

No. 1-12-3155

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 4018
)	
DWAYNE CLEMONS,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

- ¶ 1 *Held:* We affirm defendant's conviction of retail theft based on the surveillance footage and the store manager's and responding officer's testimony.
- ¶ 2 Following a bench trial, defendant, Dwayne Clemons, was convicted of felony retail theft and sentenced to two years in prison. He appeals, asserting the State failed to prove that any items were stolen from the store and, in the alternative, failed to connect defendant to the stolen items. For the reasons that follow, we affirm.

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¶ 3 At trial, Darrell Paul Robinson testified that he was the general manager of a retail store called The Alley. The Alley had four stores on the corner of Clark and Belmont, including The Alley, which was the main store, and The Architectural Revolution, located directly south of The Alley. The Alley and the Architectural Revolution could each be accessed from an alleyway off of Belmont and entrances on Clark Street.

¶ 4 While he was assisting a customer in The Alley's shoe department at around 5 p.m. on February 11, 2012, Robinson noticed defendant entering the store through the alleyway entrance. Defendant was wearing a hat and "brownish" trench coat and carrying a shopping bag, "just shopping like any other customer, looking around at merchandise." Andrew Keyt, the head of the shoe department, subsequently approached Robinson. Based on their conversation, Robinson accompanied Keyt to look for defendant at The Architectural Revolution and other stores on Belmont and Clark, but they could not find him. Approximately four hours later, Keyt approached Robinson again. Based on their conversation, Keyt and Robinson called 9-1-1 and left The Alley to search for defendant again. They spotted him on Belmont Avenue, traveling toward the "el" stop. Robinson noticed defendant was still wearing the trench coat and had on an "animal print Russian style cap" that The Architectural Revolution carried in its store.

¶ 5 Officer Jill Martinek testified that she and her partner went to the Belmont Street red line "el" stop at around 9 p.m. in response to a retail theft complaint. They apprehended defendant, who was wearing a leopard hat and long tan or brown trench coat and matched a physical description provided over the radio earlier. Robinson testified that he identified defendant and saw that the animal print hat defendant was wearing contained a sales tag from The Architectural Revolution along with a security sensor device. Martinek inventoried the hat.

¶ 6 Following defendant's arrest, Robinson met a police officer at The Alley. He identified People's exhibit No. 1 as a picture he took of a hat that was the "[e]xact same style" as the hat defendant was wearing and a flight jacket "identical" to the ones that were stolen. Martinek identified the leopard hat in People's exhibit No. 1 as the hat she inventoried. Robinson knew the bomber jacket he photographed was "identical" to the ones defendant took because he inventoried jackets at least twice a week. Robinson returned to the store and checked the store's stock levels, which showed two jackets were missing but no jackets had been sold throughout the day. Robinson scanned the items and produced receipts to determine their retail value, which totaled \$132.85.

¶ 7 The trial court admitted into evidence a disk containing three surveillance video clips from The Alley. The first clip is labeled "Alley Shoe Exit" and begins at 5:49. At around 5:50:37, a person walks from the bottom of the screen, which Robinson testified was the alleyway entrance of the store. Only the back of the person can be seen. He is carrying a shopping bag and wearing a tan trench coat and cap with flaps over the ears. The cap is a light- and dark-colored pattern. Robinson identified the person as defendant and said he was wearing the animal print Russian-style cap.

¶ 8 The second clip, labeled "Alley Mid Room," begins at 5:51. It is black and white. At around 5:51, a person wearing a trench coat and cap with ear flaps walks from the back of the room to the front. He is carrying a shopping bag in his left hand. Robinson explained that the second clip showed the men's department in the middle of the store and identified the person as defendant.

¶ 9 The third clip, titled "Front Door," is black and white and begins at 5:52. It shows security sensors at the bottom of some stairs. Robinson explained that this was the exit of the store. Robinson identified defendant as the person wearing a cap with ear flaps and a trench coat and carrying two jackets, still on their hangers. Due to the way defendant is carrying the jackets, it is unclear from the clip whether he is holding something in his left hand before he transfers the jackets to that hand. As he walks out the door, no reaction can be seen from people standing at a nearby display counter, one of whom appears to be an employee. Robinson could see that the animal print Russian cap on defendant's head still had the sales tag from The Architectural Revolution. This was the same hat Robinson saw on defendant's head when he was apprehended at the "el" stop.

