

Nos. 1-13-0001 and 1-13-0002
(Consolidated)

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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
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 12 CR 12256
)	
SAMER ALRABADI and IKLASS ALRABADI,)	
)	Honorable
Defendants-Appellants.)	John Joseph Hynes,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendants Samer and Iklass Alrabadi committed felony retail theft and proved defendant Samer Alrabadi accountable for Iklass' criminal actions.

¶ 2 Siblings Samer, Iklass, and Abeer Alrabadi were charged with felony retail theft for the theft of about \$1,600 in merchandise from the Sears department store in Orland Park, Illinois.

All three were tried together in a bench trial and the trial court granted defense counsel's motion

for a directed finding with regard to Abeer. Defendants Samer and Iklass were then found guilty and sentenced to two years of probation. In these consolidated appeals, Samer and Iklass challenge the sufficiency of the evidence.

¶ 3

BACKGROUND

¶ 4 At trial, Marilyn McBride (McBride) testified that she is a deputy sheriff for the Cook County Sheriff's Department, but also works part-time as a loss prevention agent for the Sears department store in Orland Square Mall in Orland Park, Illinois. On June 10, 2012, at about 4:55 p.m., McBride was conducting surveillance on the closed-circuit television (CCTV) system in the Loss Prevention Camera Room of Sears when she observed Samer, Abeer, and Iklass Alrabadi. They had two children with them.

¶ 5 On the CCTV system, McBride observed the defendants carrying Kohl's department store bags that appeared to be old. McBride found this suspicious because there is no Kohl's store located in the Orland Square Mall. Iklass was carrying a black bag that appeared to be a diaper bag and a Kohl's bag. Samer was pushing a shopping cart carrying a child and two Kohl's bags. Abeer was carrying a Sears bag.

¶ 6 McBride continued following them on the CCTV system as they walked through the men's department. According to McBride, the Alrabadis selected apparel indiscriminately, without regard to size or price. After they selected items in the licensed business and men's departments, the Alrabadis carried the items in their hands and proceeded onto an elevator. When they exited the elevator, they were no longer carrying any of the items that McBride had observed them remove. She continued to follow them on the cameras as they walked through the women's and then the children's departments, before they left Sears through the exit located in the children's department. When they exited, Iklass was pushing the shopping cart carrying the

Kohl's bags, and Abeer was carrying a Sears bag. Samer departed Sears a couple of seconds after Abeer and Iklass.

¶ 7 According to McBride, none of the Alrabadis stopped to make a purchase during the time she observed them on the CCTV cameras and they passed by a cash register before exiting the store. The State published the recording of the security video of the Alrabadis which substantially corroborated this portion of McBride's testimony.

¶ 8 After the Alrabadis exited the store, McBride went to the elevator and checked to see if they left any tags or merchandise in the elevator, but did not find anything. There also was no one on the elevator when she checked it. McBride then left the store and discovered the Alrabadis in the parking lot standing by their vehicle with the shopping cart. The shopping cart contained three Kohl's bags and a Sears bag.

¶ 9 When McBride approached the Alrabadis at their vehicle, she identified herself as a Sears loss prevention agent and recognized the items she observed taken from the licensed business department in the Kohl's bags. McBride recovered from the Alrabadis the three Kohl's bags and the Sears bag in the shopping cart and called the Orland Police Department. McBride then escorted the Alrabadis back into Sears to the loss prevention office.

¶ 10 Abeer produced a receipt for the items in the Sears bag. As for the remaining three Kohl's bags, McBride asked Iklass, Samer, and Abeer to identify which bag belonged to each of them and laid out the merchandise on the floor of the office. Samer identified the first Kohl's bag as his; the bag contained 17 items, valued at \$396.49 in total. Abeer identified the second Kohl's bag as hers; it contained over 40 items, valued at \$900.31. Abeer and Samer said the third Kohl's bag containing two items valued at \$62 belonged to Iklass. The Alrabadis could not produce a receipt for any of the items in the Kohl's bags. At that time, McBride had a store

manager come to the office to identify the allegedly stolen merchandise. The manager used a scanner to verify that the items were Sears' property, producing receipts to account for their value.

¶ 11 When the police arrived, McBride spoke with the responding officers in the parking lot. Thereafter, the officers recovered a black bag from the Alrabadis' vehicle containing additional merchandise. McBride delivered these items to the loss prevention office. The store manager once again scanned the merchandise and verified they belonged to Sears totaling \$241.99 in value. The officers then placed Abeer, Sameer, and Iklass into custody.

