

SECOND DIVISION
May 6, 2014

No. 1-11-3535

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 08 CR 08362 |
| |) | |
| IZABELLA TRZASKOWSKI, |) | Honorable |
| |) | Lawrence E. Flood, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

Held: The State presented sufficient evidence to sustain defendant's convictions for theft (720 ILCS 5/16-1(a)(1) (West 2010)), and forgery by alteration (720 ILCS 5/17-3(a)(1) (West 2010)). Defendant's ineffective assistance of counsel claim fails as she did not satisfy her burden of proving prejudice. Similarly, defendant also failed to satisfy her burden under the plain error doctrine because she did not provide any argument addressing whether the evidence in her case was closely balanced or how the alleged errors affected a substantial right.

¶ 1 The circuit court convicted defendant, Izabella Trzaskowski, after a bench trial, of theft (720 ILCS 5/16-1(a)(1) (West 2010)), forgery by alteration (720 ILCS 5/17-3(a)(1) (West 2010)), and forgery by delivery (720 ILCS 5/17-3 (a)(2) (West 2010)) based on her actions as a bookkeeper with her former employer, SDA Global, Incorporated (SDA). The circuit court sentenced defendant to 24 months probation. Defendant raises the following issues for our review: (1) whether the evidence was sufficient to sustain her conviction for theft ((720 ILCS 5/16-1(a)(1) (West 2010)); (2) whether the evidence was sufficient to sustain her conviction for forgery by alteration (720 ILCS 5/17-3(a)(1) (West 2010)); and (3) whether her trial counsel was ineffective for failing to suppress a statement she made to the police, or alternatively, to object to the statement on hearsay grounds. Defendant does not challenge her conviction for forgery by delivery. 720 ILCS 5/17-3 (a)(2) (West 2010). Defendant additionally asks this court to review, under the plain error doctrine: (1) whether the circuit court's finding was based on a factual mistake; (2) whether the circuit court failed to properly weigh the credibility of the witnesses; and (3) whether the prosecutor made improper statements during closing argument. We hold the State presented sufficient evidence to sustain defendant's convictions for theft (720 ILCS 5/16-1(a)(1) (West 2010)), and forgery by alteration (720 ILCS 5/17-3(a)(1) (West 2010)). Defendant's ineffective assistance of counsel claim fails as she did not satisfy her burden of proving prejudice. Similarly, defendant also failed to satisfy her burden under the plain error doctrine because she did not provide any argument addressing whether the evidence in her case was closely balanced or how the alleged errors affected a substantial right.

¶ 2 JURISDICTION

¶ 3 The circuit court sentenced defendant on October 24, 2011. Defendant timely filed her notice of appeal on November 10, 2011. Accordingly, this court has jurisdiction pursuant to

article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 4

BACKGROUND

¶ 5 The State charged defendant with the one count of theft (720 ILCS 5/16-1(a)(1) (West 2010)) and two counts of forgery (720 ILCS 5/17-3(a)(1), (2) (West 2010)). The theft count charged defendant with knowingly obtaining or exerting unauthorized control over currency belonging to her former employer, SDA, which she intended to permanently deprive SDA of the use or benefit of said currency. The two forgery counts alleged defendant, with intent to defraud, knowingly altered (720 ILCS 5/17-3(a)(1) (West 2010)) and delivered (720 ILCS 5/17-3(a)(2) (West 2010)) a check for \$551.93 drawn from her former employer's, SDA's, account with Broadway Bank. The check, dated September 15, 2004, and numbered 115321, had been made payable to Commonwealth Edison (ComEd). The indictments for both forgery counts further alleged the check was apparently capable of defrauding another because it purported to have been made with the authority of defendant's former boss at SDA, Bill Tsalas, who did not give such authority, and that defendant knew the check was not made with Tsalas's authority.

¶ 6 At trial, Bill Tsalas, SDA's operation manager¹, testified SDA employed defendant as its only bookkeeper from 2001 until approximately July of 2007. Tsalas described defendant's duties as "[a]pproving bills, entering them into Quickbooks and then issu[ing] checks for them to get paid." Tsalas explained defendant "would receive the bills via the mail, she would enter them into Quickbooks. Some would require *** approval for that to be paid. If it was pending for any specific job, you match it up to what we thought we were going to get billed and then enter it into

¹ Tsalas testified ABCXX.com employed him, but he was positioned at SDA.

Quickbooks in the allotted time and issue a check." Defendant physically cut the checks, which she would do through a printer with the help of accounting software. Tsalas signed the checks when defendant gave them to him. He would typically sign 40-50 checks at a time, one time per week.

¶ 7 In July of 2007, defendant took a leave of absence from the company. In December of 2007, Tsalas had an opportunity to reconcile the books. He noticed "a check posted to our account that wasn't in our accounting software." Based on this missing check, Tsalas called the bank to get a copy of the check. Tsalas recognized State exhibit 1-N as the copy of the check the bank sent in response to his call. Tsalas testified he had signed the check, which was dated April 17, 2007 and numbered 122744, on behalf of SDA and the check was made out to ComEd. Tsalas "called ComEd to see who got credit for this because it wasn't ours. We didn't show it in our books, so we were wondering who got credit for it." Based on his conversation with ComEd, he "went and pulled all the utility bills for several years back and tried matching them up with what [they] were showing in [their] books." Tsalas's investigation resulted in him finding "a lot of checks" were issued to utility companies that did not credit SDA accounts. SDA's bank was able to provide copies of checks that did not correspond to an SDA invoice. Tsalas identified the copies of checks he received from the bank during the course of his investigation, shown as State's group exhibit 1-A through 1-Q, as copies of checks issued to ComEd from SDA's checking account which he had signed. Tsalas proceeded to call ComEd to inform them SDA's accounts were not credited properly. One of the checks, State's exhibit 1-A, was made out to ComEd but had an account number in the memo field that was not SDA's ComEd account number. Tsalas identified State's exhibit 2 as an example of SDA's bill from ComEd. The bill listed Tandy Property Management as the customer, which Tsalas testified is

the name of the business SDA's utility bills were sent to, under account number is 6996393005. Tsalas recalled that in December of 2005, SDA owed ComEd "nothing;" but "\$1,499 and some change" in payments were made. Tsalas denied he ever gave defendant permission to apply SDA checks to her personal ComEd account.

