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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. 09 C6 60630
)	
SHARNETTE HARRIS,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* Defendant's claim of ineffective assistance of trial counsel rejected where identification evidence against her was overwhelming and she was not prejudiced by any alleged deficiencies of trial counsel.
- ¶ 2 Following a jury trial, defendant Sharnette Harris was found guilty of one count of aggravated identity theft and two counts of forgery, then sentenced to concurrent four-year prison terms on all three counts. On appeal, defendant contends trial counsel was ineffective for failing to present evidence promised in her opening statements.
- ¶ 3 In its opening statement, the State told the jury that on November 28, 2008, the day after Thanksgiving, defendant entered a Target store and used the credit card of 71-year-old Marguerite Schickel, without her permission, to purchase a Playstation 3, toiletries, and two gift cards. The State also told the jury that shortly before the unauthorized charges were made, Mrs. Schickel

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discovered her wallet was missing after someone had bumped into her at a discount store two doors down from the Target store.

¶ 4 In her opening statement, trial counsel advanced a theory of misidentification. Trial counsel explained to the jury that the incident took place on "Black Friday," an extremely busy shopping day, and that Ms. Schickel did not see who took her credit card. Trial counsel told the jury the evidence would show that the person who used Mrs. Schickel's credit card, also presented her photo identification as verification and without incident, and store employees did not identify defendant until two weeks later from a police photograph. Trial counsel added, the store surveillance video would show a "fuzzy unidentifiable person," and not defendant, whose only connection to the case was a phone number used to check the balance on one of the gift cards. Trial counsel told the jury that the phone number was just one of several owned by defendant.

¶ 5 Following opening statements, the State presented the testimony of Mrs. Schickel, Homewood Police Detective Kenneth Strunk, and two store employees. Mrs. Schickel testified she discovered her wallet was missing after someone bumped into her at a discount store in Homewood, Illinois. She did not see anyone reach into her purse and take her wallet. The discount store was located near the Target store. After she returned home, Mrs. Schickel received a phone call from Charter One Bank, the issuing bank of her credit card, to verify the purchase of a video game system at Target that same day. Mrs. Schickel told Charter One Bank to cancel her credit card because she did not make that purchase, nor did she authorize anyone else to do so on her behalf. On cross-examination, Mrs. Schickel stated she did not recognize defendant in court.

¶ 6 Carol White, a Target store supervisor, testified she was working behind the electronics counter when defendant, whom she identified in court, approached her register with a Playstation 3 and some toiletries. Defendant was talking on her cell phone at the time and avoided eye contact. Defendant had a short, asymmetrical haircut and wore a black coat with fur around the collar and did not wear a hat nor gloves. After Ms. White scanned the merchandise, defendant slid a credit card

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through the reader on the counter, signed the signature box on the reader and left with her purchases. On December 12, 2008, Ms. White identified defendant from a photographic array as the individual who purchased a Playstation 3 and toiletries from her register on November 28, 2008. She also identified the sales receipt, which is included in the record and shows that a \$50 gift card was also purchased. Finally, Ms. White testified she had viewed the video footage of the transaction to prepare for her testimony, but she could not see the customer's face in the footage. This video footage was not placed into evidence.

¶ 7 During cross-examination, Ms. White acknowledged that November 28, 2008, was a very busy shopping day, and she personally helped 20 customers. She could not describe the other 19 customers, but remembered defendant because during the entire five-minute transaction, she was on her cell phone and made no eye contact. Nonetheless, Ms. White did not report the incident to loss prevention or the authorities. Ms. White added, it was against store policy to verify identifications for credit card transactions. She also acknowledged that two weeks had passed before her identification of defendant, but maintained she recognized defendant in a photographic array and in video footage leaving the store wearing a hat and gloves.

