

No. 1-10-1702

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 9509
	)	
GLORIA HILL,	)	The Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

**ORDER**

*HELD:* Defendant's conviction affirmed where totality of the circumstances proved police officer had sufficient probable cause to arrest her, where adequate foundation was laid to allow trial court to admit videotape surveillance footage of defendant as substantive evidence against her, and where evidence presented proved her guilt beyond a reasonable doubt.

¶ 1 Following a bench trial, defendant-appellant Gloria Hill (defendant) was convicted of

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felony theft; she was sentenced to 18 months' probation conditioned on her payment of \$10,000 in restitution. Defendant appeals, contending that the trial court erred when it failed to grant her motion to quash arrest and suppress evidence, that the trial court erred in admitting videotape surveillance into evidence without an adequate foundation, and that the State failed to prove her guilty beyond a reasonable doubt. She asks that we reverse her conviction or, alternatively, that we reverse and remand for a new trial. For the following reasons, we affirm.

¶ 2

#### BACKGROUND

¶ 3 Defendant filed a pretrial motion to quash arrest and suppress evidence, seeking the exclusion of oral statements she made to police. At a hearing on this motion, Detective William Rodgers testified that on May 11, 2009, he was assigned to investigate a theft at the Brinks holding facility located at 919 South California in Chicago. Once there, Detective Rodgers spoke to general manager Mark Rediker who told him that, as of April 30, 2009, the facility was missing \$10,000. Also present were two supervisors of the facility, Jennifer Jackson and Latasha Wilson. Rediker told Detective Rodgers that, pursuant to an internal investigation, he viewed surveillance video of the facility from that date, as well as internal business documents that showed the \$10,000 discrepancy, and it was his conclusion that defendant had stolen the money. Jackson and Wilson confirmed Rediker's conclusion to Detective Rodgers. They described that, from the video, they observed defendant take a package containing an unknown amount of money, put it under some bags outside the location of her assigned work area, return to retrieve the package and then leave the building. Rediker, Jackson and Wilson then showed the video to Detective Rodgers. Regarding this, Detective Rodgers stated that the video consisted of clips,

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but that defendant's movements in these clips were "continuous," showing a "continuing of her movement for approximately three to five minutes."

¶ 4 At this point in the hearing, defendant told the court she was in possession of the video and she wished to submit and show it as "the evidence part of [her] motion." She further informed the court that the State would "stipulate as to its foundation" (which it did), and that the clips were chronological and had the dates and times stamped for viewing. In response, the court went off the record. When it returned, it made clear that the reason for its break was because "[t]here was a fair amount of video that \*\*\* seem[ed] to be kind of irrelevant." Accordingly, it had asked the parties "to come to a consensus on what they felt was the most relevant portion" for it and Detective Rodgers to watch; the parties did so and, together, presented it to the court. The court then admitted the video and viewed it with Detective Rodgers.

¶ 5 Following this, Detective Rodgers' testimony continued. He stated that, upon viewing the video for the first time at Brinks with Rediker, Jackson and Wilson, he did not specifically see defendant holding money in her hands, but did see her holding a package as the employees recounted. Defendant was holding that package, along with something else in her hands, and she placed these in a bag. Rediker explained to Detective Rodgers that it was defendant's job to handle such packages, which contained the money of Brinks' customers, and disseminate the packages to other employees' locations to be processed. Rediker further explained that defendant's actions on the video were very "unusual" on the day in question because, instead of disseminating the package in her hand, she is seen to put it under some bags in an undesignated location in the facility--bags that were not used for such work. Defendant is later seen removing

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a black backbrace she is wearing and use it to conceal the plastic package and leave the building. Detective Rodgers averred that, from his viewing of the video, he reasonably believed defendant had stolen the money that day and, although she denied the theft, he placed her under arrest.

¶ 6 Following argument, the trial court denied defendant's motion to quash her arrest and suppress her statements to police. The court's basis for its decision was, principally, the statements Rediker, Jackson and Wilson made to Detective Rodgers, as the complaining witnesses. The court noted that these, along with the "corroborative" video—both of which highlighted defendant's conduct that day in relation to the typical business procedures at Brinks—"created a suspicion, a belief that the defendant committed a crime." Accordingly, the court concluded that, while defendant's guilt was "a matter yet to be decided," there "certainly was sufficient" probable cause for Detective Rodgers to arrest defendant.

¶ 7 The cause proceeded to trial. Jackson testified that, on April 30, 2009, she was defendant's immediate supervisor. The procedures at Brinks begin with its messengers bringing in the customers' deposits to be checked-in by a teller; the money is then stored in Brinks' vault overnight and the next morning, it is brought out to be verified according to what the customers say they sent to Brinks. On May 8, 2009, Jackson's team received paperwork known as a "heat ticket" notifying them that \$10,000 of a customer's money was missing. Jackson described that Brinks' internal investigation procedure was then launched: first, paperwork was obtained to verify that the money was signed for; next, the teller's trash from that date was examined to ensure that the money was not accidentally thrown away; and finally, video footage of the work area was viewed.

