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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09 CF 523
)	
ROSEMARY HILL,)	Honorable
)	David R. Akemann,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence in retail theft case was sufficient to prove intent beyond a reasonable doubt; affirmed.

¶ 2 Following a bench trial, the trial court found defendant, Rosemary Hill, guilty of one count of retail theft (720 ILCS 5/16A-3(a) (West 2008)), and sentenced her to 30 months' probation. Defendant's sole contention on appeal is that the State failed to prove the element of intent beyond a reasonable doubt. For the foregoing reasons, we affirm.

¶ 3 **FACTS**

¶ 4 On February 18, 2009, Oscar Apantenco, a security guard for a Walmart store located in Aurora, Illinois, observed defendant and co-defendant, Veronica Almanza, shopping at the store. Defendant used an electric shopping cart and co-defendant used a regular cart. A small basket attached to the front of the electric cart measures approximately two feet by two feet wide and one foot deep. Because Apantenco became suspicious when co-defendant attempted to return a bottle of detergent that she had just taken from the shelf, he began monitoring the women. Apantenco testified that, at checkout, defendant had items in her basket, including clothing, which she did not place on the conveyor or pay for. After leaving the checkout lane, Apantenco saw defendant place those items that she did not pay for into a plastic bag. Most of this is captured on a surveillance video, which was presented at trial. The video also shows that defendant handed money to the cashier before the cashier had finished checking out the customer in front of her. The cashier pocketed this money.

¶ 5 Apantenco observed co-defendant attempt to return a comforter set that had not been purchased. When this return was denied, Apantenco apprehended her as she walked out of the store with the cart of unpaid items. Defendant never left the store, but Apantenco apprehended her in a bank located inside of the store.

¶ 6 Defendant denied any involvement with the theft. However, Apantenco and the police officer who was called to the store each testified that defendant offered to pay for the unpaid items. Defendant was indicted with retail theft over \$150, a Class 3 felony.

¶ 7 After the bench trial, the court found that defendant was not accountable for the actions of co-defendant but was guilty of retail theft of under \$150. Because defendant had a prior retail theft conviction, the court found that she had committed a Class 4 felony and the court sentenced defendant to a 30-month term of probation.

¶ 8 Defendant timely appeals, raising the sole issue that the evidence was insufficient to prove beyond a reasonable doubt that she intended to commit the theft.

¶ 9 ANALYSIS

¶ 10 When we review the adequacy of the evidence in a criminal trial, we must consider whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005); *People v. DePaolo*, 317 Ill. App. 3d 301, 306 (2000). The trier of fact determines the credibility of the witnesses, the weight given to their testimony, and the reasonable inferences drawn from the evidence (*People v. Enis*, 163 Ill. 2d 367, 393 (1994)), and is not required to draw inferences most favorable to the defendant (*People v. Martin*, 401 Ill. App. 3d 315, 323 (2010)). Additionally, a trier of fact is not required to recognize any plausible explanation presented by the defendant and accept it as reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). A reviewing court will not reweigh the evidence or substitute its judgment on these matters for that of the trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). On appeal, a conviction will only be reversed where the proof is “so improbable, unsatisfactory, or unconvincing as to raise a reasonable doubt of defendant’s guilt.” *People v. Gill*, 264 Ill. App. 3d 451, 459 (1992).

¶ 11 A person commits the offense of retail theft when he or she 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 5/16A-3(a) (West 2008).

¶ 12 Defendant contends that the evidence was insufficient for a rational trier of fact to find beyond a reasonable doubt that she did anything more than forget to pay for certain items before she passed the “last known point of payment and attempted to leave the store.” Specifically, defendant contends: (1) the police officer’s testimony contradicts the security guard’s testimony that defendant confessed in the presence of himself and the police officer; (2) although Apentenco testified that defendant used one of the empty bags to conceal the clothing in defendant’s shopping basket, the video shows only defendant grabbing the empty bag; (3) Apentenco testified that the receipt indicated that defendant had not paid for any clothing, but it was never introduced into evidence; and (4) the State does not have the benefit of the presumption that defendant intended to steal the items because she remained in the store and did not pass the “last known point of payment.”

