

No. 1-17-0930

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF:)	Appeal from the
DEANDRE J., a Minor)	Circuit Court of
)	Cook County.
(The People of the State of Illinois)	
)	
Petitioner-Appellee,)	No. 15 JD 50028
)	
v.)	
)	
Deandre J.,)	Honorable
)	Donna L. Cooper,
Respondent-Appellant).)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the trial court's adjudication of delinquency with respect to minor-respondent, where finding that he committed misdemeanor retail theft was supported by the evidence.

¶ 2 Following a bench trial, the trial court adjudicated respondent-appellant, Deandre J., a delinquent minor on the ground that he committed the offense of misdemeanor retail theft. On appeal, respondent contends that the evidence was insufficient to support the adjudication. We affirm.

¶ 3 On March 10, 2015, the State filed a petition for adjudication of wardship alleging that, on November 28, 2014, 16-year-old respondent committed misdemeanor theft in violation of 720 ILCS 5/16-25(a)(1) (West 2014), by knowingly carrying away clothing sold at Macy's Department Store (Macy's), having a value of less than \$300, with the intention of permanently depriving Macy's of the possession, use, and benefit of such merchandise.

¶ 4 On November 15, 2016, a date set for a trial on the petition, respondent moved to bar the State from admitting at trial a surveillance video which the State had just produced. The State received the video on that day from Macy's Asset Protection Manager, Erica Ochocinski, when she appeared to testify. The trial court denied respondent's motion to bar.

¶ 5 Respondent also objected to the State calling Ms. Ochocinski as she had not been disclosed as a witness in the State's answers to discovery, nor in the police report. The State responded that its disclosed witness was no longer employed by Macy's and that, instead, Ms. Ochocinski would be called to testify. The trial court allowed the State to amend its answer to discovery to name Ms. Ochocinski as a witness and continued the trial to allow respondent to speak with her

¶ 6 On December 2, 2016, prior to the commencement of respondent's rescheduled bench trial, the State announced that it did not intend to seek admission of the surveillance video.

¶ 7 At the trial, Ms. Ochocinski testified that, on November 28, 2014, she was working as an Asset Protection Manager at the Macy's store in Orland Square Mall located in Orland Park, Illinois. At around 2:26 p.m., after receiving a call, Ms. Ochocinski went to the men's department and observed "suspicious activity." Respondent, whom she identified in court, and another person, were in the men's department. Respondent held a balled-up hat in his hand and was carrying a jacket. Respondent then proceeded to the women's department on the second floor, where he put on both items. Ms. Ochocinski testified that the hat and jacket were sold at Macy's as the items had price tags and were "on our selling floor." Respondent walked past the

last point of sale and into the mall. Ms. Ochocinski then stopped him. Ms. Ochocinski testified that, while respondent was in the store, the price tags were still on the hat and jacket, but she did not recall whether the tags were still on the items when she stopped respondent outside of the store. Ms. Ochocinski explained that Macy's price tags "don't have Macy's [printed] on them," but the tags on the hat and jacket matched, or were similar to, those used by Macy's. She did not see respondent pay for the items during the time she observed him.

¶ 8 On cross examination, Ms. Ochocinski testified that, when she first saw respondent in the men's department, he was holding only the hat. Respondent then "selected" the jacket. Ms. Ochocinski admitted that she "did not have sight of [respondent] the entire time he was in the store." She saw him select the jacket, but someone else from Macy's saw him select the hat.

¶ 9 On redirect, she explained that respondent selected the jacket from a rack in the store. It is customary that purchased items are placed in a bag. When stopped outside of Macy's, respondent did not have the hat, nor the jacket, in a bag. On recross, she acknowledged that people leaving Macy's "don't always have bags."

¶ 10 The trial court denied respondent's motion for a directed finding and respondent rested.

¶ 11 Respondent's counsel, in closing arguments, challenged the sufficiency of the evidence and asserted that the State had failed to demonstrate that respondent did not purchase the items from Macy's.

¶ 12 The trial court found that the evidence established respondent possessed the hat and jacket while in Macy's and "walk[ed] out of the store without paying for them." The court concluded the State had proven the charge beyond a reasonable doubt, adjudicated respondent delinquent for misdemeanor retail theft, and continued the case for disposition.

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¶ 13 On March 3, 2017, the State reported to the court that respondent had recently been sentenced to five years' probation and 125 hours of community service in Will County, Illinois, on a separate matter.

¶ 14 On March 14, 2017, in light of the Will County disposition, and upon the recommendation of the State, the trial court entered a finding of "judgment of guilty to stand. Case closed." Respondent appeals.

¶ 15 On appeal, respondent argues that his adjudication of delinquency must be reversed because the State did not prove, beyond a reasonable doubt, that he committed the offense of misdemeanor retail theft. Defendant also argues that the evidence was insufficient because there was no confession, no inculpatory video surveillance footage, and the testimony of Ms. Ochocinski, the State's only witness, lacked certainty as to whether respondent actually paid for the hat and jacket, and whether those items were, in fact, taken from Macy's.

¶ 16 When this court considers a challenge to the sufficiency of the evidence " 'the relevant question 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.' " (Emphasis omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In answering this question, a reviewing court cannot substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009)), and will not set aside an adjudication unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of a defendant's guilt (*In re W.C.*, 167 Ill. 2d 307, 336 (1995)). The testimony of a single witness, if positive and credible, is sufficient to prove a charge. *Siguenza-Brito*, 235 Ill. 2d at 228. A reviewing court will not reverse an adjudication simply because the defendant claims that a witness was not credible. *Id.*

¶ 17 To prove misdemeanor retail theft, the State to show respondent “[took] possession of, carrie[d] away, transfer[red] or cause[d] 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 2014).

¶ 18 Ms. Ochocinski testified that respondent carried a hat and jacket with price tags from the sales floor of Macy’s men’s department and travelled to the women’s department, where he put on those items. He wore the hat and the jacket as he walked past the last point of sale and into the mall without paying for the merchandise. When viewed in the light most favorable to the State, this evidence supports a finding that respondent committed the offense of misdemeanor retail theft.

¶ 19 Respondent maintains that his adjudication should be reversed because: the testimony of Ms. Ochocinski was inconsistent as to when she first observed respondent with the jacket; she was uncertain as to whether the hat and jacket were items sold by Macy’s; and she could not confirm whether respondent could have paid for the items at the time that he was in Macy’s, but not being observed by her. Respondent further argues that, because there was no inculpatory statement or a surveillance video entered into evidence, these deficiencies in the testimony of Ms. Ochocinski are fatal to the State’s case. We disagree.

¶ 20 The State was not obligated to introduce a surveillance video or confession in order to sustain its burden of proof. The testimony of a single credible witness is sufficient to sustain the adjudication. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Respondent’s arguments, as to the deficiencies in the testimony of Ms. Ochocinski, were presented to the trial court and rejected. The trial court, as the trier of fact, considered the credibility of Ms. Ochocinski, determined the

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inferences to be drawn from her testimony, and resolved any conflicts. We may not substitute our judgment for the trier of fact on these matters. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 21 For these reasons, we affirm the adjudication of delinquency based upon respondent's commission of the offense of misdemeanor retail theft.

¶ 22 Affirmed.