2015 IL App (1st) 122019-U

FIRST DIVISION
February 9, 2015

No. 1-12-2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. VANESSA STRONG, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 11 CR 15956 Honorable Clayton J. Crane, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The evidence was sufficient to support defendant's convictions, trial counsel was not ineffective for failing to object to the admission of a video recording used to convict defendant, and the trial court did not err in denying defendant's request to proceed *pro se* at trial. The judgment of the trial court is therefore affirmed.

¶ 2 Following a bench trial, defendant Vanessa Strong was found guilty of three counts of identity theft and one count of theft, and sentenced to 30 months' imprisonment. On appeal, defendant first contends that the evidence is insufficient to support her theft convictions. In the alternative, defendant contends that (i) her trial counsel rendered ineffective assistance for failing

to object to the admission of an inculpatory video recording; and (ii) the trial court improperly denied her request to proceed *pro se*. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with three counts of identity theft for knowingly possessing three stolen credit cards on September 6, 2011, and one count of theft for knowingly obtaining unauthorized control of the victim's purse on that same date. Defendant was arrested on September 6, 2011. On October 25, 2011, one week after her first court appearance during which she was appointed counsel to represent her, defendant informed the trial court that she had "a whole lot to say."

¶ 5 The matter was continued to December 5, 2011, during which defendant complained that she had been waiting for the discovery for the previous 1½ months. The trial court responded by directing the parties to complete discovery as soon as practicable. On December 22, defendant informed the court that she no longer wanted her court-appointed attorney because he was not working for her, specifically, that he would not set her case for trial. The trial court told defendant that the discovery phase was not yet complete, but that she could raise this issue again when discovery was complete. During various subsequent court appearances, defendant complained of being incarcerated without a trial date having been set.

¶ 6 On April 27, 2014, the parties appeared before the trial court, and defense counsel explained to the trial court that both parties were ready for trial, but that defendant indicated to defense counsel that defendant wanted to conduct the cross-examination. Then, according to defense counsel, defendant accused him of "working with the State and holding her against her will," and she demanded the discovery materials from defense counsel. Defense counsel

informed the trial court that he told defendant that she could proceed *pro se* if she wanted to, but that the trial court should speak to her first. The following colloquy then took place.

> "THE DEFENDANT: Okay, I've been through the constitution and I got a lot of paper work here and I've been studying this case for a long time because everything is going wrong here. *** I know that constitutional my rights [*sic*] is to talk against anybody that is accusing me or whatever. *** But I also know that I can assist him in whatever he's doing.
>
> THE COURT: Absolutely, you can assist him, but you can't ask the questions.
>
> THE DEFENDANT: I have to ask these questions.
>
> THE COURT: You could present the questions to the attorney and ask him to ask those questions, but he may or may not ask those questions because he's the one that is going to ask the questions.
>
> * * *
>
> THE DEFENDANT: *** I understand he could be malicious and suggestive and use some improper methods and all that with me—I'm here by myself, you understand?
>
> THE COURT: You are not here by yourself, you have an attorney there, ***.
>
> THE DEFENDANT: Because it's been going on too long. Because this case has never been heard by a judge period. ***.

THE COURT: That is what we are going to do today.

* * *

THE DEFENDANT: I know, but they're not supposed to lie either. But I'm just saying, where is the video? We could get it done today. Okay, I do need some assistance.

* * *

THE COURT: Here is the story, let me lay the ground rules for you.

THE DEFENDANT: Please, please, [be]cause I'm scared.

THE COURT: We'll go to trial today. This is your attorney, you could tell him what questions you may suggest, but he is not bound to ask those questions. I could also tell you this, that he's been assigned to my courtroom for a year and a half, he fights extremely hard for all his clients, okay. So he's a very good lawyer.

THE DEFENDANT: When it comes to trial?

THE COURT: He's a very good lawyer in total.

THE DEFENDANT: Period, right? Well I wish I knew that. Okay. But—okay.

THE COURT: Okay, we'll pass it for trial."

¶ 7 The trial court then briefly recessed to allow defendant to "see everything again." When the trial court reconvened, it asked whether the parties were ready for trial. Defense counsel

stated that he was ready, but added that defendant wanted to address the court. The following exchanges then took place.

"THE DEFENDANT: I'm addressing the court because I feel nobody could defend me better than myself, and I'm ready to do this. Will you please trust me? It's only one case and I can do this, please I could do it.

THE COURT: Okay, on the day of trial I'm not going to let you represent yourself.