¶ 10 The trial court admitted into evidence a certified statement of conviction indicating defendant was convicted of misdemeanor retail theft in February 2011.

¶ 11 On this evidence, the trial court found defendant guilty of retail theft. The court reasoned that the third surveillance clip showed a person "quite similar" to defendant carrying out two coats and wearing a hat on his head. At a subsequent hearing, the court denied defendant's motion for new trial and sentenced him to two years in prison. This appeal followed.

¶ 12 On appeal, defendant asserts the State failed to prove that any merchandise was taken from The Alley. In the alternative, he contends that even assuming items were taken from the store, the State failed to connect any taking to defendant. Defendant observes that no eyewitnesses saw defendant take items from The Alley without paying for them, the allegedly stolen jackets were never recovered, the recovered hat was not from The Alley, and the quality of the video was too poor to make an identification.

¶ 13 In resolving a challenge to the sufficiency of the evidence, this court must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The standard of review applies whether evidence is direct or circumstantial, and circumstantial evidence meeting the standard is sufficient to sustain a conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility, and we will reverse only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 14 In this case, the State charged defendant with the retail theft of two coats and a hat from The Alley. A person commits retail theft when he knowingly takes possession of, carries away, transfers, or causes to be carried away or transferred any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining the merchandise or depriving the merchant permanently of the possession, use, or benefit the merchandise without paying the full retail value of such merchandise. 720 ILCS 5/16-25(a)(1) (West 2012). Retail theft is a Class 4 felony when a person convicted of retail theft of property valued at less than \$300 has previously been convicted of any type of theft. 720 ILCS 5/16-25(f)(2) (West 2012). The elements of retail theft may be inferred from circumstantial evidence. *People v. DePaolo*, 317 Ill. App. 3d 301, 307 (2000).

¶ 15 Here, the evidence sufficiently established the taking of two jackets from The Alley. The surveillance video showed a person walking through The Alley's exit with two jackets still on

their hangers. Robinson testified that he returned to The Alley after police arrested defendant, and the store's inventory levels reflected that two jackets were missing but had not been sold. Based on the foregoing, a reasonable trier of fact could have found two jackets were taken from The Alley.

¶ 16 Moreover, the State presented sufficient evidence to identify defendant as the person who took the jackets from The Alley. Notwithstanding the poor quality of the surveillance video, Robinson testified that he saw defendant in the store and identified him at the el station, during trial, and in the surveillance video. The trial court, after listening to Robinson's testimony and viewing the surveillance video, found that the person in the third surveillance clip carrying out two coats appeared "quite similar" to defendant. It was for the trial court to weigh the evidence. *Brown*, 2013 IL 114196, ¶ 48.

¶ 17 Finally, defendant contends the State failed to prove that the hat he was wearing when he was arrested came from The Alley, as it had a sales tag from The Architectural Revolution, not The Alley, and no evidence was offered that The Alley even carried the hat in its store. In response, the State argues the Alley and The Architectural Revolution should be treated as one entity because they are co-owned, located next to each other, and share an alleyway entrance. In the alternative, the State posits that defendant's conviction should be affirmed solely based on the evidence concerning the jackets. Although we reject the State's representation that the evidence showed The Alley and The Architectural Revolution shared an entrance, we agree with the State that defendant's retail theft conviction can be sustained solely on the evidence that he took the two jackets from The Alley. See 720 ILCS 5/16-25(a)(1), (f)(2) (West 2012) (A person commits felony retail theft when he has a prior theft conviction and commits retail theft of property valued

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at less than \$300). Accordingly, we need not determine whether the State proved the recovered hat came from The Alley.

¶ 18 For the reasons stated, we affirm the trial court's judgment.

¶ 19 Affirmed.