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¶ 8 Regarding Brinks' video surveillance, Jackson explained that the facility, which essentially comprises one big room, has 53 cameras and 6 DVRs, all of which were functioning properly on the day in question. Jackson pulled video from that date and examined defendant's work area, which covered about 20 feet and was monitored by eight of the cameras. Jackson verified the DVR which recorded the video, affirmed that the video she watched truly and accurately portrayed defendant's work area, and noted that the portion of the video burned onto the disk to be shown in court consisted of relevant clips showing defendant's activities that day. Jackson testified that, from her viewing of the video, defendant's activities were "unusual" that day because she was seen in an area removing a cloth bag used for coin money. Jackson described that Brinks had stopped handling coin money for a year and the cloth bags had not been used since then; instead, these bags were stored out of defendant's work area back against the wall. Jackson stated that she saw defendant in the video take this cloth bag, put it over her arm and walk around with it for awhile until she laid it over an empty postal bin in an area where thousands of dollars of currency was sitting on flatbeds. Jackson next saw defendant take the cloth bag, use it to "cuff" a package of money, and walk to where the remainder of the cloth bags were stored, where she took her bag, placed it under these other bags and left the area. Jackson averred that she saw defendant later in the video return to the bag area, "dig[ ] under the bag" to retrieve something, and place it under her backbrace, which she had removed and slung over her arm. Jackson further recalled that, soon thereafter, she had a conversation with defendant wherein defendant told her she was going out to her car to get some allergy medicine.

¶ 9 At the conclusion of Jackson's direct examination, the State sought to introduce the video

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into evidence. Defendant objected to its foundation, citing lapses of time between the clips and asking to cross-examine Jackson regarding this. The trial court allowed defendant's request.

¶ 10 During Jackson's cross-examination, she described that once the investigation led to the video surveillance, she told Brinks' security office what needed to be downloaded from the cameras, which was eventually reduced to the video clips presented in court. Jackson verified that she observed "all the tape for that two-hour period" in question, from the time defendant came in that day until she left the building to go to her car, and that, once she saw defendant's activities on tape, she asked the security office to burn that part of the tape. Upon further questioning, Jackson again testified that the original DVD, made by the security office, included the whole two-hour period and not simply the clips presented in court. She further stated that, while the tape eventually excluded parts of this period during which defendant was doing her job, Jackson traced the transactions for the missing money on that day. Jackson also testified that, while part of defendant's job was to pick up plastic bags off the flatbeds when the packaged money is removed from the vault and opened to be sorted, she is seen in the video with the unused cloth coin bag which she removed from the wall—an area where "there's no need for her to be." Moreover, Jackson stated that, while she did not see defendant actually take any money, she was the only one present in her work area during that two-hour period and her conduct amounted to "unusual activity."

¶ 11 At the end of Jackson's cross-examination, defendant again objected to the video's foundation and asked the court whether it would admit it because, if it would, defendant wanted to further question Jackson about it. The court stated it would look at the video and would allow

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defendant the chance to again cross-examine Jackson afterwards. Three clips were then played, with Jackson narrating facts about the facility and pointing out defendant's actions. The court verified for the record that each clip bore a date and time stamp, and verified with Jackson once again that the video equipment at Brinks had been functioning properly on the day in question. Following this, defendant was allowed to recross-examine Jackson, whereupon she presented a different clip to refute Jackson's prior testimony that only defendant was present in her work area.

¶ 12 Next, Detective Rodgers testified, consistent with his testimony at the pretrial hearing. He stated that, after placing defendant under arrest, he had a conversation with her at the police station after she waived her *Miranda* rights. Detective Rodgers further testified that defendant told him she was a very sickly person, had two teenagers at home, was taking care of a grandchild and had financial problems. She then told him that, because of all this, she took the \$10,000 from Brinks and used it to pay her bills. On cross-examination, Detective Rodgers averred that he wrote out a summary of defendant's statement in his report after she gave it, but defendant did not initial it, it was not recorded via audio or videotape, and no one witnessed it.

¶ 13 As the State rested its case-in-chief, it asked the court to admit both the heat ticket and the video clips into evidence. The court asked defendant if she had any objections to this other than those already of record; defendant responded "no," and the trial court allowed the evidence.

¶ 14 Defendant then testified on her own behalf. She stated that she lives with her two children and three grandchildren, all of whom she supports. She denied taking any money from Brinks on April 30, 2009. She described that, as a supervisor, she sorted money packages that came into her work area, which she recounted arrived in both plastic and cloth bags. Regarding

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the particular cloth coin bags at issue, she stated that she went over to them that day because Latasha Wilson had told her people from Brinks were coming to visit the facility for Brinks' 150th anniversary and she did not want anything "laying around." Defendant averred that she picked up some cloth bags that were laying on a counter and on a flatbed and took them to the coin bag rack. She stated that she later noticed there was "a hump" in the bags and returned to the rack to "straighten them back up" before going on her break. Defendant further testified that, at the police station, she did not discuss her financial situation with Detective Rodgers. She averred the Detective Rodgers gave her a pen and paper to write out a statement but she did not, and he never showed her the statement he wrote in his report. On cross-examination, defendant admitted that it was her on the video and that she went to the coin bag area twice that day. She also admitted that, after her second visit there, she took off her backbrace and left her work area.

¶ 15 At the close of trial, defendant argued that no crime had occurred. It noted to the trial court that, "first of all, you've seen the video," and, based on this, there was no indication a theft was committed or that defendant committed it. Defendant continued three more times in her closing argument to remind the court that it had watched the video and to argue that it did not show defendant doing anything unusual that day. The trial court found defendant guilty. It began its colloquy by stating that it took "careful notice" of the video and that "the quality of the tape was actually quite good, very fluid." It then described what it saw on the video, particularly defendant's actions the second time she returned to the cloth coin bags. Finally, the court found that, while this alone was not necessarily determinative, it, combined with Detective Rodgers' testimony, which it found to be credible, was "clearly sufficient to prove [ ] defendant's guilt

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beyond a reasonable doubt."