¶ 8 Tsalas testified his investigation showed there were also checks written by defendant to Peoples Gas and the water department of the City of Chicago. Tsalas had the bank send copies of checks made out to Peoples Gas as well. Tsalas recognized State's group exhibit 3 as the checks to People's Gas that he received from the bank in regard to his investigation. Tsalas testified that when he received the People's Gas checks from the bank, he "[r]ealized that the account that they w[ere] being accredited to was not ours and notified People's Energy of that fact." Tsalas had signed the checks to People's Gas, but noticed the "account number that's not [SDA's] written on them." Regarding State's exhibit 3A, Tsalas testified SDA's "account number is under People's Gas, but in the memo field there was another one written underneath." When shown State's exhibit 3B, check number 115795, Tsalas recognized SDA's "account number being scratched out and another one entered to the side of it." The account number handwritten into the check was 6500031282945. When shown State's exhibit 3-C, Tsalas testified "[t]he account number line under People's Energy has been totally erased and the memo field again has an account number that's not" SDA's People's Gas account number. Tsalas was shown State's exhibit 4, which Tsalas recognized as SDA's People's Gas account bill, also made out to Tandy Property Management. Tsalas testified SDA's account number for People's Gas is 2500006078358. Tsalas denied handwriting the account numbers on the checks shown as exhibits 3-A, 3-B, or 3-C. Tsalas denied ever giving defendant permission to write and apply the checks found in State group exhibit 3 to her personal People's Gas account.

¶ 9 When asked why he did not notice that two checks were being issued to utility companies despite signing all the checks, Tsalas explained the checks "were not done at the same time, and it's very hard to keep track after signing 40 or 50 checks of what was paid and what wasn't." Tsalas filed a police report and testified SDA suffered approximately \$22,000 in monetary losses due to the erroneous checks issued between April 2004 and November of 2007. Tsalas answered "No" when asked whether he "ever gave defendant permission to write those checks and apply them to her residential accounts in lieu of compensation that was owed to [her] for her work at your company." Since defendant left SDA's employ, no checks had been sent to the wrong utility company.

¶ 10 On cross-examination, Tsalas testified he did not know or see who wrote the handwritten account numbers shown to him in the State's exhibits. He did not recognize the handwriting. Tsalas admitted he was familiar with, and had access to, the Quickbooks accounting program SDA used, but testified he did not check the program regularly. Tsalas testified in July of 2007, defendant requested time off, which was marked as vacation. Tsalas admitted defendant was pregnant at the time. She never returned to work for the company. Tsalas clarified the first check that raised his suspicions was written to ComEd, and that based on that one check, he investigated the checks to all the utility companies. He only asked for checks to utility companies because that was "the only thing [he] had to go on that was inappropriately handled." Tsalas denied that defendant's overtime was paid to her by payment of her utility bills. Tsalas testified he left notes concerning SDA's accounting to both SDA's accountant, and to defendant. He recognized defendant's group exhibit 1, as copies of notes he wrote to defendant asking her to create checks to pay SDA bills. He admitted he would direct defendant to pay certain bills at certain times. Tsalas admitted he communicated regularly with defendant regarding some bills

and that he had a close working knowledge of some of the bills that he "was familiar with." He was not familiar with all of the checks SDA issued. Tsalas explained the checks "that were just handed to [him] via check that [he] had to sign, [he] just verified the name it was going to, and that's all the checking [he] did." During the period of 2004 to 2007, seven or eight people worked for SDA. Tsalas testified no employee was allowed to work overtime. Tsalas described his familiarity with the Quickbooks accounting program as "[l]imited before [defendant] left, more so afterwards." Defendant admitted defendant's exhibit 1-A was a note from him directing defendant to pay him for hours of overtime for work on Labor Day.

¶ 11 On redirect examination, Tsalas clarified that the note directing defendant to pay him overtime for work on Labor Day was actually not for overtime; rather, it was compensation for work on Labor Day. It was actually directed to Tsalas's company, not him personally. Tsalas testified he did not have to tell defendant to pay the electric or gas bill every month because that was her job. He only noticed unusual activity on SDA's People's Gas, water, and ComEd accounts.

¶ 12 On recross-examination, Tsalas denied defendant provided him a weekly report of bills that were due. He also denied being shown bills before they were paid. Tsalas answered, "Yes" when asked whether "It was entirely up to [defendant] which bills to pay or not to pay." As operations manager, however, he did have oversight over the SDA checkbook. Tsalas did not look at every single check to match up with a bill prior to signing the checks.

¶ 13 Athanasios Dimitropoulos testified on behalf of the State. Dimitropoulos, the president of SBA and its sole owner, testified he never authorized defendant to pay her personal utility bills with SDA checks. On cross-examination, Dimitropoulos testified that he is also known by the name John Lazos, which he described as a "stage name." Dimitropoulos testified

ABCXX.com is a payroll company which pays the bills for the employees of SDA. Maria Kammemos, a friend of his, is the owner of ABCXX.com. Dimitropoulos testified that from the period of 2004 to 2007, no employees received overtime because there was a limit of forty hours of work per week. Dimitropoulos could not remember if Natalie Garcia was employed by SDA, but remembered George Aponte was an employee at one point in time. He described SDA as a "package delivery" business. He did not have any input in how the bills were paid; he only saw the statements after the fact. Defendant would leave statements from Quickbooks every week in his mailbox. When asked whether he reviewed the statements every week, Dimitropoulos answered "[n]ot all the time, but you know most likely." He could not remember the following bills paid by SDA: \$1,472 to Elmwood Cemetery; \$7,200 to Staff Garner Funeral Home; \$5,000 to Jewels by Steliose; or medical bills paid to Proveno St. Joseph's Hospital, St. Alexious Medical Clinic, or Elgin Internal Medicine. Dimitropoulos explained "[t]he company pays thousands of bills everyday, every month. I don't have intimate knowledge of every and each bill."

