2018 IL App (1st) 153193-U

No. 1-15-3193

Order filed August 16, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 C4 40831
	)	
ROBERT BURAK,	)	Honorable
	)	Geary W. Kull,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for retail theft is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he was in possession of two bottles of liquor and that it was his intent not to pay for those bottles.

¶ 2 Following a bench trial, defendant Robert Burak was convicted of retail theft (720 ILCS 5/16-25(a)(1) (West 2014)), and sentenced to 155 days' imprisonment. On appeal, defendant contends that his retail theft conviction should be reversed because the State failed to prove beyond a reasonable doubt that he committed the offense. We affirm.

¶ 3 Defendant was charged by information with retail theft (720 ILCS 5/16-25(a)(1) (West 2014)). The charge alleged that defendant knowingly took possession of, carried away, transferred, caused to be carried away, or caused to be transferred any merchandise to wit: alcohol, displayed, held, stored, or offered for sale in a retail mercantile establishment, to wit: Walgreens located at 10345 Roosevelt Road in Westchester, Cook County, Illinois with the intention of retaining such merchandise without paying the full retail value of the merchandise, the full value did not exceed $300, and Robert Burak had been previously convicted of retail theft under case number 13 C4 40364. Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 Andrea Baker testified that on December 3, 2014, she was the manager of the Walgreens located at 10345 West Roosevelt Road in Westchester. About 6:20 p.m. Baker was waiting on a customer at the pharmacy counter register. As she did so, Baker had a straight view down the liquor aisle, and observed defendant take two bottles of liquor and place them into a shoulder bag that he was carrying. Baker estimated that she was about 30 feet away from defendant. Baker testified that defendant had taken New Amsterdam brand vodka because "[she] knew after [she] looked in the aisle from where [defendant] was standing what type of liquor it was." Defendant turned and then walked outside through the doors of the store. Baker alerted other store employees that "someone just stole liquor." She followed defendant outside and observed him enter into a motor vehicle. Baker recorded the license plate number and called the police. She did not try and stop defendant nor did she ask him if he was going to pay for the merchandise. Baker explained that the store has a policy for employees not to stop anyone who exits the store without paying for merchandise. The store did not have a security guard. The store had a surveillance

camera but only on the entrance and exit doors and not in the liquor aisle. Baker identified two still photos captured from the video footage that depicted defendant entering and exiting the store.

¶ 5 When police arrived at the store, Baker provided them with information about the theft. The next day, a detective from the Westchester police department came to the store and showed Baker a photo array. Baker identified defendant's photo as the person she observed place the vodka in the shoulder bag and leave the store without paying for the bottles. Baker scanned two bottles of New Amsterdam Vodka and found the total value of the two bottles to be $25.98. Baker also identified defendant in court.

¶ 6 On cross-examination, Baker acknowledged that although there is a sensor at the exit door to alert that merchandise has been taken, New Amsterdam Vodka is not tagged to activate the alarm. Baker admitted that the bottles of vodka were not recovered. She acknowledged that the distance from the cash register in the pharmacy to where she observed defendant take the bottles could have been greater than 30 feet.

¶ 7 Detective Ron Milkas of the Westchester police department testified that he was assigned to investigate a theft from the Walgreens in question. Milkas ran the license plate number that Baker provided and learned that the plates were registered to Jersey Burak. Milkas determined that Jersey Burak was defendant's father. Milkas compiled a photo array, including defendant's photo, and showed the array to Baker, who identified defendant as the person that took the two bottles of vodka from the store.

¶ 8 The parties stipulated that defendant had a prior conviction for retail theft under case number 13 C4 40364.

¶ 9 After considering the evidence presented the trial court ruled:

> "[T]here's little or no question that Ms. Baker believed that [defendant] took two bottles, and that she wasn't aware of what they were until she was able to go up and see. I'm not exactly sure of what that means, to go up and see how it is that she made a determination whether there were bottles missing or whatever the circumstances were, and that she followed [defendant] out the door.
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> ***
>
> So the only question is that because there's absolutely no corroboration for the two bottles being missing other that this receipt, is whether or not that is sufficient. I think it is sufficient. I'm going to find him guilty of misdemeanor retail theft. That's what I'm going to find him guilty of."

¶ 10 Defendant's motion for new trial was denied and he was sentenced to 155 days in Cook County jail, time considered served. Defendant's motion to reconsider his sentence was also denied.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction for retail theft. Specifically, he argues that the State failed to prove beyond a reasonable doubt that he intended to retain possession of the vodka bottles without paying for them.

¶ 12 The standard of review on a challenge to the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill. App. 3d 458, 460

(2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332, ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins,* 214 Ill. 2d 206, 217 (2005).

¶ 13 Here, defendant was charged with the retail theft of two bottles of vodka. 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 of the merchandise without paying full retail value of such merchandise. 720 ILCS 5/16-25 (a)(1) (West 2014).

¶ 14 The statute also provides for a permissive inference:

> "If any person (1) conceals upon his or her person or among his or her belongings unpurchased merchandise displayed, held, stored, or offered for sale in a retail establishment; and (2) removes that merchandise beyond the last known station for receiving payments for that merchandise in that retail mercantile establishment, then the trier of fact may infer that the person possessed, carried

> away or transferred such merchandise 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 (c)(1), (2) (West 2014).

Section 16-25(c)(2) defines "conceal" as "although there may be some notice of its presence, that merchandise is not visible through ordinary observation." 720 ILCS 5/16-25 (c)(1), (2) (West 2014).

¶ 15 After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant took possession of the two vodka bottles without paying for them. Baker testified that she had a straight view down the liquor aisle and saw defendant take two bottles of vodka from the shelf and place the bottles into his shoulder bag. See *Siguenza-Brito,* 235 Ill. 2d at 229 (It has been well-established that the positive and credible testimony of a single witness is sufficient to convict a defendant). Baker knew the bottles that defendant took were New Amsterdam Vodka based on the area in the aisle where defendant was standing. After defendant placed the bottles in his bag, he turned and left the store through the front door without paying for the bottles. Defendant entered into a vehicle and drove off alone. Based on this evidence, the trier of fact could reasonably infer that defendant intended to deprive Walgreen permanently of the possession of the vodka bottles without paying for them. See 720 ILCS 5/16-25(c)(1) (West 2014); see *People v. DePaolo,* 317 Ill. App. 3d 301, 307 (2000) (the elements of retail theft may be inferred from circumstantial evidence). Baker followed defendant and recorded the license plate of the vehicle that he entered. Baker relayed this information to police and identified him from video stills showing him entering and exiting

the store. This evidence was not so unreasonable, unsatisfactory or improbable such that there remains a reasonable doubt of defendant's guilt. *People v. Schott*, 145 Ill. 2d 188, 203 (1991). Accordingly, we will not reverse defendant's conviction for retail theft.

¶ 16 Defendant nevertheless argues that his conviction should be reversed because there was no evidence that he was in possession of the bottles when he left the store given that the bottles were never recovered. Defendant further argues that there was no evidence presented that the bottles were missing from the shelves. We note that defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do where it was the responsibility of the trier of fact to determine Baker's credibility, the weight to be given to her testimony, and to resolve any inconsistencies and conflicts in the evidence. See *Hutchinson*, 2013 IL App (1st) 102332, ¶ 27; *Ortiz*, 196 Ill. 2d at 259. Given its ruling, the court found Baker credible and resolved the complained-of inconsistencies in the evidence in favor of the State. In doing so, the trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. As mentioned, a defendant's conviction will be overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. This is not one of those cases.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.