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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-699
)	
NANCY F. GUO,)	Honorable
)	Brian F. Telander,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant forfeited various arguments by failing to provide development or authority; (2) defendant failed to show that her counsel was ineffective on any of various grounds; (3) defendant failed to show that the trial court committed any reversible error; (4) defendant's trial was otherwise fair.

¶ 2 Defendant, Nancy F. Guo, appeals *pro se* from a judgment of the circuit court of Du Page County finding her guilty of possession with the intent to sell numerous counterfeit items and sentencing her to, among other things, two years' probation and a fine of \$20,387.50. She contends that trial counsel was ineffective in numerous respects, that the trial court committed

several errors, and that she did not receive a fair trial. Because her counsel was not ineffective, no reversible error occurred, and her trial was fair, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawful possession of counterfeit items with the intent to sell (100 or more but fewer than 500 items) (765 ILCS 1040/1, 2, 8(b) (West 2012)) and one count of unlawful possession of counterfeit items with the intent to sell (aggregate retail value of more than \$300 but less than \$10,000) (765 ILCS 1040/1, 2, 8(b) (West 2012)). Defendant, who was then represented by counsel, opted for a jury trial.

¶ 5 The following facts are taken from defendant's jury trial and posttrial proceedings. On March 29, 2013, Ellen Siaj, an investigator with the Cook County sheriff's office, went to a flea market at a mall in Villa Park. She went with an informant who had advised her that defendant was selling counterfeit merchandise from a booth at the mall. Officer Siaj was accompanied by law-enforcement officers from the Villa Park police department and the Department of Homeland Security, as well as Kevin Read, a licensed private investigator who specialized in the investigation and identification of counterfeit designer merchandise.

¶ 6 When Officer Siaj entered the booth, defendant was the only one present. Officer Siaj observed numerous designer handbags, clothes, and accessories displayed for sale. She identified various items with logos or brand markings as possibly counterfeit. She purchased for \$328 10 handbags with Gucci, Louis Vuitton, Michael Kors, and Tory Burch brands. After selling the 10 handbags to Officer Siaj, defendant offered to put Tory Burch logos on blank handbags.

¶ 7 After purchasing the 10 handbags, Officer Siaj exited the mall and met with Read. Read advised Officer Siaj that all 10 handbags were counterfeit.

¶ 8 Detective William Lyons of the Villa Park police department participated in the investigation. After Officer Sij exited the mall with the 10 handbags, Detective Lyons and the other officers entered the booth. Detective Lyons spoke with defendant. According to him, defendant, who is Chinese, had no trouble communicating with him in English. He explained that neither he nor defendant had to repeat themselves, and her answers were consistent with his questions.

¶ 9 After Detective Lyons advised defendant of her *Miranda* rights, she told him that the handbags were counterfeit and that she sold them to provide financial support to her family. She told Detective Lyons that she was the owner and sole employee of the business.

¶ 10 Defendant consented to a search of the booth and its storage area. The search revealed numerous counterfeit items, including jewelry, Michael Kors handbags, and various logos and labels from designer manufacturers.

¶ 11 After seizing those items, the officers arrested defendant and transported her to the police station. At the station, Detective Lyons again spoke to defendant. Defendant consented to a search of a storage locker at the mall and a search of her car.

¶ 12 The search of the storage locker revealed various counterfeit designer purses, wallets, and labels. According to Officer Lyons, the officers also found in the storage locker a cardboard box with a shipping label addressed to defendant at the mall. The box contained several counterfeit designer labels. The trunk of defendant's car contained several counterfeit handbags.

¶ 13 Before Read testified, defendant sought to admit a notice of a trademark-application abandonment from the United States Trademark Office. The document related to a Michael Kors trademark. The document provided, in pertinent part, that the application for that particular trademark had been abandoned on March 25, 2014. The trial court denied the motion *in limine*,

ruling that it was not relevant to show the validity of the particular Michael Kors logo, as the document was dated after the charged incident.