¶ 14 On redirect examination, Dimitropoulos testified "SDA has no employees directly," and described SDA as an "asset-less and employee-less company." Bill Tsalas, SDA's operations manager, works for ABCXX.com. Dimitropoulos trusted Tsalas with SDA's operations. He employed defendant as a bookkeeper, and trusted her with check writing.

¶ 15 On recross-examination, Dimitropoulos testified "ABCXX hires the people, provides the people to do the work, SDA Global reimburses for work done by ABCXX. So the employees are employees of ABCXX." When asked why SDA does not pay its payroll directly, Dimitropoulos answered SDA is "an operations company and it has to concentrate into getting the job done, which means doing the arrangements for the pick-up and deliveries." He

estimated that "five or so employees" worked at SDA from 2004-2007. Dimitropoulos testified SDA does not have its own employees and that they "rent employees so we can select the people that will do the job. And if they don't perform, it's not our problem."

¶ 16 Fred Thornton testified he is a business analyst with ComEd and "handle[s] customer concerns that come in as it relates to bills, payments, [and] electric trouble issues." His duties also include keeping records kept in the ordinary course of business. Thornton identified State's exhibit 5 as records of defendant's accounts, specifically her billing and payments, with ComEd. Defendant's name appeared on the record with an address of 10915 South Avenue O, Chicago, Illinois, 60617. Thornton explained each ComEd customer is given a unique account number, defendant's being 7277733013. Thornton testified from January of 2003 until July of 2004, defendant's records indicate a consistent pattern of charges and matching identical payments made to her account. On July 28, 2004, a charge was made by ComEd to defendant's account. On August 6, 2004, a payment posted to defendant's account for \$558.33. Thornton testified an unusual event happened on November 16, 2007, which he testified "a transfer credit that was posted on [defendant's] account to account number 6996393005." When asked to explain in laymen's terms, Thornton explained that the November 16, 2007 "transaction *** came off [defendant's] account and went on to someone else's account." More transfer charges to account number 6996393005 occurred on December 21, 2007.

¶ 17 Thornton was shown State's exhibit 2, which he identified as a ComEd billing statement kept in the ordinary course of business. The customer was Tandy Property Management, with an account number of 6996393005, which Thornton testified was the same account number from the previously discussed unusual activity on December 21, 2007. Thornton indicated, State's exhibit 5, the ledger of activity, would show customer interactions with ComEd's customer

service department. The ledger indicated on March 26, 2008, defendant interacted with the customer service department. Thornton testified the notation on the ledger stated "former employer was paying [defendant's] electric bill instead of overtime. When she was terminated, payments were reversed and she now owes for electric service." The ledger also indicated on April 2, 2008, defendant had an interaction with the customer service department. The notation in the ledger stated: defendant "was fired by former employer. The employer paid her utilities and because of discrimination suit she filed against the company, all utility payments were retracted. She now has *** [a] disconnection notice, and wants to know why supervisor or other parties have not returned her calls or responded to her."

¶ 18 Thornton testified to the pattern of how defendant paid her bills, stating "we first saw a pattern of her getting a certain bill amount and she paid that certain bill amount. And then we saw a pattern of her getting a bill amount and paying another amount, other than what the bill was issued for." That other amount would be "substantially higher."

¶ 19 On cross-examination, Thornton admitted he did not work at ComEd from the period of 2004 through 2007. As such, he had no firsthand knowledge of the types of records ComEd kept, payment received in connection with bills, billing, or payments made to defendant's account. Thornton testified ComEd does keep records of checks, but he did not have any copies of checks made to pay defendant's account. Thornton did not personally investigate defendant's payment or billing records. He did not know who generated the reports in State's exhibit 5. On redirect-examination, Thornton testified State's exhibits 2 and 5 were kept in the ordinary course of business and were true and accurate records of the accounts that they purport to report. On recross-examination, Thornton agreed he could not speak for ComEd's record keeping

procedures before he started working for them, but testified that the records are consistent with the procedure they used at that time.

¶ 20 Soledad Barragan, a customer service representative for People's Gas, testified she works on billing complaints and keeps records for People's Gas in the ordinary course of business. She was shown State's group exhibit 6-A through 6-I, which she recognized as People's Gas billing statements kept in the ordinary course of business for defendant. Barragan explained each People's Gas customer gets a unique account number, defendant's being 6500031282945. The billing statements show charges and payments during a specified period. When reviewing exhibit 6-A, Barragan testified defendant incurred charges of \$87.23, but that a payment of \$758.15 was made to her account. Barragan testified State's exhibit 4 is a billing statement to Tandy Property Management at 4701 West Grand Avenue, Floor 3. The account number was 2500006078358. The time period was January of 2006. The amount charged by People's Gas was \$1,478.84. Payment, however, was for only \$1,299.58. The billing statement also showed a balance due on Tandy Property Management's People's Gas account for the month of February of 2006 for \$1,499. Barragan identified State's exhibit 6-H as a bill for defendant's account for August of 2006. The bill showed a payment was made in the amount of \$1,499. Barragan further testified that when a customer pays a People's Gas bill with a check there are markings made to the check after People's Gas processes it. The markings have the company name on it and show what account the payment was applied to. Barragan identified State's exhibits 3-A through D, 3-F, 3-H, and 3-I as checks with markings indicating they were applied to account number 6500031282945, *i.e.*, defendant's account. On cross-examination, Barragan admitted that she did not have any firsthand knowledge regarding who paid the above bills, and she was not responsible for putting account numbers onto checks.