THE DEFENDANT: Who?

THE COURT: Since today is the trial date and the request is made today, I'm not going to let you do that. I find that the action is dilatory.

* * *

THE DEFENDANT: Would you please trust me on this?

THE COURT: No, you have been demanding us to go to trial on this forever.

* * *

THE COURT: Yes, we are going to start the trial now.

THE DEFENDANT: I'm just going to talk to you. In this courtroom you usually ask—because this is crazy. Okay—I don't know why it's so hard for me to defend myself. That is all I want to know. I been practicing on this case and you've been with me for seven months. I don't—I'm not going to trust these two people

together with my life, I'm not going to do it. *** I want you to know exactly what happened, and with these two people you are not going to know what happened, okay. They're going to fix it up and twist it up and make you believe whatever they want you to believe. They're going to have the questions set up.

* * *

THE COURT: I don't believe anybody is going to pull the wool over my eyes in this case. *** [Y]our accusations that these two guys are in cahoots with each other has no basis in fact at all.

* * *

THE COURT: Here, we are going to trial today. He's the attorney that's going to represent you.

THE DEFENDANT: So just go out there in front of the bus and let it hit me? So I'm just saying without me in this thing it can't work. Okay. Because in order I read this—in order for me to have a trial fair trial I have to assist this guy.

THE COURT: Well you could certainly sit next to him and tell him everything you know.

THE DEFENDANT: What if he don't say it?

THE COURT: He may not choose to do that, but that is his right as the attorney in this case.

* * *

THE COURT: ***. Mr. Sandoval, are you prepared to go to trial today?

MR. SANDOVAL [Defense counsel]: Judge, I'm prepared to go to trial.

THE DEFENDANT: You are prepared, but I'm not.

THE COURT: That is why I indicated that I believe your actions are dilatory, for seven months you have insisted that we go to trial on this thing.

* * *

THE COURT: You are indicating you want to represent yourself?

THE DEFENDANT: I'm saying that I would have loved to have a lawyer, I would love that, because he gets all the skills, he got everything he need to do this. ***.

* * *

THE DEFENDANT: If I feel something's wrong, I'm going to stand up and scream; can I do that?

THE COURT: No.

THE DEFENDANT: I'm going to stand up and say something. This is my life here."

¶ 8 The State then called Cruz Garcia to testify. Garcia stated that her husband's name was Victor, and at around 9 a.m. on September 6, 2011, she went to the Family Thrift Store on West Cermak Road in Chicago to buy some clothes. Garcia brought her purse with her, which

contained three credit cards, her passport, cell phone, keys, and insurance cards. She spent about three hours at the store, trying on clothes. She had a shopping cart with her, and she placed her purse in the "small part" of the shopping cart so that she could try on clothes. When she finished shopping, she went to the cash registers, at which point she realized her purse was missing. She spoke to a manager and then went to the local police station to fill out a report.

¶ 9 Garcia then went home. Police detectives later took Garcia and her husband to the police station, where Garcia identified her purse and its contents, including the three credit cards, her passport, cell phone, keys, and insurance cards. The police returned everything except for the three credit cards to her. Garcia stated that she had never known defendant and did not give her (or anyone else) permission to use or have possession of her and her husband's credit cards. Garcia made an in-court identification of the three credit cards from her purse that the police had retained. On cross-examination, Garcia admitted she did not recall seeing defendant at the store.

¶ 10 Chicago police officer Jason Bala then testified that, on September 6, 2011, he and his partner, Rafael Megallon, were on routine patrol. At around 1 p.m., Bala observed a vehicle with license plates matching a description of a suspect vehicle that was dispatched to all cars. Bala activated his emergency lights, and the car pulled over. Both officers walked up to the car, and asked the driver and the passenger to get out of the car. Defendant got out of the passenger side of the car, and after she and the driver were patted down, Bala said they handcuffed defendant and the driver together and walked them to the front of the police car.

¶ 11 Defendant asked Bala to retrieve her purse, which was on the front passenger seat. Bala did so, and after ensuring there was no contraband inside, placed the purse on the hood of the police car. Bala then saw defendant open the purse, remove a credit card, throw it to the ground, and attempt to kick it under the police car.

¶ 12 Bala recovered the card and noticed that it had someone else's name on it. According to Bala, defendant admitted that the card was not hers, but that she did not steal the card; rather, her friend "Trish" stole it. Defendant further stated that she was on her way to buy something with the card, but she had not yet bought anything with it. Bala then placed defendant under arrest and transported her to the police station.

