FIRST DIVISION
August 26, 2013

No. 1-12-0925

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 2345
	)	
ERICA HILL,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: Defendant's conviction for theft affirmed over her claims that the State failed to prove her guilty beyond a reasonable doubt, and that the trial court failed to consider her ability to pay in ordering restitution.

¶ 2 Following a bench trial, the trial court found defendant, Erica Hill, guilty of theft of money pursuant to section 5/16-1(a)(1) of the Criminal Code (720 ILCS 5/16-1(a)(1) (West 2006)) and sentenced her to 4 years' probation. The terms of defendant's probation included the payment of $34,500 in restitution. On appeal, defendant argues that the State failed to prove her guilty of theft beyond a reasonable doubt where it failed to establish: (1) that she knowingly exerted unauthorized control over the money; and (2) that she intended to permanently deprive the victim of the money. Defendant also argues that the restitution order should be vacated because the trial court failed to consider her ability to pay as required by section 5/5-5-6 of the Unified Code of Corrections. 730 ILCS 5/5-5-6 (West 2007). We affirm.

¶ 3 The evidence at trial established that defendant was employed at the PLS Check Cashers (PLS) store located at 570 West Roosevelt Road in Chicago (store). On December 31, 2007, defendant went to the PLS store at a time when she was not scheduled to work and prepared a deposit slip for $34,520 in cash. However, instead of depositing money, defendant deposited $34,520 worth of checks and money orders into PLS's account at Banco Popular. Defendant did not enter the check deposit into PLS's computer system.

¶ 4 Sandra Arizaga, who had been employed by PLS for 13 years, testified that in 2007 and 2008, as the director of operations, she supervised the PLS store. On January 5, 2008, Banco Popular informed her that the checks and money orders that PLS deposited on December 31, 2007, had been returned to the bank uncashed. The parties stipulated that on December 31, 2007, Banco Popular received seven checks and four money orders from PLS which could not be cashed because the Federal Reserve Bank had found the items to be "bad," counterfeit, altered, fictitious or fraudulent.

¶ 5 Ms. Arizaga began an investigation into the fraudulent items by searching through the PLS point of sale system–a system used to track every transaction conducted at the store. The checks in question were not on the point of sale system, but the point of sale system did show that on December 31, 2007, PLS made a cash deposit at Banco Popular for the same amount as the fraudulent checks. After confirming it had not received a cash deposit from PLS on that date, Banco Popular sent Ms. Arizaga copies of the PLS deposit slip and fraudulent checks and money orders.

¶ 6 Ms. Arizaga examined the checks and found them to be "blatantly fraudulent" and "counterfeit." Many of the "items...were over 30 days old." PLS procedures for processing checks that are issued more than 30 days prior to a deposit require a verification that the instruments are still negotiable. Ms. Arizaga discovered these procedures had not been followed as to these checks.

¶ 7 Ms. Arizaga also reviewed the PLS store consolidation report for December 31, 2007, which indicated that the store had made a cash deposit of $34,520. Ms. Arizaga testified that pursuant to PLS procedures, any cash deposits to Banco Popular must be listed by denomination and identified on the courier slip as a cash deposit. The courier records for December 31, 2007, showed no cash deposit, but that there was a check deposit totaling $34,520.

¶ 8 Ms. Arizaga discovered that the same checks which Banco Popular had returned, had been previously entered into the PLS store's point of sale system on December 29, 2007, then voided on that same date. Ms. Arizaga identified the computer access code of employee, Vanessa Jacobo, as the assigned user of the terminal used to void the checks on December 29. Ms. Arizaga reviewed surveillance video from December 29 and saw defendant at Ms. Jacobo's terminal.

¶ 9 Defendant's payroll records showed that. although not scheduled to work, on December 31, 2007, defendant had punched in at 1:02 a.m., and punched out at 2:44 a.m. Ms. Arizaga discovered that defendant's time punches on that day had been removed from the PLS computer system, something only a district manager is authorized to do.