¶ 14 Read has been involved in over 1,000 investigations involving counterfeit merchandise, which have led to the seizure of at least 250,000 items. He has participated in various workshops and seminars related to the identification of counterfeit items. Many of the training programs were put on by such designers as Chanel, Coach, Louis Vuitton, Gucci, Michael Kors, and Tory Burch. He annually attends the International Anti-Counterfeiting Coalition conference, where he participates in additional counterfeit-detection training. He provides such training to local law-enforcement agencies. He has testified in over fifty trials and has been qualified as an expert witness seven times. The trial court found him to be an expert in the identification of counterfeit designer merchandise.

¶ 15 Read's role in the investigation was to identify any counterfeit items. To that end, he identified all 10 handbags purchased by Siaj as being counterfeit, including the Michael Kors handbag. According to Investigator Read, a legitimate Michael Kors handbag of that size would sell for approximately \$350. The lowest price for a Tory Burch handbag similar to the one purchased would be \$350.

¶ 16 Read opined that all of the handbags, jewelry, labels, and logos introduced at trial were counterfeit. The average person would not be able to discern whether those items were counterfeit. As for evidence that the handbags were counterfeit, Read relied not only on the appearance of the trademarks but also on the fact that the shoulder straps were wrapped in plastic or paper, the handbags had white paper tags attached, the zippers and brass fittings lacked any trademarks, and the stitching was poor.

¶ 17 Defendant's husband, Phillip Guo, testified on her behalf. He was the sole owner of the business. Defendant was a full-time employee who worked an average of six days per week. According to Phillip Guo, he did all of the purchasing for the business, although defendant accompanied him to a trade show and offered her input on the purchase of merchandise.

¶ 18 The jury was instructed, among other things, that a person who possesses more than 25 counterfeit items is presumed to have the intent to sell those items. Defendant's objection to that instruction (No. 19) was overruled.

¶ 19 During closing argument, defendant admitted that the items were counterfeit but contended that, as a mere employee, she did not knowingly offer the items for sale as required by the statute. Rather, defendant argued that she only "facilitate[d] a transaction."

¶ 20 The jury found defendant guilty of both counts. Following the trial, the trial court allowed defendant's attorney to withdraw and defendant to proceed *pro se*. Just like it had during the trial, the court appointed a Chinese/English interpreter to translate for defendant. Defendant told the court that if she had trouble speaking, or if the court had trouble understanding her, then she would ask the interpreter for assistance.

¶ 21 Among other things, defendant filed a posttrial motion, contending that her trial attorney was incompetent for failing to cross-examine any of the State's witnesses. The attorney explained that he did not do so because his defense theory, that defendant was merely an employee, was not impacted by their testimony. He added that he did not consider the denial of his motion *in limine* regarding the abandoned trademark application to be material, because it applied only to one of the many trademarks at issue. The trial court found that defense counsel's choice of a defense theory was a reasonable trial strategy.

¶ 22 Defendant filed a motion to reconsider the ruling regarding her trial counsel's effectiveness. She additionally argued that counsel was incompetent for failing to file either a motion to suppress evidence or a motion to suppress statements. The court denied the motion to reconsider.

¶ 23 Defendant also filed a motion for a new trial. The gist of that motion was that she did not receive a fair trial, because she was framed and the State's witnesses lied. She further contended that a store video would show that the box with the shipping label showing her as addressee was found in the store and therefore Detective Lyons lied about the box being found in the storage locker.

¶ 24 The trial court denied the motion for a new trial. In doing so, the trial court noted that defendant spoke "very eloquently" and had an "excellent grasp of not only the English language, but for a lay person, *** a very good grasp of the law," and that it saw "no confusion in the language matter whatsoever."