¶ 13 At the police station, an inventory of the purse revealed credit cards, "medical" cards, a passport, house keys, and a cell phone. Bala said that Megallon found the name Victor on the cell phone and called the number associated with that name. The person answering that number stated that the purse had been stolen along with the cell phone. Garcia and her husband, Victor, were eventually located and brought to the station for identification. Garcia identified the purse as hers as well as three credit cards that were in her purse: a Citibank Mastercard debit card, which Bala said was the card that defendant attempted to kick under his squad car; a Chase Visa debit card belonging to her husband, Victor; and a Wage Works Mastercard, also belonging to Victor. In addition, Garcia identified her cell phone and passport.

¶ 14 On cross-examination, Bala admitted that the arrest report did not reflect the fact that defendant had requested her purse. Bala, however, explained that he only included what he believed would have been enough detail to support probable cause to detain the individuals. On redirect examination, Bala further testified that, after an Officer Lopez read defendant her *Miranda*[1] rights at the police station, defendant indicated that she understood those rights and reiterated that she knew the card was stolen, that she did not steal it, and that her friend Trish "had something to do with that." Bala said that defendant also admitted that she was on her way to a Target store to purchase a television with the intention of selling it for money.

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 15 Officer Megallon then testified that, after he and Bala had defendant and the driver handcuffed and placed near the front of the squad car, Megallon heard defendant ask Bala to retrieve her purse from the car she had been riding in, and Megallon saw Bala obtain the purse for defendant. Megallon also testified that, on the same day that defendant was arrested, he obtained a video recording from the Family Dollar store where Garcia had been shopping. Megallon said that he gave the video to a detective and the video was then inventoried. Megallon identified the video in court as being in substantially the same condition as when he obtained it from the store, and added that he had personally viewed the video. The State then asked to publish the video recording to the trial court. Defense counsel stated that he had no objection, and the video was played. On cross-examination, Megallon conceded that the arrest report did not indicate that defendant had asked Bala for her purse, but on redirect examination, Megallon explained that the case report, which contained more detail, did include that fact.

¶ 16 The State then rested, and the trial court denied defendant's motion for a directed verdict. Defense counsel stated that defendant did not wish to testify. The trial court admonished defendant regarding her right to testify, and defendant responded, "Yes, I understand fully because – I'm good." When the trial court asked her to clarify, she stated that she agreed with the trial court that her trial attorney was "good" and that she did not wish to testify. The defense rested, and the parties then presented their closing arguments.

¶ 17 During defendant's closing argument, trial counsel initially recounted that Garcia could not identify who took her purse, and argued that the video recording "suppose[dly]" showed Garcia's purse being taken from the cart. Defense counsel then argued that, although the video showed that it was a woman, "you can't tell whether it's [defendant]," and the video did not indicate who took Garcia's purse. In addition, defense counsel pointed out: (1) the

discrepancies between the arrest report and the case incident report, (2) the fact that there was another individual in the car who could have taken the purse, and (3) the absence of any memorialization of defendant's purported inculpatory statement. Defense counsel also challenged the likelihood that Bala would hand over the purse after patting-down defendant out of concern for officer safety. Defense counsel concluded that these facts, "along with a video that doesn't show anything, *** cast[s] doubt on the case."

¶ 18 Following closing arguments, the trial court announced its findings. It noted that Garcia did not identify defendant as the person who took her purse from the shopping cart in the store, and that Garcia did not know whether defendant was even in the store. The trial court also recalled that, about an hour after the purse was taken, the police stopped a car in which defendant was the passenger about eight miles north of the store. The trial court then recounted testimony from both officers that defendant, while handcuffed to the driver in front of the squad car, asked for her purse, and testimony from Bala that he discovered the stolen cards in the purse after he saw defendant remove a card from the purse, drop it, and try to kick it under the squad car.

¶ 19 The trial court, however, also stated that it had "some difficulty" with two aspects of this case: first, that defendant's statement "given to the detectives subsequent to this incident afterwards [*sic*] is never contained in any report"; and second, that defendant and the driver were handcuffed together. The trial court, however, said that it could not "get over" the video from the store. The trial court noted that there was "some activity" taking place at Garcia's shopping cart involving another individual that is "very difficult to identify," but that individual then walks "very close" to the camera, and the trial court found that there was "no question" that it was defendant. The trial court then found defendant guilty of all counts, and following a subsequent sentencing hearing, the trial court sentenced defendant to 30 months' incarceration.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 Sufficiency of the Evidence

¶ 23 Defendant first contends that the State failed to prove her guilty beyond reasonable doubt. Specifically, defendant argues that all four theft convictions should be reversed because the trial court found the police officers not credible and solely relied upon the video recording, which defendant claims fails to show defendant at all, or at least to show defendant committing any criminal act.