¶ 21 Detective Neal McLoughlin testified he was assigned to investigate the incident. On January 2, 2008, he and his partner went to defendant's residence at 10915 South Avenue O in Chicago at approximately 10 in the morning. He testified he went "[t]o interview and/or arrest her for theft." When he arrived at defendant's residence, he "[k]nocked on the door" and "announced [his] office." Defendant answered the door. In response to the question "after you announced your office to Defendant, what happened next," Detective McLaughlin testified defendant "related that she knew we were there about the checks." Besides announcing their office, neither detective said anything else to defendant prior to her statement that she knew they "were there about the checks." At the police station, Detective McLaughlin presented defendant with copies of checks, which defendant recognized. She told Detective McLaughlin she had sent the checks. When asked whether defendant admitted to writing anything on the checks, Detective McLaughlin testified "I believe there was some account numbers on some of the checks, not on all of them. And I believe she said that was her handwriting on the check." Defendant told Detective Laughlin that she wrote the checks "in lieu of overtime." The police released defendant from custody because there were "other documents that needed to be obtained from the energy companies." Defendant eventually turned herself into police custody after the police obtained an arrest warrant.

¶ 22 On cross-examination, the following exchange occurred with defense counsel:

"Q. And your testimony is that the very words out of [defendant's] mouth were words to the effect that I know you're here about the checks?"

A. After I identified myself and who I was, she said she knows it's about the checks.

Q. What were her exact words?

A. I can't recall her exact words. She related that it was something to do with the checks."

Detective McLaughlin did not take notes of his conversation with defendant at that time, and he was not carrying a recording device. After defendant's release from custody on January 2, 2008, she was not re-arrested until April of 2008.

¶ 23 The State successfully entered into evidence numerous checks, bills, and business records. Relevant here, the State introduced into evidence an account activity statement for defendant's ComEd account, *i.e.*, account number 7277733013; and a copy of the September 15, 2004, check issued to ComEd as alleged in the indictment. The September 14, 2004, check was from SDA, drawn on Broadway Bank, and made payable to ComEd. The amount was \$551.93 and the check number was 115321. In the "Memo" section of the check, the numbers 7277733013 were handwritten. Defendant's account activity statement showed that her account was credited the amount of \$551.93 on December 3, 2004. The State rested. Defendant made a motion for a directed finding, which the circuit court denied.

¶ 24 Defendant testified that from 2003 to 2007 SDA employed her mainly as a bookkeeper, but sometimes she performed other duties, including as a driver in emergency situations. She described SDA as an "emergency shipping company, same day air." She was in charge of SDA's checking accounts. She testified that each company she dealt with, including SDA, ABC Group, ABCXX.com, McCool Corporation, ABC same day air, had its own checking account. She testified there were "several other" companies she also dealt with. Defendant's paycheck was not written by SDA. Defendant at first received paychecks from 9:00 to 5:00 Work Temp but in late 2004 began receiving paychecks from ABCXX.com. Defendant testified she was responsible for writing payroll checks from ABCXX.com's checking account.

She testified Maria Kammemos, who she described as Dimitropoulos's live-in girlfriend, owned ABCXX.com. Defendant testified Kammemos was a regular driver for SDA but did not work in the operations of either SDA or ABCXX.com.

¶ 25 Defendant testified when she first started working, there was no policy for number of hours worked. Regardless of how many hours you worked, you were paid "straight time," not time and a half. In 2004, that policy changed so that no one person was allowed to accumulate more than 40 hours per week in one company. Defendant testified people put in hours for the other related companies. She explained "[t]here was a limited number of dispatchers in a company, and it's a 24 hour operation, so most of the people worked overtime, so up to 14 hours a day." Defendant worked overtime. Her arrangement with the company was that "[a]ny of [her] overtime *** was paid towards [her] utility company accounts." She explained "[m]y utilities were paid or rather towards those accounts because it was not the amount that was owed on the bill." Bill Tsalas authorized this arrangement. Defendant testified that originally employees would work 8 hours for one company before clocking in under a different company. She testified people were paid overtime from McCool Corporation. Bill Tsalas directed her to write out checks from McCool Corporation to pay other employees.

¶ 26 Defendant had a conversation with Tsalas regarding how she was to be paid. After that conversation, she wrote checks for her overtime. She testified those checks were "issued from SDA Global's account to utility companies as well as other things. There were also several checks issued to family members too." Defendant testified checks were issued from SDA to her father and "probably" her mother. This was done both before and after her conversation with Tsalas. When asked whether she told Tsalas she was writing checks for overtime to herself, she answered that it was Tsalas' "suggestion."

¶ 27 Defendant testified she did not have total freedom to write checks. Defendant explained that she "either got specific instructions from [Tsalas] or *** was given time sheets and given specific instructions." She testified she was given instructions from either Tsalas or an accountant, Anthony Canazaro, for payroll checks. Defendant did not write any checks that were not signed or discussed with Tsalas. Defendant testified she received overtime sheets for another employee, George Aponte. Pursuant to those overtime sheets, she wrote checks for his overtime which were signed by Tsalas. She would discuss these checks with Tsalas. Those checks were made out to Natalie Garcia, Aponte's sister. Garcia never worked for any of the related companies at issue here. When asked why checks were made out to Aponte's sister, defendant testified that "the company didn't have to pay the overtime rate, there was no overtime shown and he still got paid." This was not an unusual arrangement in the company. Defendant testified there were other non-employees who received overtime checks for overtime owed to employees. Defendant testified that three other related entities paid employees' overtime hours. She denied ever taking any money that she was not authorized to have. Only Tsalas had authority to sign checks. She never signed any checks.

