

No. 1-09-1665

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FIRST DIVISION
FILED: March 21, 2011

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. 07 CR 17711
)	
ROBIN WILLIAMS,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred
in the judgment.

O R D E R

HELD: Defendant's felony theft conviction reduced to a
misdemeanor; cause remanded for resentencing.

Following a bench trial, defendant Robin Williams was
convicted of felony theft and sentenced to 12 months' probation.
On appeal, she claims that the State failed to prove her guilty
of theft beyond a reasonable doubt; and, alternatively, that her
conviction should be reduced to a misdemeanor.

The record shows that defendant was charged with felony theft from her employer, Old Navy, over a period of time from May 31, 2007, through August 14, 2007. At trial, Dusko Tadic testified that he is the loss prevention manager for the Old Navy Chicago district, and investigated this case. He explained that each Old Navy cashier has a unique employee identification (ID) number that is associated with his or her own password which must be used to access the cash register being used by this individual. He added that the employee is the only one who has access to that number.

As part of his job, Tadic runs the exception reporting computer program which records all the transactions made on the registers at Old Navy stores. These transactions are linked to the cashier who rang up the transaction by the personal ID number. When Tadic runs the program, he looks for any out of the ordinary exceptions, such as a cashier with higher refunds than other cashiers.

Tadic further testified that in May 2007, he noticed that the exception report pertaining to defendant, a cashier at the store located at State and Washington Streets, reflected that she was conducting many more cash refunds than her coworkers. Tadic investigated defendant for two and a half months during which he noticed multiple cash refund transactions by her on the same day that she had rung up the original purchases, and just before

another in-store transaction was processed. Tadic testified that customers do not typically go back to the same cashier in a store with 20 cash registers.

Tadic further testified that through his "electronic journal" he was able to print off the "registered transaction[s]," which is similar to a receipt, and shows what was purchased and what was refunded. Tadic stated that the transaction records also list the times of the transactions, and that he was able to match the registered transactions he printed with 14 video transactions of defendant at her register. Tadic stated that the video footage showed defendant holding onto different receipts, then utilizing them for herself to conduct a fraudulent refund.

Tadic further testified that he flagged 59 refund transactions including the 14 video transactions done by defendant for herself. When the State asked Tadic whether the amount defendant stole was in excess of \$300, trial counsel objected but was overruled. Tadic then testified that he determined that the dollar amount of the 14 video transactions alone exceeded \$300.

The State then introduced into evidence two videos that contained 9 of the 14 video transactions testified to by Tadic. These videos showed transactions conducted by defendant on July 26 and 27, 2007, and August 1, 4, and 8, 2007. The State noted

that there was also a transaction dated August 13, 2007, but that it agreed with the defense not to pursue that transaction.

As the videos were played in court, Tadic explained that they showed a customer waiting while defendant entered a refund from a receipt that she obtained from a previous customer. Tadic stated that the video then shows that the cash drawer opened, that defendant quickly closed it, and placed the printed receipt to the side. After that, she rang the sale for the waiting customer. Tadic stated that customers who are purchasing goods in the store may use either a blue mesh bag or a cart to carry the merchandise they are buying, and that one of the video transactions shows a customer placing merchandise on the counter from one of the blue mesh bags after defendant completed a refund. Tadic testified that the videos do not show all of defendant's illegitimate refunds.

Tadic further testified that there were no shortages in defendant's cash drawers on the dates in the videos. Tadic explained that if the money was not removed from the cash drawers there would have been an overage, and that defendant was responsible for balancing her cash drawer which was done in the basement of the store.

Tadic further testified that on August 14, 2007, he asked defendant about the cash refunds. Defendant first denied conducting them, but, when Tadic showed her the 59 transactions

he had flagged, she admitted that she had, but stated that he would not understand why she did it. Tadic then asked defendant to complete a voluntary written statement which documented defendant's admission to one of the transactions for \$60. Tadic noted in his own report that defendant also admitted performing the other transactions.

Defendant testified that one of her responsibilities as an Old Navy cashier was to make sure that the amount of money in her cash drawer in the morning was the same amount at the end of the day. Defendant testified that six other cashiers had access to her ID number, that she only needed her ID number to use her cash register and did not have a password. Defendant stated that she stopped closing out her cash register because there were too many rules, and that someone else closed it out for her. Defendant also stated that she never had a receipt in her hand before a customer came up to her, and that it was impossible to print a duplicate receipt unless the customer used a credit card.

Defendant further testified that Tadic only questioned her about a \$60 transaction, and that she was coerced into writing and signing a statement admitting that she conducted an unlawful refund on August 13, 2007. Defendant also stated that she was appalled that Old Navy would ask her about the \$60 refund and indicated in her statement that she has worked hard for Old Navy and received no incentives. She acknowledged that her statement

reflects that she did not know how long this was going on, but she did not recall writing that in her statement.

At the close of evidence, the court found defendant guilty of theft beyond a reasonable doubt. In doing so, the court noted that there were some credibility issues, and that it had "great difficulty" with defendant's testimony. The court then noted that the videos clearly showed defendant conducting transactions at the cash register, which she opened and closed at "lightning speed," before she rang up her customers. The court found that the testimony was sufficient to prove that defendant stole in excess of \$300.

Defendant filed a motion for a new trial alleging that no proof of the dollar amount taken from Old Navy was admitted through hard evidence or testimony. At the hearing on the motion, defense counsel emphasized that there was no concrete proof regarding the amount of the loss to Old Navy. The court denied the motion noting that it was convinced that defendant "perpetrated fraud upon" Old Navy, and that the State proved that defendant took over \$300 based on Tadic's testimony.

On appeal, defendant first claims that the State failed to prove her guilty of felony theft beyond a reasonable doubt. She specifically maintains that there was no evidence that Old Navy suffered any loss.