¶ 24 At the outset, defendant contends that we should review the video recording under a *de novo* standard of review because we are allegedly in the same position as the trial court. *De novo* review, however, is inappropriate, where, as here, the trial court did not simply review the video recording in isolation. See *People v. Span*, 2011 IL App (1st) 083037, ¶ 27 (rejecting *de novo* review because the evidence did not solely consist of documentary evidence). Instead, the trial court reviewed the video recording—purportedly showing defendant at the store—and then *compared* the image on the video recording to defendant, who was actually present in court. Since we are not in the same position as the trial court, we must therefore use the traditional standard of review applicable these types of claims.

¶ 25 When presented with a challenge to the sufficiency of the evidence, this court must determine "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 in original.) *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for the trier of

fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *Id.* at 211. It is not necessary that a trier of fact be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; rather, it is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the accused's guilt. *People v. Jones*, 105 Ill. 2d 342, 350 (1985). Moreover, a trier of fact may believe as much, or as little, of any witness's testimony as it sees fit. *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007). Although a trier of fact's credibility determinations are entitled to great deference, those determinations are nevertheless not binding upon a reviewing court. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). In essence, this court will not reverse a conviction unless the evidence is "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 26 Defendant was convicted of three counts of identity theft and one count of simple theft. A person commits identity theft if she knowingly "possesses *** any *** personal identification document of another knowing that such *** personal identification documents were stolen." 720 ILCS 5/16G-15(a)(4) (West 2010). "Personal identification document" is defined in relevant part as "a credit card, [or] a debit card, *** issued to or on behalf of a person other than the offender." 720 ILCS 5/16-0.1 (West 2010). A person commits theft when she knowingly "Obtains or exerts unauthorized control over property of the owner." 720 ILCS 5/16-1(a)(1) (West 2011 supp.).

¶ 27 Here, there was ample evidence supporting defendant's convictions. Garcia, the victim, testified that defendant was not authorized to be in possession of her purse or its contents. One hour after the reported theft (and according to the trial court, about eight miles north of the store), Officers Bala and Megallon pulled over a vehicle in which defendant was riding. Both

officers testified that, while handcuffed to the driver in front of the officers' squad car, defendant asked Bala to retrieve her purse from the car, which Bala did. Bala then noticed defendant open the purse, remove a credit card, throw it to the ground, and attempt to kick it under the police car. The credit card and others found in the purse were those of the victim or her husband. Bala stated that defendant then admitted that the card was not hers, but she did not steal it; rather, her friend Trish did. On these facts, there was ample evidence to support defendant's convictions for both identity theft as well as simple theft.

¶ 28 Defendant, however, asserts that the trial court found the officers' testimony not credible because it stated that it had "some difficulty" both with the fact that defendant's postarrest statement to the detectives was not contained in any report and also with the fact that defendant and the driver were handcuffed together. Based upon these two difficulties, defendant concludes that the sole basis for the trial court's guilty finding was the video recording, which she characterizes as too ambiguous to establish guilt beyond a reasonable doubt. We reject defendant's argument. The mere fact that the trial court had some unspecified "difficulty" with two isolated aspects of this case does not mean that the trial court rejected the entirety of the officers' testimony. As a result, even assuming, *arguendo*, that the trial court rejected those two points entirely, there was nonetheless sufficient evidence supporting defendant's convictions. Defendant's contention of error on this point is therefore unavailing.

¶ 29 Effective Assistance of Counsel

¶ 30 Defendant also contends that she received ineffective assistance of trial counsel because her trial counsel failed to object to the admission of the store surveillance video on the grounds that an adequate foundation had not been laid. Defendant further argues that, since the trial court "expressly relied" upon the video recording in finding defendant guilty, she was prejudiced by

trial counsel's omission. Alternatively, defendant asks that we review the admission of the video recording under the plain error doctrine. Defendant's claim is problematic for several reasons.