¶ 13 Defendant’s first three arguments concern credibility determinations. A conviction cannot be reversed merely because the defendant claims witnesses are not credible. *People v. Smith*, 177 Ill. 2d 53, 74 (1997). A reviewing court will not retry a defendant or substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses, the inferences to be drawn, or the weight to be given their testimony. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). It is for the trier of fact to accept or reject as little or as much of a witness’ testimony and to judge how flaws in parts of his or her testimony affect the credibility of the whole. *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004). A reviewing court must allow these reasonable inferences in favor of the State. *Cunningham*, 212 Ill. 2d at 280.

¶ 14 As to the last argument, defendant cites *People v. Steele*, 156 Ill. App. 3d 508, 511 (1987), for the proposition that removing merchandise “beyond the last known station for receiving payments,” namely the service counter, is evidence of intent. Defendant argues that,

without this presumption, the statute could be taken literally to include would-be thieves who remove merchandise from the shelf with the intent to steal it, only to change their minds moments later. First, it is important to note that the trial court never relied on any presumption in making its findings. Second, the State need not rely on the presumption and may still prove the element of intent without it. See *DePaolo*, 317 Ill. App. 3d at 307; *Steele*, 156 Ill. App. 3d at 511-12.

¶ 15 Here, without the benefit of the presumption, the evidence is sufficient to satisfy the burden of proof. The surveillance video shows defendant placing some merchandise on the conveyor belt but not placing other items on the conveyer belt which can be seen in her basket, including the clothing items which Apantenco had previously seen defendant placing in the basket. Apantenco testified that, after leaving the cashier, defendant placed the items left in the basket in a plastic bag. The trial court explicitly accepted this testimony, which it was entitled to do as the trier of fact, and acknowledged that defendant's basket was not empty when she checked out.

¶ 16 Moreover, even though the police officer's testimony did not corroborate the security guard's on the issue of a confession, both testified that defendant offered to pay for the items that she had in her possession. Clearly, this evidence shows defendant was aware that she did not pay for the all of the items at check out and is evidence of consciousness of guilt.

¶ 17 Additionally, a trier of fact could reasonably infer that defendant's action of watching the cashier retain the payment without placing cash in the register, together with defendant not placing all of the items in her basket onto the conveyor belt for a normal transaction indicated the intent to steal. These facts, coupled with the evidence that defendant gave the cashier money, which the cashier placed in her pocket, before the cashier was finished with the preceding

customer, supports a determination that defendant possessed the items with the intent of depriving the merchant of them without paying for them at the time she was apprehended. When viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.

¶ 18 Defendant contends that, by claiming that the actions of co-defendant and the cashier circumstantially prove that defendant herself intended to steal, the State essentially suggests that defendant's conviction depends on her association with those other individuals. We find this argument unavailing. The State does not suggest that defendant's conviction solely depends on her association with co-defendant and the cashier. The State cites to the interaction between defendant, co-defendant, and the cashier as *additional* evidence to consider in support of its burden of proving defendant's intent to commit retail theft. To determine whether sufficient evidence was presented to sustain a conviction, a reviewing court must consider *all* the evidence in the light most favorable to the State, and then determine if a rational trier of fact could have concluded that the State proved the elements of the crime charged beyond a reasonable doubt. *People v. Rojas*, 359 Ill. App. 3d 392, 396-97 (2005). Furthermore, if co-defendant's behavior is consistent with defendant's intent to commit retail theft, it is relevant. Evidence is relevant if it has any tendency to make any fact of consequence to the action more or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan.1, 2011).

¶ 19 Defendant last suggests that the State attempts to shift the burden of proof by calling attention to defendant's failure to offer a reasonable explanation for her behavior. Defendant does not point to any evidence presented during the trial in which the State shifted the burden of proof by asserting that defendant's silence should have been used against her. Nor does the State make any such inference in its appellate brief. Rather, the State correctly notes that the trial

court was allowed to infer defendant's criminal state of mind based on the evidence presented at trial.

¶ 20

CONCLUSION

¶ 21 Accordingly, based on the preceding reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 22 Affirmed.