¶ 12 Officer Ziolkowski of the Orland Park Police Patrol testified that when he arrived in the loss prevention office, defendant Samer told him that he wanted to take the blame, that he wanted the merchandise charged to him, and that he wanted "this" to be "put" on him because Iklass was ill and could not handle it. He also said that Iklass has children. Defendant Samer escorted Ziolkowski to their vehicle and after the officer placed him in custody, the officer conducted an inventory search of the vehicle. When Officer Ziolkowski searched the vehicle he located a black bag that contained Sears merchandise, along with baby items. He secured the bag and notified another officer. McBride then met him and identified the items as being stolen from Sears.

¶ 13 Two Sears managers also testified that they scanned the items that McBride recovered and produced receipts showing the value of the items. After the State rested, the defense moved for a directed verdict for Abeer Alrabadi, and the trial court granted the motion.

¶ 14 Samer Alrabadi testified for the defense. According to Samer, he drove his sisters Iklass and Abeer, and Iklass' two young children to Sears. He wanted to buy his nephew a gift so he picked up two sports team outfits and handed them to his sister because she knew the child's

size. When they entered the elevator, the children began crying and jumping around. Iklass began looking for diapers and put the outfit down to do so. Iklass did not find the diapers in the cart. Defendant Samer gave his car key to Abeer to retrieve the diapers from the automobile. He helped Iklass off the elevator and then tried to place the items back on the shelf. After returning the items to the shelf, defendant Samer ran after his sisters because the sports outfit that he wanted to buy had not been paid for. When he arrived at the parking lot, he saw McBride showing her badge to his sisters.

¶ 15 Defendant Samer and his sisters followed McBride into the loss prevention office where defendant Samer observed various items in the office. He testified that aside from the two sports outfits, he and his sisters only had Sears items that they planned to return. Defendant Samer told the Orland Park police officers to leave his sister Iklass alone and that “[i]f there’s anything missing, put any blame on me.” Defendant Samer testified that he intended to purchase the two sports outfits.

¶ 16 On cross-examination, defendant Samer testified that his sisters purchased items while on the first floor of Sears. He admitted that his sisters did not pay for the items recovered from the Kohls bags, but maintained the items were not from Sears. He testified that the items were gifts that Iklass received for her baby. However, defendant Samer never saw a gift certificate for these items.

¶ 17 Defendant Iklass testified that defendant Samer handed her two sports team outfits and asked her to check the sizes. She looked at the sizes and held onto them as the group began walking towards the elevators. Iklass's two sons, both of whom were under the age of two, became restless at this point, with one squirming in the shopping cart and the other "yelling" because he needed his diaper changed. According to Iklass, she began looking for milk and

diapers in her black bag and put the items that defendant Samer had handed her into the cart to look for the baby items. When she did not find them, they exited the elevator and defendant Samer gave Abeer his car key to retrieve the diapers and milk. Defendant Iklass then left the store with Abeer. As they left, defendant Samer took some items out of the cart because he "wanted to return some of the stuff[.]" She brought a total of about 12 pieces to the store to return.

¶ 18 On cross-examination, defendant Iklass testified that she had gift receipts for her returns but she did not show them to McBride because McBride did not ask for them. She also admitted that she did not volunteer the receipts. According to Iklass, she did not attempt to pay for the items she placed in the cart when she began looking for milk and diapers because defendant Samer took some items out of the cart to place them on the shelves, and she did not know which items he removed.

¶ 19 The defense rested and the parties made closing arguments. The trial court then rendered its finding. The court reviewed the video and stated that it was "clear that both Samer and Iklass Alrabadi were working together." The trial court further stated the following while making its finding:

“Now, the defendants’ story as to say how this occurred is incredible. First of all, you would have me believe that they went into a store where they had receipts for items *** from Sears; that the first thing they did not do, they did not stop at customer service to get the money for these items, especially if they were going to buy something else like a seat or whatever they were going to buy.

So I’m supposed to believe that they just walked around and continued to buy items or were going to buy some items, but hadn't paid for them.