¶ 16 Defendant filed a posttrial motion for a new trial. She argued, in part, that, in addition to having already objected to the video's introduction at trial, the video should not have been admitted into evidence because it lacked a proper foundation. The trial court denied defendant's motion, stating in part that "the evidence supported the ruling[]" it had made regarding the admission of the video.

¶ 17

#### ANALYSIS

¶ 18 As noted earlier, defendant presents three contentions on appeal. We address each separately.

¶ 19

#### I. Probable Cause

¶ 20 Defendant's first contention is that the trial court erred in failing to grant her pretrial motion to quash her arrest and suppress evidence. She argues that the State did not sustain its burden of proof when it failed to show that the video it presented at this hearing was the same video on which Detective Rodgers relied in making his arrest. Alternatively, she argues that, even assuming the video was the same, the evidence presented was still insufficient to justify her warrantless arrest due to a lack of probable cause. We disagree.

¶ 21 Clearly, defendant's claims here primarily focus on whether Detective Rodgers had probable cause to arrest her without a warrant. In assessing the propriety of a trial court's determination of probable cause, a two-part standard of review is used. *People v. Oliver*, 236 Ill. 2d 448, 454 (2010); *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Great deference is given to the trial court's factual findings, and we will reverse them only if they are against the manifest

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weight of the evidence. *Oliver*, 236 Ill. 2d at 454. However, the trial court's ultimate decision whether to grant or deny a defendant's motion to suppress is reviewed *de novo*. *Oliver*, 236 Ill. 2d at 454; *Luedemann*, 222 Ill. 2d at 542.

¶ 22 A warrantless arrest is valid if police have probable cause to arrest. See *People v. Sims*, 192 Ill. 2d 592, 614 (2000). Probable cause constitutes knowledge of sufficient articulable facts creating a reasonable suspicion that the person in question has committed, or is about to commit, a crime. *People v. Love*, 199 Ill. 2d 269, 275 (2002). Consequently, probable cause to arrest arises when the totality of the circumstances known to the officer at the time of the arrest would lead a reasonable, objective person, in the position of the officer, to deduce that a crime has been committed and that the defendant was the person who committed the crime. *People v. Harris*, 352 Ill. App. 3d 63, 66 (2004). While mere suspicion is inadequate to establish probable cause, the evidence ultimately relied upon by the arresting officer involved need not be sufficient to prove the defendant guilty beyond a reasonable doubt or even be admissible at trial. See *People v. Rodriguez-Chavez*, 405 Ill. App. 3d 872, 876 (2010) ("the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause"); *People v. Wear*, 229 Ill. 2d 545, 564 (2008); *People v. Robinson*, 299 Ill. App. 3d 426, 431 (1998). Rather, the focus is on what information the officer knew before the arrest and whether this information would lead a reasonably prudent person to believe the action taken was appropriate. See *Robinson*, 299 Ill. App. 3d at 431; see also *Sims*, 192 Ill. 2d at 615; *People v. Chapman*, 194 Ill. 2d 186, 218 (2000) (determination of probable cause rests on *probability* of criminal activity). Ultimately, whether probable cause existed is not

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a legal or technical determination, but one of practical and common sense which analyzes the totality of the circumstances at the time of arrest. See *Sims*, 192 Ill. 2d at 615; *Robinson*, 299 Ill. App. 3d at 431.

¶ 23 When viewing the totality of the circumstances surrounding the present matter, it is clear that Detective Rodgers possessed sufficient probable cause to arrest defendant. At the hearing on defendant's motion to quash and suppress, Detective Rodgers testified as to the information he learned before he arrested defendant at Brinks. He stated that, when he arrived at the facility, he spoke to general manager Rediker, who told him \$10,000 went missing on April 30, 2009, and that it was suspected that defendant had stolen it on that date. Detective Rodgers discovered that Brinks employees had conducted an internal investigation to support this conclusion, based upon paperwork they had received. Rediker and these employees (Jackson and Wilson) informed Detective Rodgers that, in addition to analyzing this paperwork, they viewed a surveillance video that showed defendant taking a package of money without permission, place it under some cloth bags outside her work area, return to retrieve it and then leave the building.

¶ 24 In an effort to corroborate what these complaining witnesses told him, Detective Rodgers decided to view the surveillance video for himself before deciding whether to arrest defendant. When he did so, he admitted that he did not specifically see defendant holding money in her hands. However, he did see her holding a package, just as the employees recounted to him. Moreover, the type of package he saw defendant holding in her hands was the same type of package that contains the money deposited at the Brinks facility. Rediker had explained to Detective Rodgers that defendant's job was to take these packages and disseminate them to other

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employees' work areas to be processed. But Detective Rodgers noted that, instead of doing this, defendant took the package in her hands and placed it under some cloth coin bags in an undesignated location, bags that were not in use at the facility for any work purpose. Detective Rodgers then saw defendant return to that same location later, retrieve the package from under the cloth bags, place it under the backbrace she was carrying at that time and leave the building.

¶ 25 As he testified, it was upon both the statements of the three complaining witnesses and his own personal viewing of the video surveillance footage that Detective Rodgers formed the reasonable suspicion to believe that \$10,000 was stolen from Brinks and that defendant was the one who stole this money. From the record, it is clear that Detective Rodgers, in his position as a police officer, objectively examined the totality of these circumstances presented at the time of defendant's arrest to make these conclusions. Based on the this, we find nothing wrong with the trial court's denial of defendant's motion to quash and suppress.