¶ 28 On cross-examination, defendant admitted that as a bookkeeper for the various companies, she was responsible for paying SDA's People's Gas and ComEd bills. Defendant explained she would receive a spreadsheet every week, which she described as "a printout from Quickbooks of what I was to do." Tsalas "would mark in yellow, fluorescent yellow what I needed to write." She would then write the desired check. She agreed with the State's question that she "testified earlier that *** the company satisfied its overtime owed to you by writing checks on the company's account to your personal utilities." She further agreed that those payments were more than actually owed to the utilities. She could only recall one

instance where the amount paid to her personal utility bills matched the amount SDA owed on its company utility bill. She answered "Yes" to the following question from the State:

"And your recall receiving an email from Tom Dimitropoulos reading Dear Iza, I do not know how you pro-rated the vacation and sick days dollar sign value, but I have no reason to argue with you, so I will pay the 16 hours for you to be happy. That is why I asked you before to calculate your own check.

Furthermore, I need to put an end to your complaints about monies owed in tools. Please let me know how much more I need to pay you so all, and I mean all mean all monies owed.

As far as withholdings you would have gotten a W-9 form, but since you returned the check, we will deduct the taxes as you requested. Sincerely Tom Dimitropoulos.

Do you recall receiving that email?"

¶ 29 According to defendant, the company should have been paying her for overtime for the seven years she worked there. Defendant explained she saved her overtime for years because the company did not have a maternity leave policy and she wanted to stay at home with her new baby for at least 2 months.

¶ 30 On redirect examination, defendant explained how she determined how much to pay herself for overtime. She stated she:

"Just took off a little bit of the overtime I had saved. At some point I had over 300 hours of overtime saved. I just took a little

bit off and put in the amount of hours I was out into the Quickbooks and it would come up with a number."

When she did this, she would discuss it with Tsalas by giving him a post-it note with a check.

¶ 31 Defendant testified Tsalas suggested she should start a company or incorporate to receive her overtime payments, but she "thought it was too much of a hassle." She and Tsalas agreed on this arrangement.

¶ 32 Defendant testified she filed several complaints regarding the payment of overtime between July and December of 2007. One complaint was filed with the Department of Labor concerning overtime. She described the email discussed on cross-examination as a response to an email she sent regarding her complaint with the Department of Labor for unpaid overtime.

¶ 33 On recross-examination, defendant indicated that defense exhibit 1 contained post-it notes, but admitted that none of the post-it notes in the exhibit directed her to pay her overtime through her personal utility bills. She explained the notes in the exhibit were only a small portion of the notes Tsalas would leave her. She further testified that "[t]hese notes are from 2007 mostly. He instructed me to write checks to my utilities back in 2004." She agreed that there were payments from SDA to her personal utility accounts in 2007. She clarified that "[she] would write [Tsalas] the note that [she] want[ed] to get paid for this amount of time, this amount for these days, and he would just say okay or he would mark it on that spreadsheet." She admitted to living at 10915 South Avenue O. She agreed she only wrote checks from SDA to pay her personal gas, water, and electricity bills. She testified that after she left SDA, she consulted with the Department of Labor regarding whether it was legal to pay employees a straight rate for overtime. She testified that "when I was fired while I was on maternity leave, I

was - - I guess you can say that I figured maybe [SDA] weren't paying me right, which is why I sent [Dimitropoulos] an e-mail."

¶ 34 On further redirect examination, defendant stressed she was authorized to write the overtime checks she wrote, which covered her overtime at a straight rate. She subsequently found out that she was entitled to time and half rate, which was why she filed her complaint with the Department of Labor.

¶ 35 During closing argument, the State, amongst other arguments, made the following statement:

"And I think what's most telling about this case is [defendant's] reaction to Detective McLoughlin. When Detective McLoughlin shows up at her door before he says a word about why she is there, all she knows is he is a detective with the Chicago Police Department, you're here for the checks, this is about the checks."

If she was authorized to do that, why would she blurt that out to the police? If she was innocent in this whole check deal, she would say how can I help you detective, what is this all about.

She knew what it was about because she knew she was busted."

¶ 36 The circuit court found defendant guilty of two counts of forgery and one count of theft.

The court found as follows:

"The Defendant is charged with two counts of forgery. It is alleged that she altered and also delivered certain checks, and also she is charged with one count of theft regarding the same incident.

This matter, the Court heard evidence with the bench trial, which indicated that the Defendant was employed as a bookkeeper for *** SDA*** during a period from approximately April of 2004 through May of 2007. The evidence indicated that she wrote checks on the account of SDA *** to certain utility companies by which she had accounts with them. The evidence primarily in the testimony of the general manager, Mr. Sallas, and also the defendant's own testimony during the course of the trial, indicated that those checks were written by her, signed off by the company, but sent in payment for her utilities. The testimony indicated that this was done without the consent and knowledge of the company, and this was not discovered until after the Defendant had left on maternity leave, and the checks that were written to her own accounts were not found within the cancelled checks that were sent to the company. The investigation revealed that these checks were then written. The total amount from the testimony that I heard was in the area of approximately \$22,000 in checks during the period that I have indicated.

The defendant testified, and she acknowledged in her testimony that she did write these checks. She said that this was in payment for her overtime work at the company. I didn't find that to be credible quite honestly, and, therefore, based upon the

evidence that I heard, the Court is entering guilty findings as to the two counts of forgery and the one count of theft."

¶ 37 Defendant filed a motion for a new trial which the circuit court denied. On October 24, 2011, the circuit court sentenced defendant to two years of probation and assessed her fees. Specifically, the court stated it "will place [defendant] on 24 months probation on count one which is the theft count and that's to run concurrent with the two forgery counts, counts two and three." On November 10, 2011, defendant timely appealed.