¶ 25 The trial court imposed a sentence of two years' probation and a minimum statutory fine of \$20,387.50 based on a percentage of the retail value of the seized items' authentic counterparts. Following the disposition of defendant's motion to reconsider her sentence, she filed a timely notice of appeal.¹

¶ 26

II. ANALYSIS

¶ 27 On appeal, defendant contends that: (1) trial counsel was ineffective because he: (a) failed to disclose in discovery the notice of trademark-application abandonment; (b) failed to file

¹ We note that defendant originally filed a premature notice of appeal and an emergency motion for a stay in this court. We denied the motion and dismissed the appeal. See *People v. Guo*, No. 2-15-0553. (June 17, 2005) (minute order).

a motion to dismiss the indictment based on Read's faulty testimony; (c) failed to file a motion to suppress evidence; (d) failed to file a motion to suppress statements; (e) failed to file anything pretrial other than an answer; (f) failed to clarify to the court that the notice of abandonment was related to an application for, as opposed to a registration of, a trademark; (g) failed to object more than once during trial; (h) failed to cross-examine any witnesses; (i) conceded during closing argument that all of the admitted items were counterfeit; (j) did not ask defendant's husband any relevant questions; and (k) did not tender certain documents to the State; (2) the trial court erred in denying admission of the notice of trademark abandonment; (3) the Michael Kors tags and Gucci purses were not counterfeit on March 29, 2013; (4) Read was not competent to testify as an expert, because he did not know about the abandonment of the Michael Kors trademark application; (5) the retail value of the seized items was miscalculated, because the State did not introduce any comparable "authentic reasonably similar" counterpart; (6) the search violated the fourth amendment because there was no warrant and defendant's consent was not knowing and voluntary; (7) defendant's statements and *Miranda* waiver were not knowing and voluntary, because she did not speak English well enough to understand that she could refuse to answer questions or have an attorney present; (8) instruction No. 19 was improper, because it did not clarify that a person must possess more than 25 of the same counterfeit items; (9) Lyons testified falsely regarding where he found the box with the shipping label addressed to defendant; (10) Officer Siaj testified falsely; and (11) the surveillance video shows that the State's opening and closing arguments were incorrect.

¶ 28 We begin our analysis by gleaning from defendant's brief those issues not properly raised. As the State notes, a point raised in an appellant's brief must be supported by both reasoned argument and relevant legal authority. *People v. Urdiales*, 225 Ill. 2d 354, 420 (2007).

Failure to comply with those requirements results in forfeiture. *Urdiales*, 225 Ill. 2d at 420. A *pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to a *pro se* litigant. *People v. Adams*, 318 Ill. App. 3d 539, 542 (2001).

¶ 29 Applying the foregoing rules, the following contentions are forfeited. First, defendant's contention that her trial counsel was ineffective for failing to disclose in discovery the trademark-application abandonment document is unsupported by reasoned argument or any relevant authority. Second, defendant's barebones statement that trial counsel was ineffective for failing to file anything pretrial other than an answer is unsupported by argument or authority. Third, her claim that her attorney improperly raised only one objection during trial fails to specify what other objections should have been raised and is otherwise unsupported by any argument or authority. Fourth, defendant's claim that counsel should have cross-examined the State's witnesses fails to explain the basis for such cross-examination or how it would have furthered her defense. Fifth, her contention that counsel failed to ask her husband relevant questions does not specify what those questions might have been or how they would have materially advanced her defense. Sixth, defendant offers no argument or authority for her claim that counsel was ineffective for not tendering certain documents to the State. Finally, her two barebones contentions that Officer Siaj lied and that the State's opening statement and closing argument were inaccurate lack any argument or authority. Thus, all of the foregoing contentions are forfeited.

¶ 30 We turn then to the remaining contentions. In doing so, we first address defendant's arguments regarding her trial counsel's asserted ineffectiveness.

¶ 31 Generally, claims of ineffective assistance of counsel are assessed under a two-part test. *People v. Rogers*, 2015 IL App (2d) 130412, ¶ 67 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To establish ineffective assistance of counsel, a defendant must prove that: (1) her counsel's representation fell below an objective standard of reasonableness; and (2) absent that error, there is a reasonable probability that the trial's outcome would have been different. *Rogers*, 2015 IL App (2d) 130412, ¶ 67. Because a defendant must prove both prongs to prevail, we may resolve an ineffective-assistance claim under either prong. *Rogers*, 2015 IL App (2d) 130412, ¶ 67.