¶ 26 Defendant's argument regarding the video is misplaced. As noted, defendant claims that no evidence was presented to prove that the video shown in court at the pretrial hearing was the same video Detective Rodgers watched that day at Brinks and, thus, the trial court could not have given the video any weight. According to defendant, this left the trial court with only the "vague, uncertain, and confused statements of Detective Rodgers" upon which to make its determination of probable cause.

¶ 27 Defendant is correct that Detective Rodgers did not specifically state in his pretrial testimony, as she insists on appeal he should have, that the video played at the hearing was the same video he watched at Brinks on the day he arrested her. However, while these explicit

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words were not used, several other pieces of information to which he did testify support the conclusion that this was, indeed, the case. Detective Rodgers testified that he was assigned to investigate a theft at Brinks which had occurred on April 30, 2009. When he arrived there, Rediker, Jackson and Wilson told him that they formed the basis of their complaint regarding the theft and defendant's responsibility for it upon their viewing of video from that date. Detective Rodgers testified that, after speaking with these employees, he himself viewed the video they had watched from that date. When questioned about the video, and as it was about to be shown in court at the pretrial hearing, Detective Rodgers confirmed for the record both the date stamp on the video as April 30, 2009, as well as the time stamp, in reference to the time period during which he viewed defendant's actions on that date.

¶ 28 What is more, it cannot escape our review how the video, the validity or "sameness" of which defendant now attempts to place at issue on appeal, was introduced at the pretrial hearing in the first place. The record is without doubt that it was defendant herself who sought to submit what was shown into evidence. Defendant interrupted Detective Rodgers' testimony to inform the court that she was in possession of the video about which he had been testifying when he was describing what he viewed at Brinks that day before he arrested her, and that she wanted to submit it as "the evidence part" of her motion to quash and suppress. She then told the court that she, along with the State, would stipulate that its foundation was proper—*i.e.*, that it was the video from April 30, 2009, about which Detective Rodgers was currently testifying had formed the basis for his probable cause determination. Defendant further confirmed for the court that the video was in chronological order and verified the date and time stamps. By both offering the

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video and stipulating that it was the video Detective Rodgers viewed from April 30, 2009 that day at Brinks before her arrest, defendant essentially forfeits any issue as to the impropriety of the video. See *People v. Durgan*, 346 Ill. App. 3d 1121, 1131-32 (2004) (citing *People v. Hill*, 345 Ill. App. 3d 620, 630-33 (2003)) (a defendant forfeits any issue as to validity of evidence if she procures, invites or acquiesces to its admission); accord *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (2010) (citing *People v. Woods*, 214 Ill. 2d 455, 470-71 (2005)) (application of waiver rule is especially important in context of foundation challenge to evidence at issue). In light of this, for defendant to now claim that the video was not the same or that the trial court should not have considered it is entirely disingenuous.

¶ 29 Finally, we dispute defendant's insistence that, without the video, the trial court would have been left with only the "vague, uncertain, and confused statements of Detective Rodgers." Based on our review of the record, we would hardly characterized Detective Rodgers' testimony in this manner. Detective Rodgers consistently and concisely explained the basis for his objective and reasonable belief that \$10,000 was stolen from Brinks and that defendant was the one who committed this crime. His testimony was in no way vague or confused as he recounted the steps he took to reach his determination. Moreover, the trial court clearly found him to be credible, as it, too, concluded that there "certainly was sufficient" probable cause for Detective Rodgers to arrest defendant. Thus, even were the video not to have been considered for some reason, the outcome of defendant's pretrial hearing would have been the same.

¶ 30 Therefore, we hold that there was sufficient probable cause to arrest defendant and we will not reverse her conviction on this ground.

¶ 31

## II. Admission of Video

¶ 32 Defendant's next contention on appeal is that the trial court committed reversible error in admitting the video due to its inadequate foundation. Relying on *People v. Taylor*, 398 Ill. App. 3d 74 (2010), and *People v. Flores*, 406 Ill. App. 3d 566 (2010),<sup>1</sup> defendant argues that, because the video was used as substantive evidence in this cause, and because it was altered and lacked a proper "chain of custody," it should never have been admitted into evidence against her.

¶ 33 As a threshold matter, the State contends that defendant has forfeited this argument for review. According to the State, defendant affirmatively waived any foundational challenge to the video when she acquiesced to its admission without objection and then used the video as part of her defense. We agree.

¶ 34 First and foremost, we must again acknowledge what occurred with the video's admission at defendant's pretrial hearing. Notably, defendant, at that hearing, did not seek to bar the video's admission. To the contrary, again, the record is clear that it was defendant herself who sought to introduce the video into evidence. She presented it to the court as it having been in her possession and she wanted to submit it for the record as, in her own words, "evidence." She then expressly told the court that she, along with the State, would "stipulate to the foundation" of the video as being proper and, moreover, confirmed that the video was in chronological order and verified the date and time stamps. Undeniably, defendant both offered and stipulated to the validity and propriety of the video. In our view, this would essentially forfeit any issue regarding

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<sup>1</sup>*Flores* was decided on December 22, 2010, the same day defendant filed her appellate brief in the instant cause. On February 16, 2011, she filed a motion in our Court for leave to cite that case as additional authority. We allowed her motion.

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the same. See *Durgan*, 346 Ill. App. 3d at 1131-32 (citing *Hill*, 345 Ill. App. 3d at 630-33 (2003)) (a defendant forfeits any issue as to validity of evidence if she procures, invites or acquiesces to its admission); accord *Muhammad*, 398 Ill. App. 3d at 1017 (citing *Woods*, 214 Ill. 2d at 470-71).