¶ 8 Donnesie Hill of the Target human resources department testified she was working at a register when defendant, whom she identified in court, approached to purchase a \$200 gift card. Ms. Hill asked a manager to approve the purchase. Because the store was so busy, her manager indicated she should complete the sale without preapproval, as was usually required for gift cards of more than \$75. Ms. Hill testified she recalled this transaction because she did not have any other gift card purchases that day that required a manager's approval. Subsequently, on December 12, 2008, Ms. Hill identified defendant from a photographic array that Detective Strunk showed her.

¶ 9 Ms. Hill also identified in court, the gift card receipt which included Mrs. Schickel's full name and the last four digits of her credit card account. Video footage from that day (People's exhibit 8), was played during direct examination. The exhibit 8 video footage shows a customer

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exiting the store and does not include footage as to the gift card transaction. After the video footage was played for the jury, Ms. Hill stated, the customer's face was not visible, but she recognized the customer shown in the video to be defendant based on her clothing. She maintained on cross-examination that defendant was the customer in the video footage who purchased a \$200 gift card from her. Ms. Hill also acknowledged, it was against store policy to verify identification for credit card transactions.

¶ 10 On further cross-examination, trial counsel asked to play the entire store surveillance video for the jury. The record does not show that any further video footage was shown to the jury. However, trial counsel asked Ms. Hill if she "saw that person on another portion of the tape." Ms. Hill answered: "[i]n my line coming through the checkout." Trial counsel then stated: "Never mind you Honor. It has already been shown. Sorry."

¶ 11 Detective Strunk testified that a Target loss prevention investigator provided him with sales receipts for the two transactions in question, a surveillance video showing both transactions, and a caller identification log for the customer service line showing a number used to inquire about the balance on one of the gift cards in question. A computer search revealed the number was for defendant's cell phone. Detective Strunk placed a photograph of defendant obtained from the Illinois Secretary of State's database in a photographic array which he showed to the two store employees who processed the charges on Mrs. Schickel's credit card. Both employees identified defendant and an arrest warrant was issued for her arrest.

¶ 12 On cross-examination, Detective Strunk stated that store employees did not describe the suspect before viewing the photographic array, but they each recalled a particular transaction involving a customer they subsequently identified as defendant. He also stated the automated caller identification log only showed the number used to call customer service to inquire about a certain gift card. Because he ran that number and determined it belonged to defendant, he did not check for other numbers that defendant might have owned. After the State rested its case, the trial court

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ascertained defendant did not want to testify, and the defense rested without presenting any evidence.

¶ 13 During closing arguments, trial counsel asserted that the identifications of defendant were unreliable, as they were made two weeks after the busiest shopping day of the year and the descriptions of defendant differed. Trial counsel also reminded the jury that the caller identification log only recorded a cell phone number belonging to defendant, and not to who actually placed the call or purchased the gift card.

¶ 14 In this appeal from the guilty verdicts rendered by the jury, defendant contends trial counsel was ineffective for failing to present evidence she promised in her opening statement. Defendant complains trial counsel failed to deliver on her promise to the jury that the evidence would show the person who used Mrs. Schickel's credit card also presented Mrs. Schickel's identification, and they would see a videotape of an unidentifiable person doing this in each transaction. She argues this evidence "would ostensibly establish [her] innocence, simply because the 35-year-old defendant could not have reasonably presented herself as a woman twice her age." That failure, she argues, was a result of trial counsel's failure to conduct a meaningful pretrial investigation, which would have disclosed the store policy against verifying identification for credit card transactions and could have easily avoided the negative impact of such testimony on her theory of misidentification. Defendant further claims counsel either did not view the available videotape evidence, or did not accurately recall what this evidence contained. She also complains her trial counsel failed to prove up the existence of the several phone numbers she claimed were owned by defendant, and then, in her closing argument, "hoped to rely on the collective personal experience of the jury to substantiate her theory" that someone other than defendant, could have called the store to check the balance on the gift card.