As an initial matter, defendant asserts that this issue should be reviewed *de novo* because it is a purely legal issue. We disagree where defendant has raised the sufficiency of the evidence to sustain her conviction. In such a case, the standard of review is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). For the reasons that follow, we do not find this to be such a case.

To sustain defendant's theft conviction, the State was required to prove beyond a reasonable doubt that she knowingly obtained property belonging to Old Navy intending to permanently deprive the company of the use or benefit of that property. 720 ILCS 5/16-1(a)(1)(A) (West 2006). Defendant maintains that Tadic's testimony and the nine video transactions show that she entered returns without giving money to a customer, but do not show that she took any money, kept any receipts for conducting fraudulent refunds later, or that the refunds were fraudulent.

The record shows, however, that Tadic became suspicious when his review of the transactions on defendant's register showed

that she was executing many more cash refunds than her coworkers. He also found the refunds unusual because they were transacted on the same day that the original purchase was made and both were initiated by defendant. In addition, Tadic identified 14 video transactions of defendant conducting cash refunds for herself which matched the registered transactions that he had generated from the computer. Although defendant's cash drawer was balanced on each of the dates of the video transactions, Tadic explained that if the money was not removed from her drawer, there would have been an overage. Based on this testimony and the permissible inferences therefrom (*People v. Jackson*, 391 Ill. App. 3d 11, 30 (2009)), we find that a reasonable trier of fact could conclude that when defendant closed out her cash drawer, she removed cash from the drawer, thereby accounting for the fraudulent cash refunds that were recorded on her register and depriving her employer of that property.

We have also observed the nine video transactions presented at trial which clearly show defendant entering information from a piece of paper into the cash register with the cash drawer opening and closing prior to her ringing up a customer. Although defendant claims that these video transactions show her entering returns without giving money to a customer, they do not show that she stole any money or conducted fraudulent refunds. We find this alternative explanation for the numerous video cash

transactions that were done without a customer implausible and illogical, especially where defendant's cash drawer did not have an overage.

We also find that defendant's admission to Tadic that she conducted 59 fraudulent refunds reinforces the State's case. *People v. Taylor*, 398 Ill. App. 3d 74, 91 (2010). Defendant maintains that this testimony was highly suspect. This argument concerns the credibility of the witnesses, a matter within the purview of the trier of fact. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). Here, the trial court clearly found Tadic to be a credible witness, and specifically found defendant's testimony troubling. The record, therefore, presents no basis for disturbing the credibility determination made by the trial court in this case. *Campbell*, 146 Ill. 2d at 375.

Defendant further claims that her written statement cannot be used against her because it was based on a transaction that the State agreed not to pursue, *i.e.*, the August 13, 2007, transaction, and that under the doctrine of *corpus delicti*, the statement was insufficient to prove her guilt. We find these claims without merit where, the evidence, even without the admission to the August 13th transaction, was sufficient for the trial court to conclude that defendant was proved guilty of theft beyond a reasonable doubt.

In reaching that conclusion, we have considered *People v. Liner*, 221 Ill. App. 3d 578 (1991) and *People v. Leigh*, 45 Ill. App. 3d 563 (1976), cited by defendant, and find them factually inapposite to this case. In *Liner* and *Leigh* there was no evidence establishing that defendant stole from the victim, an infirmity that does not exist in this case.

Furthermore, we reject defendant's contention that the State failed to prove her guilty of theft since it did not present any evidence that she possessed the funds she was charged with taking. A conviction can be upheld even if the stolen property is never recovered as defendant could have disposed of the proceeds. *People v. Dayani*, 16 Ill. App. 3d 615, 619 (1973). That is particularly evident where the property is cash money taken over a period of time.

Defendant claims, in the alternative, that her felony theft conviction should be reduced to a misdemeanor because the State failed to prove beyond a reasonable doubt that the value of the loss to Old Navy was over \$300. She maintains that the State's value evidence was insufficient where the State alleged that the 14 video transactions amounted to more than \$300, but it only introduced 9 of the video transactions.

Where, as here, defendant is charged with theft of property exceeding a certain value, the value of the stolen property is an element of the offense to be resolved by the trier of fact as

either exceeding or not exceeding that value. 720 ILCS 5/16-1 (West 2006); *People v. Perry*, 224 Ill. 2d 312, 320 (2007). An element of an offense must, of course, be proven beyond a reasonable doubt. *People v. Furby*, 138 Ill. 2d 434, 446 (1990).

The record reveals that Tadic testified that he flagged 59 refund transactions, including the 14 video transactions. He also determined that the dollar amount of the 14 video transactions exceeded \$300. No further value testimony was provided, and only 9 of the 14 video transactions were admitted into evidence. Although it is highly probable that the total amount taken over a period of 10 weeks was more than \$300, the proof of this element did not establish that amount beyond a reasonable doubt. Accordingly, we reduce defendant's conviction to misdemeanor theft and remand the case for resentencing on the lesser offense. This conclusion renders moot defendant's remaining contentions regarding the reduction of her conviction to a misdemeanor. *People v. Boyd*, 363 Ill. App. 3d 1027, 1030 (2006).

Defendant finally requests that her DNA record be expunged pursuant to section 5-4-3(f-1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-3(f-1) (West 2006)). That section, however, only provides for expungement when a conviction is reversed based on actual innocence. Defendant's conviction was not reversed based on actual innocence, but, rather, was reduced

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based on insufficient evidence. Accordingly, expungement is not indicated under this section.

In light of the foregoing, we reduce defendant's felony theft conviction to misdemeanor theft and remand the cause for resentencing on that lesser offense.

Affirmed as modified; remanded with directions.