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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 Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-3612
)	
RONALD PIERI,)	Honorable
)	Victoria Rossetti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The data and statistical reports relied upon by the State to prove that defendant made false entries on his timecards in order to defraud the city were so unreliable as to create a reasonable doubt of the defendant's guilt. However, double jeopardy considerations did not prevent retrial.

¶ 2 Defendant, Ronald Pieri, appeals from his conviction of one count of false entries (720 ILCS 5/33E-15 (West 2010)). On appeal, defendant contends that: (1) he was not proven guilty of false entries beyond a reasonable doubt; and (2) defense counsel rendered ineffective assistance.

We reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with two counts of official misconduct (720 ILCS 5/33-3(b) (West 2010)), three counts of theft of government property (720 ILCS 5/16-1(a)(1)(A), (a)(2)(A) (West 2010)), and one count of false entries (720 ILCS 5/33E-15 (West 2010)). All counts arose out of defendant's conduct as a firefighter and deputy chief in the Highwood Fire Department from January 1, 2006 to December 31, 2010. After the State dismissed *nolle pros* Count III (theft of government property having a value in excess of \$100,000), the case proceeded to bench trial.

¶ 5 The Highwood Fire Department was divided into three shifts: Red, or A, Gold, or B, and Black, or C. Each shift was 24.25 hours long, running from 7:45 a.m. until 8:00 a.m. the following day. The shift rotation of Red, Gold, and Black was strictly followed. Each shift was worked by a supervisor and three firefighters; they were considered "critical employees" and could not be absent from the station on their shift unless someone replaced them.

¶ 6 Thomas Lovejoy testified that he was chief of the Highwood Fire Department between 2003, when he replaced defendant in that capacity, and February 2010, when Lovejoy left the position and defendant took over the duties. As of January 1, 2006, defendant was shift commander of Red shift, with the responsibility of supervising every 24-hour Red shift. On January 1, 2007, Lovejoy redesignated the shift commanders as battalion chiefs, with the exception of defendant, who became deputy chief. All three of the former supervisors still had the primary duty of supervising their shifts; however, defendant was also given some additional duties involving vehicle maintenance, training, and emergency medical services. Defendant also assumed the role of acting chief when Lovejoy was away from the station for more than a week.

¶ 7 While the work hours, overtime, and benefit time issues of line firefighters were generally governed by the Fair Labor Standards Act (FLSA), some firefighters were exempt, being paid a strict salary regardless of hours worked. The battalion chiefs were non-exempt; however, in July

2007, defendant's status was changed to exempt; he was paid a salary and did not receive overtime pay or extra pay for extra hours worked. Defendant received a 20 per cent salary increase at that time to compensate for lost overtime. Lovejoy stressed to defendant that his duties as to Red shift remained the same.

¶ 8 All firefighters were required to submit written time cards for each pay period. Lovejoy would enter the information from the cards into a computer spreadsheet for each employee and submit the spreadsheets to the city for payroll processing. He initialed each spread sheet to indicate his approval, and the City was not supposed to process any spreadsheet that did not show his initials. Over time, defendant began to process his own spreadsheets. Although Lovejoy told defendant to stop and told the City not to process defendant's spreadsheets unless Lovejoy approved them, the practice continued.

¶ 9 David Mohry testified that he was the battalion chief of the Gold shift, which worked the days after Red shift. Mohry did not routinely see defendant during the 15 minute overlap of their shifts, especially on weekends. Mohry described the record-keeping program called FIREHOUSE. The shift commander entered the firefighters on duty, anyone using benefit time, the duties performed, and any emergency services provided. Defendant taught Mohry how to use FIREHOUSE. Entries in FIREHOUSE were dated by the shift date, which ran from 8:00 a.m. one day to 8:00 a.m. the next. If an event occurred between midnight and 8:00 a.m., it appeared on the previous day's shift. When shown a FIREHOUSE entry that included reference to defendant and "Shift D," Mohry stated that he did not know what "Shift D" meant.