¶ 38 ANALYSIS

¶ 39 Defendant first argues the State failed to prove her guilty beyond a reasonable doubt of both theft and forgery. We note defendant did not file a reply brief in this matter.

¶ 40 The due process clause of the fourteenth amendment to the United States Constitution insures that an accused defendant is not convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); *People v. Brown*, 2013 IL 114196, ¶52 ("the State bears the burden of proving beyond a reasonable doubt each element of a charged offense and the defendant's guilt.") It is not, however, the function of this court to retry a defendant when reviewing whether the evidence at trial was sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our review of is focused on "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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard of review applies to both circumstantial and direct evidence as well as to both jury and bench trials.

People v. Ehlert, 211 Ill. 2d 192, 202 (2000); *Brown*, 2013 IL 114196, ¶48. Circumstantial evidence alone can support a criminal conviction. *Id.* ¶49.

¶ 41 The trier of fact is responsible for determining a witness's credibility and the weight to be given to a witness's testimony, as well as drawing any reasonable inferences from the evidence. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Although all reasonable inferences in the record must be given in the prosecution's favor, unreasonable inferences will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The trier of fact, however, is in the best position to resolve any conflicting inferences produced by the evidence. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Further, "the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*; see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.") A defendant's conviction will not be reversed "simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible." *Id.* at 228. "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶49. The findings of the trier of fact are given great weight because it saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *Brown*, 2013 IL 114196, ¶ 48. Although the trier of fact is accorded great deference, its decision is not binding or conclusive. *Id.* at 115. As such, a conviction will be reversed where the evidence

is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 42

Theft

¶ 43 Defendant argues the State failed to prove her guilty beyond a reasonable doubt of theft because the State relied on evidence that was unreasonable and improbable in light of general business and accounting practices. Specifically, she characterizes the State's witness, Bill Tsalas's testimony, as incredible, contradictory, and unreasonable considering he was SDA's operations manager. Defendant points out Tsalas himself investigated the matter, which she alleges is a conflict of interest. She further argues that it is unreasonable to believe she would risk her job knowing her work was overseen by the operations manager, accountant, and company owner on a weekly basis. According to defendant, she had no motive to commit the crimes she was convicted of.

¶ 44 In response, the State argues it proved defendant guilty beyond a reasonable doubt because the evidence showed defendant knowingly obtained or exerted unauthorized control over SDA's money with the intent to permanently deprive SDA of that money. According to the State, because defendant admitted she obtained control over SDA's money and used that money to pay her personal utility bills, the only question for the circuit court was whether defendant's conduct was authorized. The State argues it offered sufficient evidence for the trier of fact to find defendant's conduct was not authorized. The State characterizes defendant's argument as an improper attempt to have this court make credibility determinations.

¶ 45 An individual commits theft under section 16-1(a)(1) of the Criminal Code of 1961 (Code), when he or she knowingly obtains or exerts unauthorized control over the property of the owner and intends to permanently deprive the owner of the use or benefit of that property. 720

ILCS 5/16-1(a)(1) (West 2010). As such, the State had to prove defendant knowingly obtained or exerted unauthorized control over SDA's money with the intent to permanently deprive SDA of the use or benefit of its money.

¶ 46 At trial, Bill Tsalas, SDA's operations manager, testified defendant was SDA's only bookkeeper during the relevant time period. Her duties were to approve bills, enter them into their accounting software, and to issue checks to pay the bills. After printing the checks, defendant gave them to Tsalas to sign. He would sign 40 to 50 a week. Tsalas investigated SDA's bill payment after noticing a missing check. During his investigation, he discovered SDA had issued checks to ComEd, People's Gas, and the water department of the city of Chicago for which SDA accounts were not credited. Tsalas testified non-SDA account numbers had been added by hand to SDA issued checks; causing SDA to pay money into non-SDA related accounts. Refuting defendant's testimony, Tsalas testified he did not give her permission to pay her utility bills with SDA funds as overtime compensation. He testified SDA did not pay overtime.

¶ 47 Similarly, SDA's owner, Athanasios Dimitropoulos testified he never authorized defendant to pay her utility bills with SDA funds as compensation for overtime worked. Dimitropoulos testified that during the relevant time period, no employees were allowed to work overtime.

¶ 48 Fred Thornton, a business analyst for ComEd, explained defendant's and SDA's billing history with ComEd. Thornton testified about defendant's billing patterns, including instances where payments on defendant's account greatly exceeded the amount she owed. Soledad Barragan, a customer service representative for People's Gas, testified about defendant's and

SDA's billing history with People's Gas. Barragan testified specifically about an instance where defendant incurred \$87.23 in charges, but a payment of \$758.15 was made to her account.

¶ 49 Detective McLaughlin testified he showed defendant copies of the checks. Defendant admitted that she wrote the checks. Detective McLaughlin testified defendant told him that she wrote the checks in lieu of overtime. Defendant admitted that some of the account numbers handwritten on the checks were in her handwriting.

¶ 50 The State successfully introduced into evidence copies of checks from SDA, which although they were made payable to ComEd, did not credit SDA's account. Rather, the checks credited defendant's account. The State also successfully entered into evidence copies of checks from SDA made payable to People's Gas which were credited to defendant's People's Gas account. Defendant, for her part, admitted that she wrote the checks to pay her utility bills, but testified that Tsalas authorized her to do so.