¶ 32 Decisions as to what evidence to present, whether to call certain witnesses, and what theory of defense to pursue are matters of trial strategy. *Rogers*, 2015 IL App (2d) 130412, ¶ 71. Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Rogers*, 2015 IL App (2d) 130412, ¶ 71. While the cross-examination of a witness is a matter of trial strategy, the failure to use significant impeaching testimony against an important witness is deficient representation. *Rogers*, 2015 IL App (2d) 130412, ¶ 71. A defendant can overcome the deference given to sound trial strategy only by showing that counsel's decision was so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy. *Rogers*, 2015 IL App (2d) 130412, ¶ 71.

¶ 33 In this case, defendant claims that counsel was ineffective for failing to move to dismiss the indictment because Read did not know that the Michael Kors trademark application had been abandoned. However, the indictment was supported by far more than the evidence provided by Read as to that one trademark. Moreover, Read's trial testimony came too late to provide any basis to dismiss the indictment. Counsel was not deficient for failing to have moved to dismiss the indictment after Read testified.

¶ 34 Defendant asserts that counsel was ineffective for failing to clarify to the trial court that the abandonment was of an application for, as opposed to a registration of, a trademark. Defendant's argument fails to recognize that counsel's strategy was not to challenge the validity of the trademarks. Instead, he opted to argue that defendant, as a mere employee, did not knowingly sell counterfeit items. Considering the significant evidence of counterfeit items being sold, along with defendant's husband's testimony that she was merely an uninformed employee, that strategy was sound. Even though that strategy ultimately failed, that does not establish the ineffective assistance of counsel. See *People v. Szabo*, 144 Ill. 2d 525, 531 (1991). Therefore, counsel's failure to point out that the document was an abandonment of an application, as opposed to a registration, was not ineffective.

¶ 35 The same can be said for counsel's concession during closing argument that the items were counterfeit. That was entirely consistent with his defense theory that defendant was not responsible for the sale of the items. As explained, that theory was a matter of sound trial strategy.

¶ 36 That leaves defendant's contention that counsel was ineffective for failing to file motions to suppress evidence and to suppress her statements. Where an ineffectiveness claim is based on counsel's failure to file a motion to suppress, a defendant must demonstrate that the unargued suppression motion would have been meritorious and that there is at least a reasonable probability that the trial outcome would have been different had the evidence or statement been suppressed. *People v. Henderson*, 2013 IL 114040, ¶¶ 12, 15.

¶ 37 As for the failure to file a motion to suppress evidence, although there was no warrant, defendant consented to the searches. A warrantless search does not violate the fourth amendment where the police obtain consent from a person who they reasonably believe

possessed actual authority to consent, but who in fact did not. *People v. Burton*, 409 Ill. App. 3d 321, 328 (2011).

¶ 38 Here, even if defendant did not have actual authority to consent, the evidence shows that it was reasonable under the circumstances for the officers to have believed that she did. As for defendant's contention that the consent was invalid because of her inability to understand English, that is belied by the record. Indeed, the trial court found that she had a solid grasp of English. Moreover, her briefs in this court are clear and understandable. Therefore, counsel's failure to file a motion to suppress evidence was not ineffective.

¶ 39 Similarly, counsel's failure to file a motion to suppress statements was not ineffective, as the record contradicts defendant's assertion that, because of her poor English, she could not understand the *Miranda* warnings and could not knowingly waive those rights. As the trial court found, and her briefs in this court reflect, defendant has an excellent grasp of English.

¶ 40 Based on the foregoing, defendant has raised no viable claim of the ineffective assistance of her trial counsel.

¶ 41 As for her claims unrelated to counsel's effectiveness, we begin with her assertion that instruction No. 19, regarding the presumption of intent to sell arising from the possession of more than 25 counterfeit items, should have stated that the items had to be obtained on or after January 1, 2010, the effective date of the presumption. See 765 ILCS 1040/8(h) (West 2012). That contention fails, however, as the statute uses the term "possess" as opposed to "obtain." See 765 ILCS 1040/8(h) (West 2012). Therefore, when she obtained the counterfeit items was not material.