¶ 10 Mohry had reviewed the six years of Firehouse records that the State introduced into evidence and deemed them to be "accurate, as they appeared to be logical" and "appeared to be like everyday when we worked." According to Mohry, "they came off of FIREHOUSE so it is

an accurate document.” They were inherently accurate because they came from FIREHOUSE. He had not compared the information contained in the reports to anything else. When questioned about a FIREHOUSE entry for September 14, 2006, which showed Chief Lovejoy as working on an EMS call for 1015.5 hours, Mohry still insisted that it was inherently accurate because it came from the FIREHOUSE software. He later backtracked, stating that he knew that his documents were accurate, but that the Lovejoy EMS entry “appear[ed] not to be accurate.”

¶ 11 Susannah Huber, a criminal intelligence analyst for the Lake County State’s Attorney’s office, was qualified to testify as an expert on fraud examination. Huber testified that she examined FIREHOUSE records, defendant’s time cards, and payroll registers relating to defendant to develop a series of spreadsheets showing defendant’s absences from Red shift, differences between FIREHOUSE and payroll records regarding defendant’s hours of work, and the amount of unearned pay that defendant had received.

¶ 12 Huber testified that FIREHOUSE was not payroll software; her understanding was that “it can be used for any of the daily activities and recording start times and times of calls who was assigned to what apparatus when certain operational duties were done.” She testified that she did not know if the information contained in FIREHOUSE was incomplete; she simply “used what information was logged there.” In addition, she assumed that the FIREHOUSE records and time cards should match. However, if they did not match, she assumed that the FIREHOUSE records, not the time cards, were correct. This was so even if time cards had been “authorized” by Lovejoy. Further, Huber had never seen defendant’s handwritten time cards; she only saw computerized time cards that “look[ed] like Excel spreadsheet timecards.”

¶ 13 People’s exhibit No. 43 was a spreadsheet created by Huber entitled “Benefit Time Use Reconstruction.” In this report, Huber calculated the cost to Highwood for defendant taking off

time when he had no more benefit time remaining. Huber admitted that this was the third version of the spreadsheet. Her first version contained errors that sometimes doubled or tripled the costs as compared to the current version. She created her second version after defendant's expert, Dr. Benjamin Wilner, pointed out the errors. She created the third version after Wilner suggested additional changes.

¶ 14 Defendant presented Dr. Wilner as his expert in "economics, forensics, and fraud investigation." In Wilner's opinion, there was "no economic basis behind any of the Prosecutor's allegation that Mr. Pieri defrauded Highwood." He found flaws in all three of Huber's spreadsheets that eventually became People's Exhibit No. 42, including failure to account for common non-fraudulent events and unreliability of data. Specifically, Wilner mentioned Huber's reliance on FIREHOUSE, describing it as "hey, look, if there is a discrepancy between the FIREHOUSE software and the timecards, it must be fraud." Wilner also brought up the issues of shift trades and administrative functions that were not logged into FIREHOUSE.

¶ 15 Wilner stated that, to ensure the reliability of data, one must "look through the totality of the records." In looking through the FIREHOUSE records, he found an entry showing an individual working 1000 hours in a single day. Such a "glaring error" called "into question the entire database." Further, he could find no statistical explanation for the changes in data contained in the various versions of Huber's spreadsheet. He also noted that Huber applied the wrong guidelines in calculating defendant's earned benefit time, as she failed to take into account that defendant was exempt from FLSA standards. Wilner also found misalignment of columns and input errors in Huber's spreadsheet.

¶ 16 Finally, Wilner was again shown People's Exhibit No. 42 and noted that it actually was Huber's second attempt at the spreadsheet, not the third version. Defense Exhibit No. 2, which

was the third attempt, was admitted into evidence. Wilner noted that the second version claimed losses of more than \$58,000, while the third version claimed approximately \$53,000. Wilner ultimately opined that “Mr. Pieri did not defraud Highwood in that the Prosecution has put forth a model that is based on inaccurate data, they made calculation error after calculation error, and that because of that the Prosecution's model is completely unreliable.”