¶ 31 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To establish ineffective assistance, a defendant must show both that (i) counsel's performance was deficient and (ii) the deficient performance prejudiced the defendant. *Id.* (citing *Strickland*, 466 U.S. at 687). Deficient performance is performance that is objectively unreasonable under prevailing professional norms, and prejudice is found where there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 496-97; *Strickland*, 466 U.S. at 690, 694. Matters of trial strategy are generally immune from claims of ineffective assistance of counsel except where the trial strategy results in no meaningful adversarial testing. *People v. West*, 187 Ill. 2d 418, 432-33 (1999). The failure to establish either prong of the *Strickland* test is fatal to the claim. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010) (citing *Strickland*, 466 U.S. at 697). Whether a defendant received ineffective assistance of counsel presents is a mixed question of fact and law. *Strickland*, 466 U.S. at 698. We thus defer to the trial court's findings of fact, but review *de novo* the ultimate legal issue of whether counsel's purported omission supports an ineffective assistance claim. *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004).

¶ 32 In this case, the State questioned Officer Megallon on direct examination regarding his recovery of the video recording from the Family Dollar store. When the State asked to publish the video to the trial court, trial counsel stated, "No objection." Trial counsel argued during his closing argument that the video recording "suppose[dly]" showed the victim's purse being taken

from the cart from a woman, but that no one could discern whether it was defendant, and the video did not indicate who actually took the victim's purse. Trial counsel also highlighted discrepancies between the police reports (including the lack of any written statement about defendant allegedly incriminating herself), deflected culpability onto the driver of the car as the possible individual who took the purse, and questioned the likelihood that Bala would give defendant the purse after patting her down out of concern for officer safety. Trial counsel then concluded that these factors and the video recording "that doesn't show anything" raised a reasonable doubt as to defendant's guilt. As such, it is clear that it was trial counsel's strategic decision to not challenge the submission of the video recording: it added fuel to the fire of the defense theory that someone other than defendant took that purse. Since matters of trial strategy are generally immune from claims of ineffective assistance of counsel, and trial counsel's strategy did not result in "no meaningful adversarial testing" (*West*, 187 Ill. 2d at 432-33), defendant's claim of ineffective assistance of counsel is without merit.

¶ 33 Moreover, defendant cannot meet the prejudice prong of *Strickland*. As noted above, defendant's convictions were supported by ample evidence. The testimony of the victim established that defendant was not authorized to possess either her purse or her and her husband's credit cards, and the testimony of the two arresting officers established that defendant freely admitted to knowingly possessing the victim's stolen credit cards. Since defendant cannot meet both prongs of the *Strickland* test, her claim necessarily fails. *Clendenin*, 238 Ill. 2d at 317-18 (citing *Strickland*, 466 U.S. at 697).

¶ 34 Finally, defendant's claim in the alternative fares no better. The plain error doctrine allows a reviewing court to bypass normal forfeiture principles and consider an otherwise unpreserved error affecting substantial rights when either: "(1) the evidence is close, regardless

of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 187 (2005); see also Ill. S. Ct. R. 615(a). Defendant only argues that the first prong of the plain error analysis applies, *i.e.*, "where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence." *Herron*, 215 Ill. 2d at 178.

¶ 35 As a preliminary matter, plain error review is inappropriate because defendant acquiesced in the admission of the video recording at trial and cannot be heard to complain about it on appeal. *People v. Bush*, 214 Ill. 2d 318, 332 (2005) ("Moreover, when a defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, she cannot contest the admission on appeal."). Trial counsel offered no objection when the State asked to publish the video recording to the trial court. Although defendant contends that *Bush* is distinguishable because the defendant there stipulated to the evidence, we reject defendant's unduly narrow reading of *Bush*. In that case, the defendant's stipulation added force to the supreme court's holding of forfeiture. See *id.* at 333 ("Here, defendant certainly invited and acquiesced in the admission [of the evidence]. Indeed, defendant stipulated to *** the admission. * * * In this context, the impact of defendant's stipulation cannot be overstated."). Nowhere in *Bush* does the court say that a stipulation is the minimum requirement for forfeiture by acquiescence. Defendant's argument is therefore meritless.

¶ 36 In any event, as to the first prong, we find the evidence presented at defendant's trial, which as summarized above, was far from closely balanced. Defendant's convictions were supported by the testimony of the victim and the two arresting officers, one of whom recounted defendant's inculpatory statement. Again, the trial court merely indicated "some difficulty" with the lack of a memorialized postarrest statement as well as the fact that defendant was handcuffed

to the driver. The trial court did not state that it completely disbelieved the officers' testimony. As such, we cannot hold that the trial court's guilty verdict would have been otherwise had the video recording not been introduced.