¶ 42 We next address defendant's contention that the trial court erred in denying admission of the trademark-abandonment document. The admission of evidence is within the wide discretion

of the trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). Additionally, an error in the exclusion of evidence does not warrant reversal if it causes no prejudice. *People v. Kluppelberg*, 257 Ill. App. 3d 516, 533 (1993).

¶ 43 Here, although it might be arguable that an abandoned trademark application could show that the trademark was not in fact ever registered, defendant has failed to explain how the exclusion prejudiced her defense where there was significant independent evidence of counterfeit items, including those under the Michael Kors brand. Thus, even if the trial court abused its discretion in barring admission of the trademark-application abandonment, defendant has failed to specify how she was prejudiced by that ruling.

¶ 44 In a related argument, defendant asserts that the Michael Kors tags and Gucci purses were not counterfeit on March 29, 2013. In doing so, she relies on evidence outside the record. As she did not introduce that evidence at trial, she may not rely on it now. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 229 (1986).

¶ 45 We reject defendant's argument that Read was incompetent to testify regarding whether the items were counterfeit because he was unaware of the abandonment of the Michael Kors trademark. Although his knowledge of trademarks was relevant to his opinion, he testified that there were many other indicia that the items were counterfeit, such as the shoulder straps being wrapped in plastic or paper, the presence of white paper tags, the lack of any trademarks on the zippers and brass fittings, and the poor quality of the stitching. He also testified that he received significant training from the designers themselves as to what constituted counterfeit trademarks. Further, assuming that Read told defense counsel that he did not know where the abandonment

document came from, that merely shows that he did not understand its source and not necessarily that he did not know of the abandonment.

¶ 46 Next, defendant maintains that, without the introduction of an authentic item, the trial court could not properly determine whether an authentic reasonably similar counterpart existed for purposes of assessing the “retail value” of the counterfeit items. Therefore, she asserts that the retail value of the counterfeit items, for purposes of assessing a fine, should have been the retail price she was asking for the counterfeit items, as opposed to the retail value of their authentic counterparts. The plain language of the statute defines “retail value” as the “counterfeiter’s per unit regular price for the counterfeit item, unless the counterfeit item would appear to a reasonably prudent person to be authentic, then the retail value shall be the price of the authentic counterpart” unless no “authentic reasonably similar counterpart exists, then the retail value shall remain the counterfeiter’s per unit regular sale price.” 765 ILCS 1040/1(1) (West 2012). Read testified that the counterfeit items would appear authentic to the average person. More importantly, he testified that the value of an authentic reasonable counterpart was at least \$350. From that latter testimony, the court could reasonably infer that such a counterpart existed. In light of Read’s expert testimony, the State did not have to introduce an authentic counterpart to establish value. Moreover, defendant did not challenge that testimony as insufficient and thus the issue is forfeited. See *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Nor was any error plain. See *People v. Sargent*, 239 Ill. 2d 166, 189-90 (2010).

¶ 47 Defendant contends that Detective Lyons lied about where he found the box with the shipping label addressed to defendant. Even if Detective Lyons was mistaken about where he found the box, the shipping label nonetheless showed that defendant was the addressee.

Moreover, that one mistaken point would not have materially impeached Detective Lyons as to the remainder of his testimony.

¶ 48 We note that, to the extent defendant raises arguments for the first time in her reply brief, those arguments are forfeited. See *People v. Polk*, 2014 IL App (1st) 122017, ¶ 49 (citing Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)).

¶ 49 In closing, we observe that defendant believes that she was framed and that the State's witnesses lied. After carefully examining the entire record, we find no indication of any such conduct by the State or any of its witnesses or that defendant received anything other than a fair trial. Moreover, the trial court exhibited remarkable tolerance, patience, and respect for both defendant and her *pro se* status. Indeed, the court allowed defendant tremendous leeway to repeatedly argue her case and thoroughly considered defendant's various posttrial motions and arguments. Although defendant might disagree with the ultimate outcome of her trial, she certainly received a full and fair opportunity to defend herself.

¶ 50

III. CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Du Page County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS /4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 52 Affirmed.