¶ 51 Viewing the evidence in the light most favorable to the prosecution, we hold the State proved beyond a reasonable doubt that defendant committed theft according to section 16-1(a)(1) of the Code. 720 ILCS 5/16-1(a)(1) (West 2010); *Baskerville*, 2012 IL 111056, ¶31. Specifically, the State presented evidence showing defendant knowingly obtained or exerted unauthorized control over SDA's money with the intent to permanently deprive SDA of the use or benefit of its money. Defendant, SDA's only bookkeeper, admitted to writing the checks, and the State showed how those checks were credited to defendant's personal utility accounts. Tsalas and Dimitropoulos testified they did not authorize defendant to write checks from SDA accounts to pay her personal utility bills. Accordingly, the State presented sufficient evidence to sustain defendant's conviction of theft pursuant section 16-1(a)(1) of the Code. 720 ILCS 5/16-1(a)(1) (West 2010).

¶ 52 Defendant argues her conviction must be reversed because the State's evidence was improbable and unreasonable. She contends the State's witnesses were incredible while characterizing her own testimony as credible. Defendant admitted she wrote the checks that were deposited into her personal utility accounts. But, argues she was authorized to do so as a form of compensation for the overtime she worked. Her contention was refuted by Tsalas's and Dimitropoulos's testimony to the contrary. Based on the conflicting evidence, the biggest issue for the trier of fact was to determine whether or not defendant was authorized to pay her utility bills with checks drawn on SDA funds. The circuit court found defendant's testimony incredible. It is not our role on review to make credibility determinations or to re-weigh conflicting evidence. *Brown*, 2013 IL 114196, ¶ 48 ("a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses.") We will only reverse a conviction where the evidence presented is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to defendant's guilt. *Evans*, 209 Ill. 2d at 209. We cannot say that the State's evidence in this case was unsatisfactory, unreasonable or improbable. We affirm defendant's theft conviction.

¶ 53 Forgery

¶ 54 Defendant argues the State failed to prove her guilty beyond a reasonable doubt of forgery because the State relied on an improper interpretation of section 17-3(a)(1) of the Code. See 720 ILCS 5/17-3(a)(1) (West 2002).

¶ 55 The State contends defendant was convicted for both forgery by altering (720 ILCS 5/17-3(a)(1) (West 2010)) and for forgery by delivery (720 ILCS 5/17-3(a)(2) (West 2010)), and that the circuit court merged the findings of guilt and entered judgment on only defendant's conviction for forgery by delivery. Notwithstanding its arguments that the circuit court entered

judgment as to the forgery by delivery count only, the State argues defendant was properly convicted of both forgery by altering (720 ILCS 5/17-3(a)(1) (West 2010)) and for forgery by delivery (720 ILCS 5/17-3(a)(2) (West 2010)).

¶ 56 Our review of the record shows the circuit court found defendant guilty of two counts of forgery: one count for altering (720 ILCS 5/17-3(a)(1) (West 2010)); and one count for delivering (720 ILCS 5/17-3(a)(2) (West 2010)) the check at issue here. Defendant, however, only argues the evidence was insufficient to sustain her conviction under section 17-3(a)(1) of the Code for altering the check at issue here. 720 ILCS 5/17-3(a)(1) (West 2010). Accordingly, whether the evidence was sufficient to sustain her conviction for forgery by delivery under section 17-3(a)(2) of the Code is not at issue. 720 ILCS 5/17-3(a)(2) (West 2010); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research.").

¶ 57 Section 17-3(a)(1) of the Code provides, in relevant part:

"(a) A person commits forgery when, with intent to defraud,
he knowingly:

(1) makes or *alters* any document apparently capable of
defrauding another in such a manner that it purports to have been
made by another or at another time, *or with different provisions, or
by authority of one who did not give such authority.*" (Emphases
added.) 720 ILCS 5/17-3(a)(1) (West 2010).

¶ 58 Our supreme court recently analyzed section 17-3(a)(1) of the Code, holding:

"the State must prove beyond a reasonable doubt that a defendant, with intent to defraud, knowingly made *or altered* a document such that it is capable of defrauding another. [Citations.] The document 'need not necessarily be in due legal form' [citation], or be so skillfully prepared that it requires an expert to detect it. [Citation.] Rather, the test of whether a forged document is apparently capable of defrauding another is whether a reasonable person might be deceived into accepting the document as genuine. [Citations]." (Emphasis added.) *Brown*, 2013 IL 114196, ¶39.

"The gist of forgery is the intent to defraud." *Id.* ¶ 38.

¶ 59 We hold, after viewing the evidence in the light most favorable to the State, that the evidence was sufficient to sustain defendant's conviction for forgery by alteration under section 17-3(a)(1) of the Code. 720 ILCS 5/17-3(a)(1) (West 2010). The State had to prove, beyond a reasonable doubt, that defendant, with the intent to defraud, knowingly altered check number 115321, dated September 15, 2004, in the amount of \$551.93, drawn from SDA's account and made payable to ComEd. 720 ILCS 5/17-3(a)(1) (West 2010). The State had to further prove that the altered check was apparently capable of defrauding another in such a manner that it was purported to have been made under the authority of Bill Tsalas, who did not give such authority. 720 ILCS 5/17-3(a)(1) (West 2010). Fred Thornton, a ComEd employee, testified defendant's ComEd account number was 7277733013. The check at issue, number 115321, dated September 14, 2004, was entered into evidence. The check was from SDA and made payable

to ComEd. Defendant's account number, 7277733013, is handwritten in the check's "Memo" section. Also entered into evidence was defendant's account activity statement which showed her account was credited \$551.93 on December 3, 2004. Defendant, SDA's only bookkeeper, was in charge of making checks for Bill Tsalas to sign. Tsalas testified defendant was not authorized to issue checks to pay her personal utility bills. SDA's owner, Athanasios Dimitropoulos, also testified that defendant was not authorized to issue checks to pay her utility bills. Detective McLaughlin testified that when defendant was shown copies of the SDA checks issued to pay her utility bills, defendant admitted it was her handwriting on the checks. Defendant admitted that she used SDA checks, and thus SDA funds, to pay her personal utility bills in lieu of overtime payments. Both Dimitropoulos and Tsalas denied that defendant had permission to do so. Accordingly, based on the evidence presented, and by viewing the evidence in the prosecution's favor, we hold defendant was proven guilty beyond a reasonable doubt of forgery by altering check number 11532. The evidence was sufficient to sustain her conviction under section 17-3(a)(1) of the Code. 720 ILCS 5/17-3(a)(1) (West 2010).