¶ 35 Moreover, apart from defendant's conduct at her pretrial hearing, her actions during trial with respect to the video also clearly indicate waiver as to its admission. It is well established that, in order to preserve an issue for review, both an objection at trial and a written posttrial motion raising the issue are required. See *Woods*, 214 Ill. 2d at 270; *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). An objection at trial is particularly critical when a defendant seeks to attack an alleged failure by the State to lay a proper technical foundation for the admission of evidence, so any such failure can be cured at trial. See *Woods*, 214 Ill. 2d at 470; see also *People v. Bynum*, 257 Ill. App. 3d 502, 514-15 (1994).

¶ 36 Interestingly, in the instant cause, the first time defendant attacks the propriety of the video, thereby essentially switching her position from her stance on it at her pretrial hearing, was in her opening argument at trial. Then, when the State finished its direct examination of Jackson, it asked that the video be admitted into evidence. At this point, defendant raised an oral objection as to its foundation. However, instead of asking the court to bar the video, defendant's objection requested that the court give her "an opportunity to cross-examine" Jackson about the video's foundational elements. The court allowed this. Defendant then began her cross examination of Jackson, during which it questioned her about the contents of the video, including, for example, whether other workers could be seen on the tape in defendant's work

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area. At the end of her cross examination, and before it made any ruling on the admissibility of the video, defendant informed the court that she was objecting to its foundation. However, again, she did not ask the court to bar the video, but only that she be again allowed to "ask [Jackson] questions about" it. The court again allowed this, whereupon defendant told the court, "[a]ll right." On brief redirect examination of Jackson, the State published the video; defendant did not object. Then, on recross examination, defendant played the video for Jackson and questioned her about what could be seen on it. Finally, when the State asked to move the video into evidence, the court explicitly asked defendant if she had any "[o]bjections to the evidence other than those stated." Not only did defendant reply, "[n]o," but she then referred to the video repeatedly in her closing argument, stating that "the tape speaks for itself."

¶ 37 Based on these circumstances, defendant, through her conduct as described, forfeited review of the foundational propriety of the video. First, while she initially objected to the video's foundation, she subsequently twice specifically asked the court to allow her to question Jackson about the video. She never asked the court to bar it but, rather, accepted the court's decision allowing the exact remedy she sought, namely, cross-examining Jackson regarding it. In so doing, she abandoned any opportunity she had to seek the video's bar and instead, essentially, acquiesced to the video's foundational validity. See *People v. Lowe*, 153 Ill. 2d 195, 199 (1992) ("an accused may not ask the trial court to proceed in a certain manner and then contend in a court of review that the order he obtained was in error"); see, e.g., *People v. Shelton*, 401 Ill. App. 3d 564 (2010) (a defendant cannot ask a court to proceed in one way and then challenge the court's action as error on appeal when it allows the defendant's request). Next, once defendant

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completed the remedy she sought (*i.e.*, questioning Jackson about the video), she never renewed her objection to the video's foundation. Indeed, the record shows that the trial court specifically asked defendant, at the end of testimony and before the video was published, whether she had any objection; she replied that she did not. And, finally, defendant herself used the video as part of her defense at trial. Not only did she play it for Jackson and question her about it during recross examination, but she also repeatedly referred to it in her closing argument to argue her innocence. After all this, she should not now be allowed to insist that the video is inadmissible.

¶ 38 Waiver aside, even were we to address the merits of defendant's contention<sup>2</sup> on appeal, which she bases on the holdings of *Flores* and *Taylor*, we find that it cannot stand based on the circumstances before us.

¶ 39 The recent decision of *Flores* presented issues surrounding the foundational requirements for the admission of a video recording at trial. In that case, the defendant was charged with a traffic offense after the complaining witness, his long-time feuding neighbor, reported him to police. The neighbor claimed that he had recorded video of the incident, as he happened to have his camcorder in his car. Not wanting the police to view "personal information" on the tape, the neighbor showed, but did not give, the tape to police at that time. At trial, the defendant objected to the tape's admission on the ground that its foundation was insufficient. The trial court allowed the video to be shown; according to the *Flores* court, it started with static, momentarily flashed to something colorful and then showed a very shaky scene of a white van; the video had a date

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<sup>2</sup>We note for the record that, while defendant did not acknowledge a waiver argument in her opening brief on appeal, she does respond to this in her reply brief and addresses plain error review.

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stamp, but no time stamp. In testifying about how he made the tape, the neighbor stated only that he made a copy of the video from his camcorder to a VCR tape, but admitted he erased the personal information that had been on the video. He gave no other explanation of how he produced the tape. The trial court found defendant guilty, in part, based on "the clear depiction contained within the videotape." See *Flores*, 406 Ill. App. 3d at 567-71.

¶ 40 On appeal, the defendant alleged that the trial court improperly admitted the tape as substantive evidence against him without a proper foundation. The *Flores* court agreed. It began its decision by distinguishing between the admission of video at trial as demonstrative evidence (for illustrative purposes), as opposed to substantive evidence. It noted that, for the admission of a video as demonstrative evidence, the foundation need only show that the video matches the witness's recollection—that a person with personal knowledge of the videoed event can testify that the video is a fair and accurate representation of what occurred at the relevant time. See *Flores*, 406 Ill. App. 3d at 572. However, *Flores* declared that, when the video is used substantively as proof of the defendant's guilt, which happens rarely, the standard for its admissibility is different; it, essentially, requires more. See *Flores*, 406 Ill. App. 3d at 575. After discussing concerns about tampering and fabrication in the new digital age, the court held that the standard for the admission of a video to be used as substantive evidence requires a showing that "the original video has been preserved without change, addition, or deletion and that, if a copy is introduced into evidence, there must be a cogent explanation of any copying such that the court is satisfied that during the copying process there were no changes, additions or deletions." *Flores*, 406 Ill. App. 3d at 577.