¶ 37 Defendant's Request to Proceed *Pro Se*

¶ 38 Finally, defendant contends that the trial court erred in denying her request to proceed *pro se* at trial. Specifically, defendant argues that the trial court failed to determine whether defendant's attempted waiver of counsel was knowing and intelligent, and instead abruptly found that defendant's request was dilatory. Defendant claims that the record establishes that she wanted a speedy resolution of her case and sought to represent herself because she was unhappy with her appointed trial counsel's performance.

¶ 39 It is well established that a defendant has the right to represent himself in criminal trials under both the federal and state constitutions. See U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Faretta v. California*, 422 U.S. 806, 832 (1975); *People v. Burton*, 184 Ill.2d 1, 21 (1998). This right, however, is "not absolute and may be forfeited if the defendant engages in serious and obstructionist misconduct, or if he cannot make a knowing and intelligent waiver of counsel." *People v. Rohlfs*, 368 Ill. App. 3d 540, 545 (2006). Moreover, for a defendant to invoke the right of self-representation, the waiver of counsel must be clear and unequivocal, not ambiguous. *Burton*, 184 Ill. 2d at 21. In other words, a defendant only invokes her right of self-representation if she " 'articulately and unmistakably demands to proceed *pro se*.' " *Id.* at 22 (quoting *United States v. Weisz*, 718 F.2d 413, 426 (D.C. Cir. 1983)).

¶ 40 Even if a defendant gives some indication that she wants to proceed *pro se*, she may later acquiesce in representation by counsel, such as by vacillating or abandoning an earlier request to proceed *pro se*. *Id.* at 23. "In determining whether a defendant seeks to relinquish counsel,

courts may look at the defendant's conduct following the defendant's request to represent [her]self." *Id.* at 23-24 (citing *Bennett v. Duckworth*, 909 F. Supp. 1169, 1175-76 (N.D. Ind. 1995) (the defendant acquiesced in the representation of his court-appointed counsel where he raised the possibility of proceeding *pro se* but did not mention the issue again after the trial judge declined to appoint substitute counsel)). Finally, reviewing courts must " 'indulge in every reasonable presumption against waiver' of the right to counsel." *Id.* at 23 (quoting *Brewer v. Williams*, 430 U.S. 387, 404 (1977). A trial court's ruling on a defendant's decision to represent himself at trial will only be reversed if the trial court abused its discretion. See *id.* at 25; *People v. Baez*, 241 Ill. 2d 44, 116 (2011); *People v. Toy*, 407 Ill. App. 3d 272, 282 (2011). "An abuse of discretion exists only where the trial court's decision is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court." *People v. Ramsey*, 239 Ill. 2d 342, 429 (2010) (citing *People v. Donoho*, 204 Ill. 2d 159, 182 (2003)).

¶ 41 The record in this case reveals no abuse of discretion because defendant was neither clear nor unequivocal in her attempted waiver of counsel. Her initial complaint was based upon her trial counsel's alleged failure to set her case for trial. The trial court, however, informed defendant that discovery had not been completed, so setting a trial date would have been premature, and the trial court also advised her that she could raise this matter again once discovery was complete. Defendant complained at subsequent court appearances of being incarcerated and her case again not being set for trial. On the day of trial, defendant wanted to discharge her court-appointed attorney only because she wanted to conduct the cross-examination of the witnesses. Defendant extended colloquy with the trial court veered from (1) wanting appointed counsel and admitting she needed "some assistance" to (2) claiming that only she could defend herself properly and then reverting to (3) responding to her appointed counsel

in front of the trial court, "You are prepared [for trial], but I'm not." In light of the requirement that we must " 'indulge in every reasonable presumption against waiver' of the right to counsel," (*Burton*, 184 Ill. 2d at 23), defendant's vague equivocations were far from the "clear and unequivocal" standard required for a waiver of counsel (*Id.* at 21). Since the trial court's decision was not "arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court" (*Ramsey*, 239 Ill. 2d at 429), it did not abuse its discretion in refusing defendant's request to proceed *pro se*. Defendant's final claim of error is thus meritless.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the evidence was sufficient to support defendant's convictions of three counts of identity theft and one count of simple theft. In addition, defendant's trial counsel was not ineffective because his failure to object to the admission of the video recording was a strategic decision, and in any event, defendant suffered no prejudice. Finally, the trial court did not err in denying defendant's request to proceed *pro se*, where defendant's request was not clear and unequivocal. Accordingly, we affirm the judgment of the trial court.

¶ 44 Affirmed.