¶ 17 On cross-examination, Wilner stated that he only looked at FIREHOUSE records regarding Lovejoy, not those regarding defendant or other firefighters, and “the compilation of the FIREHOUSE records that the Prosecution put together.” He discounted all of the FIREHOUSE entries based on the single entry showing Lovejoy working 1015 hours in one day “plus other things.” In situations in which defendant worked more hours according to his timecard than were logged into FIREHOUSE, the discrepancy could be based on duty trades to other shifts, administrative duties that defendant performed or mayoral approval to perform other duties; however, he could not account for the specific tasks that defendant performed and knew of no one who could. He also noted that he was informed by Highwood's former city manager and independent auditors that there were problems with timecards and the calculation of benefit time. The \$53,000 loss shown on Defense Exhibit 2 was the result of “fat fingers” [hitting wrong keys while entering data], a lack of internal controls, hours worked on other shifts, the application of incorrect compensation rules by the State, and “other factors that we have already discussed.”

¶ 18 Later, when asked on recross examination whether the 1015-hour entry could be attributed to “fat fingers”, Huber responded:

“Yes. And so—but, again, it is a material error based upon fat fingers. And, again, I do not know. One of the things that we do when we audit things is we don't—we sit there and we just find errors, and we say is something—is there

enough internal controls to sit there and say things are accurate. When you have a material error such as this, you can say that there are problems[.]”

When further asked if there was “a possibility though that all the remaining FIREHOUSE records are potentially accurate,” he responded:

“It is possible, but one of the things that this is standard with an audit in that it could be that you just got unlucky and found an error, and everything else is accurate, but still standards that are promulgated by the AICPA[,] Illinois CP[A] Society[,] SEC, and you named—the entity says if there is a material error, there is a problem.”

¶ 19 Defendant also recalled Susannah Huber. Huber admitted that People’s Exhibit 42 actually was her second version of the spreadsheet, not the third. People’s Exhibit 43 was also the second version of that spreadsheet, instead of the third and final version. She also admitted that she did not review defendant’s handwritten timesheets, only the computerized spreadsheet versions. If a computerized spreadsheet varied from the FIREHOUSE records, she counted it against defendant even if the spreadsheet contained Lovejoy’s initials on it.

¶ 20 The State then recalled Huber in rebuttal. Huber stated that she had created the spreadsheets in People’s exhibits 44-47 and 57 as part of her first analysis but did not create new versions after Wilner had pointed out errors in her analysis; she believed that those spreadsheets remained accurate. Huber admitted that FIREHOUSE was not payroll software and did not know if it was designed to keep track of every firefighter task. She also admitted that she did not compare FIREHOUSE to any firefighter’s time cards. Her analysis was a classic enthymeme that contained an assumed but *unestablished* premise that any time that a FIREHOUSE log did not match defendant’s time card, FIREHOUSE was correct and the time card was fraudulent.

¶ 21 In its oral ruling, the trial court stressed that it had considered “all of the evidence,” specifically mentioning the thousands of pages of exhibits entered by the State. The court also summarized the testimony of all the witnesses. The court found that defendant knew the policies and procedures regarding taking time off and was also familiar with the FIREHOUSE and payroll systems. The court stressed four State exhibits: (1) No. 44, which showed Red shift days on which defendant was not listed as on duty in FIREHOUSE but claimed a full shift worked (5 days in 5 years), with a claimed cost to the Village of \$3000; (2) No. 45, which showed Red shift days on which defendant was not listed as on duty in FIREHOUSE but claimed some hours worked without claiming benefit time for the rest of the shift (32 days), with a claimed cost of \$19,200; (3) No. 46, which showed Red shift days on which defendant was “Absent and Omitted from Timecards” such that no benefit time was used to cover defendant’s absence (35 days), with a claimed cost of \$21,000; and (4) No. 47, which showed Red shift days on which FIREHOUSE and defendant’s timecards matched (395 days).