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¶ 41 Returning to the facts of that case, the *Flores* court immediately noted that the neighbor had testified that he altered the video by omitting portions of the original. See *Flores*, 406 Ill. App. 3d at 576. Accordingly, said the court, something more was required for the foundational admissibility of the tape as substantive evidence than his testimony that it truly and accurately depicted that which it purported to depict. See *Flores*, 406 Ill. App. 3d at 576. However, nothing more had ever been offered. Rather, after his testimony that there had been a different, original tape that he altered, the neighbor gave no other explanation of how the tape was produced. Instead, as the *Flores* court stated, he "seemed to go out of his way to make obscure the process by which he produced the evidence tape, so reconstructing the process that he used is a matter of guesswork." *Flores*, 406 Ill. App. 3d at 577. Based on this lack of information, the *Flores* court held that the video should not have been admitted as substantive proof of the defendant's guilt. See *Flores*, 406 Ill. App. 3d at 577 (where evidence that video was not substantially altered was not presented, video was inadmissible as substantive evidence).

¶ 42 *Flores*, just as defendant here, relied principally on the prior decision of *Taylor*. That case involved the foundational requirements of a video used as substantive evidence where no witness was available to testify that it was a true and accurate depiction of what it purported to depict, *i.e.*, the "silent witness" theory. In *Taylor*, school administrators informed police of thefts from the school building. A police officer purchased a camera with a motion sensor, DVR and transmitter; he set them up as a recording unit according to the instructions given to him by the store manager from where he purchased the materials and hid the unit at the school. The unit recorded two periods of time. After the first, the officer looked at the video but could not see

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anything. After the second period, he again retrieved the unit and viewed the recording; this time, it showed a person, identified as the defendant, taking money from the school. To establish a foundation for the video's admissibility, the State elicited testimony from the officer that he had reset the unit at some point between these two periods of time and that the unit was "working" both when he left it and when he returned for it. The trial court pressed the State to obtain more information regarding what the officer did; his further testimony indicated only that he checked the unit was working by following the directions of the store manager and the instruction manual included in his purchase. See *Taylor*, 398 Ill. App. 3d at 77-79. When the video was played for the court, 54 seconds of it was missing; there was "a sudden jump" in the tape which the officer explained occurred because, while the unit would record after detecting motion, it would stop after 15 seconds if no new motion was detected. Accordingly, the tape was seen to "shut off" for 54 seconds at a point where the alleged perpetrator was in front of the camera, turning back on again only when he was in an entirely different position in the room. See *Taylor*, 398 Ill. App. 3d at 80. Despite this, the trial court allowed the tape into evidence in a substantive manner and found the defendant guilty of theft.

¶ 43 On appeal, the *Taylor* court reversed, finding the admission of the video to have been in error because the State failed to establish the probability that it had not been subject to tampering. See *Taylor*, 398 Ill. App. 3d at 87. First, the court noted the obvious jumps in the continuity of the tape, which raised "a serious challenge" to its integrity. *Taylor*, 398 Ill. App. 3d at 87. In addition, the court noted that the officer's explanation did not account for the timing of the jumps which, in turn, raised questions about the capability of the unit, its production of the recording

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and its proper operation. See *Taylor*, 398 Ill. App. 3d at 87. The court further described that there was no evidence regarding how the video was made, what process was used to transfer the original data to the tape shown in court, or who completed this process, since the officer never testified to this. See *Taylor*, 398 Ill. App. 3d at 87. Ultimately, the *Taylor* court concluded that, in its view of the foundational evidence, the tape simply could not be trusted. See *Taylor*, 398 Ill. App. 3d at 90.

¶ 44 We take no issue, at this time, with the holdings of *Flores* or *Taylor*.<sup>3</sup> To the contrary, we find them to have been proper applications of the law regarding foundational requirements for the use of video as substantive evidence to their particular facts. However, what defendant here neglects to consider in his reliance on those cases is exactly that—namely, the outcomes in *Flores* and *Taylor* depended heavily on the foundational facts presented; or, more precisely, on the lack of these facts.

¶ 45 We agree with defendant that the trial court in the instant cause used the video as substantive evidence. Indeed, in its colloquy imposing the guilty verdict, the court reviewed defendant's actions as depicted therein and commented that the video, combined with the other evidence presented, was "clearly sufficient" to prove defendant's guilt. The issue remains, then, whether this was proper for the trial court to do, *i.e.*, whether there was an adequate foundation for the video to be used in a substantive manner. Based on this record before us, and unlike *Flores* and *Taylor*, we find that there was.

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<sup>3</sup>We do note, however, that *Taylor* is currently pending before the Illinois Supreme Court. See *People v. Taylor*, 237 Ill. 2d 585 (2010) (*petition for leave to appeal granted*).

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¶ 46 At trial, Jackson testified at length about the video, how it was produced, who produced it, how it was copied and that the surveillance system was functioning properly. Jackson detailed that Brinks had a sophisticated surveillance system manned by a security team. The system consisted of 53 cameras and 6 DVRs to record what occurred at the facility. Eight of these cameras were trained on defendant's work area. Jackson testified without challenge, and repeatedly, that the system was properly functioning on April 30, 2009, the day of the theft. It recorded both a date and a time stamp.