Then I'm to believe that they passed—and in that video it's clear there are cash registers all over the place—they passed those cash registers without pay for the items that they were going to buy. They went into the elevator, and all of a sudden because of something that happened in the elevator with the kids, these items were nowhere to be seen. They were in the hands of Iklass. ***

And Samer put items back. There's nothing in any of those videos that shows anybody putting anything back. They were doing nothing but taking items. And they walked past the last cash register as opposed to somebody running out and getting the milk or getting the diapers or whatever needs to be gotten.

I don't believe a single thing either of them said.

I think the State has proven their case beyond a reasonable doubt. There will be a finding of guilt as to both defendants.”

The trial court denied the defense's motion for new trial and sentenced Iklass to two years of probation and sentenced Samer to two years of probation with 34 days considered served.

Defendants appeal.

¶ 20

ANALYSIS

¶ 21 On appeal, defendants contend the State failed to prove them guilty of felony retail theft. Where a defendant challenges the sufficiency of the evidence, we decide, after viewing the evidence in the light most favorable to the prosecution, whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). "We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt." *People*

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v. Evans, 209 Ill. 2d 194, 209 (2004). A person commits felony retail theft when that person 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 such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise." 720 ILCS 5/16-25(a)(1) (West 2012).

¶ 22 Here, the testimony and the video recording showed that Samer, Iklass, and Abeer Alrabadi selected clothing items from the licensed business department and the men's department, entered the elevator with the items, but when they exited the elevator the items were concealed. Defendants Samer and Iklass left Sears without paying for the items. After McBride stopped them, Iklass and Samer identified which Kohl's bags they were carrying, and Sears managers scanned the items contained in these bags and determined that the merchandise was worth about \$1500. Defendants passed various cash registers in the store, passed a final register before exiting, and consequently, the trial court properly inferred defendants' intent to steal the merchandise. See 720 ILCS 5/16-25(c) (West 2012) (trier of fact may infer intent to steal merchandise where defendant conceals un-purchased merchandise and removes it "beyond the last known station for receiving payments" in that retail establishment).

¶ 23 Defendants argue that McBride's testimony is not credible as "it is fraught with inconsistencies." The trier of fact determines witness credibility, and we will not substitute our judgment for the trier of fact's on issues of credibility where the evidence is not so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendants' guilt remains. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In this case, a surveillance video recorded defendants' actions within the store and substantially supported McBride's testimony. It was therefore

reasonable for the trial court to have found McBride's testimony credible.

¶ 24 Defendants also argue that the State failed to prove that the recovered items came from the Orland Park Sears store. Defendants' argument is contradicted by the evidence adduced at trial, which revealed the defendants selecting store items and concealing them in their shopping cart. The evidence further established store managers scanned these items upon their recovery, produced a receipt for them, and then re-shelved them for purchase. Accordingly, the State proved this element beyond a reasonable doubt.

¶ 25 Defendant Samer further contends the State failed to prove that he had the intent or knowledge to be held accountable for Iklass' criminal actions. A person is legally accountable for another's actions when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2012); see also *People v. Perez*, 189 Ill. 2d 254, 266-68 (2000). Mere presence alone is insufficient to sustain a conviction based on an accountability theory. *People v. Jones*, 364 Ill. App. 3d 740, 747 (2006). A person may be held accountable under the "common design" rule, which provides that "where two or more people engage in a common criminal design or agreement, acts in furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *People v. Cooper*, 194 Ill. 2d 419, 434 (2000), quoting *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Proof may be established by the circumstances surrounding the commission of the crime. *Id.* at 435. Accountability does not require proof of a preconceived plan. *Jones*, 364 Ill. App. 3d at 747. Evidence that the accused was involved in the spontaneous acts of the group may be shown to prove accountability. *Id.*

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¶ 26 Here, defendant Samer arrived with Iklass, pushed the shopping cart, removed clothing items from the shelves that were never paid for, and exited the store without attempting to pay for any of the merchandise. The trial court could properly infer that defendant Samer intended to participate with Iklass in their common criminal design to steal merchandise from Sears. See *Perez*, 189 Ill. 2d at 267 (factors to consider in determining that a defendant is accountable for another's criminal conduct include proof that the defendant was present during the perpetration of the offense, fled from the scene, maintained "a close affiliation" with his companions after the crime, and failed to report the crime).

¶ 27 CONCLUSION

¶ 28 Based on the foregoing, we affirm the circuit court of Cook County's judgment finding defendants guilty of felony retail theft.

¶ 29 Affirmed.