¶ 22 The court then found defendant guilty of false entries and stated that it “cannot find the defendant guilty beyond a reasonable doubt” of the official misconduct and theft charges. Defendant filed a motion for a new trial that was denied. The trial court sentenced defendant to 18 months of probation. This appeal followed.

¶ 23 **II. ANALYSIS**

¶ 24 Defendant first contends that he was not proven guilty beyond a reasonable doubt of the charge of false entries. Due process requires that a person may not be convicted of a charge except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). When reviewing a challenge to the sufficiency of the evidence, we must consider whether, 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. *Id.* This standard of review applies whether the evidence is direct or circumstantial and regardless of whether the defendant receives a bench or jury trial. *Id.*

¶ 25 This court will not retry a defendant when considering a sufficiency of the evidence challenge. *Id.* The trier of fact is in the best position to judge the credibility of witnesses; accordingly, the fact-finder's findings concerning credibility are entitled to great weight. *Id.* at 114-15. However, the simple fact that a judge or jury accepted the veracity of certain testimony does not guarantee reasonableness; reasonable people may occasionally act unreasonably, and while a fact finder's decision to accept testimony is entitled to deference, it is neither conclusive nor binding. *Id.* at 115. We will not overturn a guilty verdict unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Id.*

¶ 26 Defendant was convicted of one count of false entries, which the legislature has defined as:

“Any officer, agent, or employee of, or anyone who is affiliated in any capacity with any unit of local government or school district and makes a false entry in any book, report, or statement of any unit of local government or school district with the intent to defraud the unit of local government or school district, is guilty of a Class 3 felony.” 720 ILCS 5/33E-15 (West 2010).

¶ 27 It is important to consider what, exactly, the records contained in Firehouse represent. Early in the proceedings, the following colloquy took place:

“THE COURT: Can I ask, what are these firehouse [*sic*] software records used for? Is it just to keep a record or a log of who has worked that shift, or does it relate to—correlate to the pay that is given to those firefighters?”

MR. TURK [Assistant State’s Attorney]: *It does not correlate to the pay, your Honor. It does keep track of other things besides the firefighters that are there. It keeps track of emergency runs, when equipment is sent out for service. It is done to help comply with state rules with regards to a firehouse, separate from the named firehouse for the software, but firehouse administration. So it does more than just keep track of the firefighters who are there, but that is one of the things that it is used for.* (Emphasis added.)

¶ 28 In its oral ruling, the trial court stated that it had considered all of the evidence that had been presented, having “gone over all of the exhibits,” including the “thousands of pages” of the State’s exhibits. The court noted that “the [F]irehouse records are not payroll records. They are information keeping track of what occurred in the hours that were kept, the duties that were done in the fire station.”

¶ 29 Susannah Huber had testified that Firehouse was not payroll software; her understanding was that “it can be used for any of the daily activities and recording start times and times of calls who was assigned to what apparatus when certain operational duties were done.” She testified that she did not know if the information contained in Firehouse was incomplete; she simply “used what information was logged there.” In addition, she assumed that the Firehouse records and time cards should match. However, if they did not match, she assumed that the Firehouse records, not the time cards, were correct. This was so even if time cards had been “authorized”

by Lovejoy. Further, Huber had never seen defendant's handwritten time cards; she only saw computerized time cards that "look[ed] like Excel spreadsheet timecards."