¶ 15 In reviewing a claim of ineffective assistance of counsel, we employ a bifurcated standard of review, wherein we defer to the trial court's findings of fact unless they are against the manifest weight of the evidence, but make a *de novo* assessment of the ultimate legal issue of whether

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counsel's actions support an ineffective assistance claim. *People v. Stanley*, 397 Ill. App. 3d 598, 612 (2009). As the facts surrounding this claim are not disputed, we review defendant's contention *de novo*. *Id.*

¶ 16 To establish ineffective assistance of counsel, defendant must show counsel's performance was objectively unreasonable under prevailing professional norms and a " 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *People v. Magallanes*, 409 Ill. App. 3d 720, 748 (2011) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *People v. Scott*, 2011 IL App (1st) 100122, ¶27 (quoting *Strickland*, 466 U.S. at 694). If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not ever consider the quality of the attorney's performance. *Id.* (citing *Strickland*, 466 U.S. at 697). Based on our review, we find this to be such a case.

¶ 17 Although trial counsel was unsuccessful in her attempts to elicit that the person who used Mrs. Schickel's credit card also presented Mrs. Schickel's identification, the record shows trial counsel zealously presented defendant's theory of misidentification throughout the entire trial. During opening statements and closing arguments, trial counsel emphasized Mrs. Schickel could not identify who bumped into her at the discount store, that the identifications of defendant were unreliable as they were made two weeks after the busiest shopping day of the year and the descriptions of defendant differed somewhat, and the caller identification log only recorded a cell phone number belonging to defendant, and not who actually placed the call or purchased the gift card. Counsel also elicited testimony that the store was extremely busy that day and both salespersons did not recall other customers. In addition, while cross-examining the detective, trial counsel attempted to elicit that defendant had additional phone numbers. Trial counsel made a good-faith effort to elicit relevant testimony (*People v. Topps*, 293 Ill. App. 3d 39, 46 (1997)), and was able, at minimum, "to plant a seed in the jury's mind" that someone other than defendant could have

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used Mrs. Schickel's credit card and could have called about the balance on the gift card. *People v. Nowicki*, 385 Ill. App. 3d 53, 85 (2008).

¶ 18 Notwithstanding, we find defendant was not prejudiced by the alleged deficiencies of trial counsel because the identification evidence against her was overwhelming. *People v. Cox*, 377 Ill. App. 3d 690, 706 (2007). The positive identification of a single witness is sufficient to sustain a conviction, and in this case, two witnesses, Ms. Hill and Ms. White, positively identified defendant as the customer who used Mrs. Schickel's credit card. *People v. Buchanan*, 211 Ill. App. 3d 305, 316 (1991). Although their opportunity to view the customer was brief and made on a busy shopping day, it was facilitated by their close proximity to the customer during the credit card transactions. *People v. Ward*, 371 Ill. App. 3d 382, 417 (2007).

¶ 19 Additionally, the fact that the two store employees identified defendant in a photographic array two weeks after the incident, does not automatically render the identifications unreliable. *People v. Austin*, 328 Ill. App. 3d 798, 805 (2002). Ms. Hill and Ms. White were certain about their identification of defendant in the photographic array and in court, and " 'the lapse of time goes only to the weight of the testimony, a question for the jury ***.'" *Id.* (quoting *People v. Rogers*, 53 Ill. 2d 207, 214 (1972)). The same applies to any variances in the witnesses' descriptions of defendant. *People v. Hughes*, 259 Ill. App. 3d 172, 177 (1994). In light of the credible, positive identification testimony of defendant by two store employees, there is no reasonable probability " 'that [trial] counsel's alleged deficient performance rendered the *** [jury] trial unreliable or the proceeding fundamentally unfair.'" *People v. Manning*, 241 Ill. 2d 319, 327 (2011) (quoting *People v. Jackson*, 205 Ill. 2d 47, 259 (2001)).

¶ 20 Accordingly, we affirm the judgment entered against defendant in the circuit court of Cook County.

¶ 21 Affirmed.