¶ 60

Ineffective Assistance of Counsel

¶ 61 Next, defendant argues her trial counsel was ineffective for failing to either object to or file a motion to suppress the statement she made to Detective McLaughlin. Detective McLaughlin testified that after he knocked on defendant's door, defendant opened the door and "related that she knew we were there about the checks." According to defendant, this error greatly prejudiced her and a motion to suppress had a reasonable probability of success because no exigent circumstances existed to justify the warrantless, nonconsensual entry into her apartment. Alternatively, defendant argues her trial counsel should have objected to the testimony based on the statement violating the hearsay doctrine.

¶ 62 The State responds that a motion to suppress her statement to Detective McLaughlin would have been futile because Detective McLaughlin had not entered defendant's residence or made any seizure when she made the statement. The State argues further that defendant's hearsay argument lacks merit because her statement was an admission by a party opponent, an exception to the hearsay doctrine. Alternatively, the State argues the statement was not asserted to prove the truth of the matter asserted, but rather, to show defendant's consciousness of guilt. Lastly, the State argues that even if the statement was admitted in error, defendant was not prejudiced by the statement, and therefore, is unable to sustain a claim of ineffective assistance.

¶ 63 The right to the effective assistance of counsel is guaranteed under both the federal and Illinois Constitutions. *People v. Domagala*, 2013 IL 113688, ¶ 36 (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8). Ineffective assistance claims are analyzed under the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), as adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *Id.* To prove she was denied the effective assistance of counsel, defendant has to show both deficient performance by her attorney and that the deficiency prejudiced her. *People v. Givens*, 237 Ill. 2d 311, 330-331 (2010); *People v. Easley*, 192 Ill. 2d 307, 317 (2000) ("The test is composed of two prongs: deficiency and prejudice."). Defendant has the burden of proving she did not receive the effective assistance of counsel. *People v. Rucker*, 346 Ill. App. 3d 873, 885 (2004). If prejudice is not shown, a court can dispose of an ineffective assistance of counsel claim without first determining whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331.

¶ 64 To establish prejudice, a "defendant must prove that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Easley*, 192 Ill. 2d at 317. Therefore, "[a] reasonable probability is a probability sufficient to

undermine confidence in the outcome." *Id.* As such, the results of the proceedings must be shown to be fundamentally unfair or unreliable. *Id.* To establish prejudice in the context of a claim that counsel was ineffective for failing to file a motion to suppress, "the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed." *People v. Henderson*, 2013 IL 114040, ¶ 15.

¶ 65 Defendant has not satisfied her burden of proving her attorney's alleged deficiency prejudiced her. Viewing the record without defendant's statement to Detective McLaughlin, the result of defendant's trial would not have been different. Specifically, defendant admitted she wrote the checks to pay her personal utility bills, but asserted she was authorized to do so as a form of payment for overtime she worked. Both Bill Tsalas, SDA's operations manager and defendant's direct boss, and SDA's owner, Athanasios Dimitropoulos, denied that SDA authorized this arrangement. The court found defendant's testimony incredible. In addition to Tsalas's and Dimitropoulos' testimony, the State introduced numerous documentary evidence including: bills, defendant's personal utility account history, and copies of checks to show checks from SDA drawn on SDA funds were going to pay defendant's personal utility bills. Representatives from both ComEd and People's Gas testified about defendant's personal accounts with each company. Tsalas testified defendant was SDA's only bookkeeper and was in charge of giving him 40 to 50 checks a week to sign to pay SDA's various obligations. Tsalas testified he signed the checks at issue, but he did not closely monitor all of the checks defendant gave him to sign. In light of the other evidence presented at trial, without defendant's statement to Detective McLaughlin, we cannot say that the result of the proceeding would have been different had the statement been suppressed or had a hearsay objection been sustained. Because

defendant failed to show prejudice, we need not determine whether trial counsel rendered deficient performance. *Givens*, 237 Ill. 2d at 331. Accordingly, defendant's claim of ineffective assistance of counsel fails.

¶ 66

Plain Error Doctrine

¶ 67 Defendant additionally asks this court to review three claims under the plain error doctrine: whether the circuit court's finding was based on factual mistake; whether the circuit court failed to properly weigh the credibility of the witnesses; and whether the prosecutor made improper closing statements. In response, the State argues defendant failed to provide any argument addressing either prong of the plain error doctrine. The State therefore, asks this court to honor defendant's procedural default and decline to consider defendant's remaining arguments on their merits.

¶ 68 Under the plain error doctrine, we may review alleged errors that are not properly preserved for appellate review. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The plain error doctrine consists of two prongs which would allow this court to review a forfeited claim of error: "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" or "where the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Under either prong of the plain error doctrine, the defendant bears the burden of persuasion. *Id.* at 187. A defendant, however, forfeits plain error review where he or she fails to present an argument addressing either prong of the plain error doctrine. *Hillier*, 237 Ill. 2d at 545-46.

¶ 69 Defendant argued that error occurred, but did not provide any argument addressing whether the evidence in her case was closely balanced or how the alleged error affected a

substantial right. *Id.* Defendant has therefore failed to carry her burden under the plain error doctrine. *Herron*, 215 Ill. 2d at 187. Accordingly, we decline to review defendant's claims under the plain error doctrine honor defendant's procedural default of her remaining issues.

¶ 70

CONCLUSION

¶ 71 The judgment of the circuit court of Cook County is affirmed.

¶ 72 Affirmed.