¶ 30 Dave Mohry stated that the purpose of Firehouse was "hold[ing] our daily log." The shift commander was supposed to enter the names of the on-duty firefighters, the duties performed that day, whether anyone used benefit time, and service calls. Mohry had reviewed the six years of Firehouse records that the State introduced into evidence and deemed them to be "accurate, as they appeared to be logical" and "appeared to be like everyday when we worked." According to Mohry, "they came off of FIREHOUSE so it is an accurate document." They were inherently accurate because they came from FIREHOUSE. He had not compared the information contained in the reports to anything else. When questioned about a FIREHOUSE entry for September 14, 2006, which showed Chief Lovejoy as working on an EMS call for 1015.5 hours, Mohry still insisted that it was inherently accurate because it came from the FIREHOUSE software. He later backtracked, stating that he knew that his documents were accurate, but that the Lovejoy EMS entry "appear[ed] not to be accurate."

¶ 31 This court's review of even a small portion of FIREHOUSE records (September through December 2006) reveals a multitude of questionable or improper data in the FIREHOUSE logs. The entry for September 11, 2006, a "Black" or "C" shift, shows four firefighters logged in as "Shift D." October 4 ("Gold" "B") contained a "Shift D" entry for a meeting. October 5 ("Black," "C") showed three firefighters on duty for the entire shift. A fourth firefighter, Klotz, is shown on duty for 12 hours. At 7 p.m., Klotz is shown going off duty, replaced by Mohry for 12.98 hours, listed as "Shift B." Yet at 8 p.m., Mohry is again listed as on duty for 11.98 hours and listed as "Shift C." On October 6 ("Red" "A"), only three firefighters are listed as on duty for the day. October 17 ("Black" "C") shows firefighters Olsen, Shimanski and Louie on duty

for the whole shift; Noga is listed as on duty for 0.00 hours. October 25 (“Gold” “B”) shows Mohry, Champley and Sandahl on duty for the entire shift; at 6p.m., Noga, who was not listed as on duty before and is not credited with any hours of duty, goes off duty, replaced by Vanderwell for 13.98 hours. October 26 (“Black” “C”) shows a “Shift D” entry for a meeting. November 13 (“Black” “C”) shows only three firefighters on duty for the day. December 14 (“Red” “A”) is shown on the bottom of page 198 of the printed FIREHOUSE report and is Bates stamped “000305.” Page 199 is missing; page 200 (Bates stamped “000306”) shows only two entries for December 15, including only one reference to a firefighter being on duty, and that for 12 hours. December 17 (“Red” “A”) shows three firefighters on duty for the entire shift, one firefighter on duty for 9 hours, and one on duty for 2 hours.

¶ 32 As the saying goes, “Garbage In, Garbage Out.” The reports that the trial court relied upon in State Exhibits 44-46 are also rife with errors. State’s Exhibit 44 purports to show five instances in which defendant was absent from his shift but claimed to have worked in full on his timecard. However, four of these claimed instances are in error. On April 30, 2006, FIREHOUSE shows that defendant was not listed as on duty, while his time card claimed time, but less than a full day, worked. However, the entry at 6:30 a.m. on April 29 shows defendant going to class for 10.5 hours. As was explained at trial, FIREHOUSE runs on the 24 hour shifts that run from 8:00 a.m. to 8:00 a.m. Thus, 6:30 a.m. on April 30 in real time shows up as 6:30 a.m. on April 29 in FIREHOUSE. Exhibit 44 claims that defendant was not on duty on June 6, 2007, per FIREHOUSE. However, the FIREHOUSE record for that date clearly shows defendant on duty for the entire shift. On August 5, 2007, FIREHOUSE shows a full staff of firefighters on duty but does not include defendant; however, defendant’s timecard does not show any hours worked. (It also does not show any benefit time used.) While the FIREHOUSE entry

for November 24, 2008 does not show defendant on duty, it shows only one firefighter working the full shift and one other working 17 hours.

¶ 33 A random check of entries in Exhibit 45 revealed three instances of improper staffing per FIREHOUSE, including too many firefighters on duty on a single shift (May 7, 2007), too few on duty (October 10, 2007), and an instance (September 10, 2008) in which it is unclear whether there were too many or too few firefighters on duty.