¶ 47 It is true, as defendant points out, that clips of the video were shown at trial, rather than the original video itself which lasted for a period of two hours—the time from which defendant arrived at work that morning to the time she went on break; it was during this time that defendant handled the missing package. However, Jackson was questioned about this and provided a clear and detailed explanation of the recording and compilation of these clips. First, we note that at defendant's pretrial hearing, the parties, in addition to stipulating to the foundation of the video, agreed on which portions thereof would be presented to the court. This was because a fair amount of the video was irrelevant to the issues at hand; accordingly, the record shows that the court excused itself, the parties together came to a consensus on which clips would be shown, and these were admitted into evidence without objection.

¶ 48 Then, at trial, when the clips were shown, Jackson was asked about how the tape was "put together." She testified that she discussed the video with Brinks' security office. She reviewed the footage in full and told the office what should be downloaded, or copied, from the security DVRs. When asked by defendant if she excluded parts of the video, Jackson affirmatively stated

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that, while the video did not include defendant's whole day of work, it did include every action related to the particular money package that was stolen. Jackson explained, repeatedly, that she "followed the transaction for the day for that missing bag." The trial court, too, clarified the issue with her, whereupon Jackson testified that the tape included not only the things she testified to but, rather, the entire two hours defendant was seen to be around the money package. Again, Jackson clearly described that she viewed the video, she tracked it that day when the package went missing, and she "followed each step" of the package's whereabouts; it was this that was "burned," or copied, by Brinks' surveillance team onto a DVD for viewing in this case.

¶ 49 Jackson's testimony, and the foundational information it provides regarding the video, renders the instant case wholly distinguishable from *Flores* and *Taylor*. Again, those courts were specific to note that the producers of the videos in question failed to explain critical elements about the videos' foundations. For example, the video in *Flores* was made by the defendant's long-time feuding neighbor. The neighbor happened to have his camcorder in his car, used that to tape the defendant and then proceeded to make a copy of that video. He refused to give the original to police and admitted that, in making the copy, he altered it by erasing portions of the video. He then failed to give any explanation about how he produced the tape and refused to give any details about this at trial. Moreover, the tape itself included static, momentary flashes, and very shaky scenes of the alleged event. And, it did not include any sort of time stamp. Likewise, the video in *Taylor* was made by an officer who was not entirely familiar with the unit he used to record the events. Rather, he set it up according to a store manager's instructions. In fact, the first time he tried to use the unit, the recording was not viable and he had to reset the

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unit. The only other information he gave at trial was that he was able to check that the unit was working the second time because he followed the instruction manual. It was never revealed who transferred the video or how this was accomplished. Moreover, the tape itself exhibited jumps and almost a minute of it was missing, cutting out when the perpetrator was in one area of the room and reappearing when he was in a completely different area. While the officer attempted to explain this by discussing the motion sensor's shut-off feature, the *Taylor* court noted that the timing to which he testified did not match the timing of the video itself.

¶ 50 Clearly, serious challenges to the integrity of the videos in *Flores* and *Taylor* were present and went unresolved by the scant foundational evidence presented. In both those cases, it was unclear that the original tapes were unaltered, whether the recording units were operating properly or produced proper recordings, or whether the transferring process was completed properly. As we have described, these are far from the situation presented in the instant case, which saw Jackson testify in detail as to the video's operation, production, recording, preservation and transfer. Moreover, there were no jumps or missing periods exhibited in the clips shown in court. To the contrary, the trial court explicitly commented that it took "careful notice" of the video and that "the quality of the tape was actually quite good, very fluid." Thus, we find no reason to believe that defendant's cause merits the same outcome as *Flores* and *Taylor*.

¶ 51 Ultimately, the admissibility of evidence at trial is a matter within the sound discretion of the trial court and we will not overturn that court's decision absent a clear abuse of that discretion, which occurs only when the decision is arbitrary, fanciful or where no reasonable man

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would take the view adopted by that court. See *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). In addition, as defendant was tried in a bench trial, we note that the trial judge here, as the trier of fact, is presumed to know the law and to have considered only competent, admissible evidence. See *People v. Brown*, 185 Ill. 2d 229, 258 (1998). Based on the record before us, we find that a sufficient foundation was laid for the substantive use of the video against defendant and, thus, that the trial court properly admitted it into evidence.

¶ 52

### III. Sufficiency of the Evidence

¶ 53 Defendant's final contention on appeal is that she was not proven guilty beyond a reasonable doubt. She asserts that the State failed to establish that there was a theft at Brinks and that the amount stolen was over \$500. She further claims that not only did the State fail to establish the *corpus delicti* of the crime (that it occurred), but also that she was the one who committed it because it provided no independent evidence of her alleged confession. We disagree with defendant's contention.

¶ 54 Defendant was convicted of class three felony theft pursuant to section 16-1(a)(1) of the Illinois Criminal Code of 1961. See 720 ILCS 5/16-1(a)(1), (b)(4) (West 2008). Under that section, a person commits a class three felony theft when she knowingly obtains or exerts unauthorized control over property of the owner and that property exceeds \$300 but not \$10,000 in value. See 720 ILCS 5/16-1(a)(1), (b)(4) (West 2008). Accordingly, the State here was required to prove that defendant knowingly exerted unauthorized control over the money at Brinks, and that this money totaled between \$300 and \$10,000.