¶ 34 A review of the first two entries on Exhibit 46 truly exposes the inadequacy of the reports relied upon by the court. People's Exhibit No. 46 (Doc 153) purported to show Red shift days on which defendant was "Absent and Omitted from Timecards" such that no benefit time was used to cover defendant's absence. FIREHOUSE does not show defendant on duty on July 15, 2007. The State claims that defendant, while not claiming hours worked on his time card, also improperly failed to use any benefit time to cover his absence from his shift. A review of defendant's time cards from July 2007 shows that the first pay period ended July 14, making July 15 the first day of the pay period ending July 28. Looking at that Excel spreadsheet time card, we see that day one listed on the time card is actually July 16, not July 15. There is no time card entry for July 15. We must also note that this time card contains the approving initials of Chief Lovejoy. Thus, this not a matter of defendant leaving his timecard blank; it is actually a matter of his spreadsheet timecard being improperly created. Yet the State's report did not recognize this fact. The same situation occurred on the August 26, 2007 entry, although we must note that the time card for the period ending September 8 did not include anyone's initials.

¶ 35 All of this demonstrates that the exhibits upon which the trial court based its finding of guilt were, as Wilner testified, unreliable. The trial court discounted Wilner's claim that all FIREHOUSE records were flawed because of the single error, saying that, "from 2006 to 2010

there were no others.” First, we note that Wilner did not testify that all FIREHOUSE records were flawed based on only the single error; Wilner testified that the existence of a material error such as a firefighter working over 1000 hours in a single day indicates that there are problems in the data that call the accuracy of the data into question. Second, Wilner also raised duty trades, the performance of administrative duties, incorrect data entry (“fat fingers”), a lack of internal controls, hours worked on other shifts, the application of incorrect compensation rules by the State, and “other factors that we have already discussed” as possible reasons for discrepancies between FIREHOUSE and payroll records. Third, as we have shown, the trial court’s finding that, “from 2006 to 2010 there were no others [errors]” is clearly against the manifest weight of the evidence. Both FIREHOUSE and the State’s exhibits that relied on FIREHOUSE contained multitudinous errors. Despite the universal testimony that FIREHOUSE was *not* payroll software, the trial court adopted the State’s expert’s unproven enthymeme that, where FIREHOUSE and time cards conflicted, FIREHOUSE prevailed.

¶ 36 As we have said, reasonable people may occasionally act unreasonably, and while a fact finder's decision to accept testimony is entitled to deference, it is neither conclusive nor binding. *Wheeler*, 226 Ill. 2d at 115. We conclude that the evidence relied on by the trial court in this case was so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant’s guilt. See *id.* The data are endemically unreliable, as demonstrated by this court’s examination of the FIREHOUSE records and the State’s reports that are based on those records.

¶ 37 However, while the data are unreliable, it is not impossible for the State to produce a case showing that defendant made false entries with the intent to defraud. As Wilner testified, the existence of a material error (or errors) indicates that there are problems in the data that call the accuracy of the data into question. However, it does not prove that all the data are incorrect or

flawed. There are literally thousands of entries in FIREHOUSE records and time card claims to be considered. Retrial is proper if the evidence presented at the initial trial, including improperly admitted evidence, was sufficient to sustain the conviction. *People v. Drake*, 2019 IL 123734, ¶ 21. In determining the sufficiency of the evidence, we must view the evidence in the light most favorable to the State and consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* Here, there certainly were instances in which FIREHOUSE records and timecard data did not match. Looking at those instances in the light most favorable to the State, a rational trier of fact could have found that defendant falsely entered hours on time cards instead of making incorrect entries in FIREHOUSE. Thus, the double jeopardy clause does not bar retrial.

¶ 38

III. CONCLUSION

¶ 39 The judgment of the circuit court of Lake County is reversed, and the cause is remanded for further proceedings.

¶ 40 Reversed and remanded.