¶ 55 When a criminal defendant challenges the sufficiency of the evidence used to convict her,

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the standard of review is whether, when viewing 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. See *People v. Smith*, 185 Ill. 2d 532, 542 (1999); *People v. Hunley*, 313 Ill. App. 3d 16, 20 (2000). Courts of appeal will not retry the defendant. See *People v. Digirolamo*, 179 Ill. 2d 24, 43 (1997). Instead, the trial court, as the trier of fact in a bench trial, hears and sees the witnesses and, thus, has the responsibility to adjudge their credibility, resolve any inconsistencies, determine the weight to afford their testimony and draw reasonable inferences from all the evidence presented. See *People v. Steidl*, 142 Ill. 2d 204, 226 (1991); *Hunley*, 313 Ill. App. 3d at 21. Ultimately, a conviction will not be overturned unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of guilt. See *Brown*, 185 Ill. 2d at 247.

¶ 56 We find that the evidence in this cause does not raise a reasonably sufficient doubt as to defendant's guilt. At both defendant's pretrial hearing and trial, evidence was adduced that \$10,000 was stolen from Brinks on April 30, 2009. Detective Rodgers testified that three complaining witnesses—general manager Rediker and supervisors Jackson and Wilson—recounted to him that they believed defendant stole \$10,000 from Brinks. Detective Rodgers averred that Rediker told him that paperwork generated internally at Brinks revealed this theft. In more detail, Jackson testified before the court that her team received this paperwork, known as a "heat ticket," notifying them of the theft. This document, which was admitted into evidence for the court's consideration, verified that the amount missing was \$10,000 and that it originated from the deposit of a particular customer of Brinks. Jackson explained that Brinks' messengers bring

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in the customer deposits, they are checked-in by a teller, the money is stored in Brinks' vault overnight, and the deposits are again verified the next morning. Jackson testified that the paperwork showed that when the particular customer's money was brought in, it was signed for by a teller. The complaining witnesses further revealed that defendant's primary job was to disseminate the customers' money packages in the morning after they were taken out of the vault to Brinks' employees for processing. The packages defendant was to handle, which were placed on flatbeds, were packages of money wrapped in plastic. She did not deal with cloth bags, nor did she deal with coin currency in the specific cloth coin bags Brinks stopped using a year ago which were stored on a rack near her work area.

¶ 57 Each of the witnesses then described that, on the precise day and time of the theft, surveillance video of her work area showed defendant performing "unusual" activities. That is, and as supported by the video, defendant is seen removing a cloth bag from the rack of coin cloth bags outside her work area—bags no longer in use at the Brinks facility—and walk around with it over her arm until she places it over an empty postal bin in an area near the flatbeds holding the thousands of dollars of currency which had been removed from the vault that morning.

Defendant next picks up the cloth bag, uses it to cuff or clutch a plastic package, and walks to the rack of unused cloth bags outside her work area, placing her bag underneath them. She returns to the rack later, digs under the cloth bags, retrieves something, immediately puts it under her backbrace which she had draped over her arm and then leaves the building. Viewing the testimony of Detective Rodgers and Jackson, which the trial court found to be credible, as well as the video which it declared to be of good quality, and in the light most favorable to the State, any

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rational trier of fact could have found the essential elements of a class three felony theft beyond a reasonable doubt.

¶ 58 Citing *People v. Sargent*, 239 Ill. 2d 166 (2010), defendant claims that the *corpus delicti* of the crime was not proven here because the only evidence of the amount of money stolen comes from her alleged confession, which was never recorded. In *Sargent*, our state supreme court reminded us that proof of a crime requires proof that both a crime occurred (*corpus delicti*) and that the crime was committed by the person charged. See *Sargent*, 239 Ill. 2d at 183.

Regarding *corpus delicti*, while a defendant's confession "may be integral" in proving that a crime occurred, that proof "may not rest exclusively" or solely on that confession; rather, there must be some corroborating evidence related to the specific events. *Sargent*, 239 Ill. 2d at 183.

However, this corroborating evidence need not prove the existence of the crime beyond a reasonable doubt. See *Sargent*, 239 Ill. 2d at 183. Instead, this corroborating evidence can be considered together with the confession in determining, beyond a reasonable doubt, whether the crime occurred and whether the defendant committed it. See *Sargent*, 239 Ill. 2d at 183.

¶ 59 In the instant cause, Detective Rodgers testified that, once at the police station and after mirandizing her, defendant recounted to him that she is the sole provider for several young children and grandchildren, all of whom live with her. Defendant herself corroborated this testimony at trial. In addition, Detective Rodgers testified that defendant told him that, because of this, and due to financial hardships, she stole the money from Brinks to pay her bills.

¶ 60 While defendant is correct in noting that her confession to Detective Rodgers was never recorded or witnessed by a third party, her *corpus delicti* argument holds no water. This is

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because, contrary to her claim, the State presented several pieces of corroborating evidence, both testimonial and documentary, to substantiate her guilt of the crime independent of any statement she made to police. As we have discussed at length, \$10,000 in a plastic-wrapped package was stolen from Brinks on April 30, 2009; defendant was in charge of this money on that day; and defendant was seen on videotape performing several "unusual" acts around and with this money immediately before she conceals a plastic-wrapped package under her arm and leaves the facility.

¶ 61 While this corroborating evidence, standing alone, may not prove the existence of the crime beyond a reasonable doubt, it certainly relates to the specific events upon which defendant was prosecuted. And, when considered together with Detective Rodgers' testimony regarding her confession, which, again, the trial court specifically found to be credible, this corroborating evidence was sufficient to determine that both a class three felony theft of \$10,000 occurred at Brinks and that defendant was the one who committed it. Accordingly, we find that defendant was proven guilty beyond a reasonable doubt.

¶ 62 **CONCLUSION**

¶ 63 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 64 Affirmed.