¶ 10 Ms. Arizaga's review of the surveillance video from December 31 showed defendant in the PLS "cage area"–a secured area where money is kept. The video shows defendant removing money from the safe and taking it out of the frame of the surveillance camera. PLS procedures prohibited all employees from being in the cage area without Ms. Arizaga's permission and also during unscheduled work time, especially during the third shift–from 11 p.m. to 7 a.m. Ms. Arizaga had not given defendant permission to be in the cage area on December 31, 2007. After she took the money from the safe, defendant left the PLS store through the back door. The video from December 31 did not show defendant returning the money to the PLS safe. Ms. Arizaga also observed on the surveillance video a uniformed individual from the courier for PLS picking up a deposit at about 2 a.m. The parties stipulated that the courier did not pick up cash from the PLS store on that date.

¶ 11 After concluding her internal investigation, Ms. Arizaga called the Chicago police on January 15, 2008. Defendant was arrested and charged with theft that same day.

¶ 12 Ms. Arizaga testified that after the arrest, defendant called her and said she knew she was wrong in taking the money. Defendant said that PLS district manager, Darnell Hopkins, showed her how to remove money from the PLS safe. Mr. Hopkins was being investigated for fraudulent activity in an unrelated PLS matter.

¶ 13 Detective Schaedel testified that after defendant was arrested and given her *Miranda* warnings, she told him that she took about $34,000 from the PLS store by placing the money in her pants. After leaving the store, she placed the money into a bag, and brought it to Mr. Hopkins at his home. Defendant thought Mr. Hopkins was going to return the money and was upset to learn that he had not done so. Defendant also stated that she wanted to apologize to her boss. Mr. Hopkins was never located by the police.

¶ 14 Defendant testified that she was employed at the PLS store on the dates in question and was being trained to be a shift supervisor by Mr. Hopkins. At the end of her shift on December 29, 2007, Mr. Hopkins called defendant and instructed her to cash checks which were in a file drawer at the PLS store. She testified that her computer access code did not work when she attempted to cash the checks. After speaking with Mr. Hopkins, defendant then used a different computer access code to cash the checks. Because Mr. Hopkins could not pick up the money from the PLS store on that date, defendant "voided the checks out" and put them back in the file drawer.

¶ 15 On December 31, 2007, after a conversation with Mr. Hopkins, defendant agreed to work at the PLS store during the overnight shift even though she was not scheduled to work. Following another conversation with Mr. Hopkins that day, defendant again cashed the checks she had processed on December 29. She then removed money from the PLS safe in order to take the money to a PLS branch located at Randolph and Halsted Streets. Defendant placed the cashed checks for pickup by the courier for deposit at Banco Popular. Defendant testified that she was tired and did not feel safe bringing the money to the PLS branch located at Randolph and Wabash Streets, so she called Mr. Hopkins. Following their conversation, defendant instead brought the money to Mr. Hopkins's home in Calumet City. Defendant testified that she carried the money out of the PLS store in a bag which she had placed in her purse. Defendant did not get a receipt for the money after delivering the money to Mr. Hopkins. Defendant testified that she did not keep any of the money for herself, and she did not have any agreement with Mr. Hopkins to permanently deprive PLS of the money. Defendant testified that she later called Mr. Hopkins to obtain "some type of confirmation for the cash transfer," but he never answered. Defendant testified that pursuant to PLS procedures, employees may transfer money from one branch to another only when a district manager or a regional manager approves of the transfer. Defendant did not think it was unusual that she took money from the PLS store to Mr. Hopkins' home. Defendant insisted that she was "duped" by Mr. Hopkins. After her arrest, defendant told detectives she did not think the checks she had deposited were fraudulent, and that she was just following instructions. Defendant denied calling and apologizing to Ms. Arizaga.

¶ 16 Following closing argument, the trial court found defendant guilty of theft pursuant to section 5/16-1(a)(1) of the Criminal Code. 720 ILCS 5/16-1(a)(1) (West 2006).

¶ 17 On October 22, 2010, the trial court sentenced defendant to 4 years' probation and entered a written order stating that defendant was required to pay $34,500 in restitution by October 16, 2014, in "some form" per month. During the sentencing hearing, the trial court stated that it had reviewed defendant's presentence investigation report which showed defendant was in good health with no disability, had attended two years of college, and possessed various skills. The trial court further noted that defendant was unemployed at that time. In discussing restitution during the sentencing hearing, the trial court stated: "I'm going to ask you to pay some amount every month ***. If this means that you have to find employment to do so, so be it."

¶ 18 On February 24, 2012, the Supreme Court entered a supervisory order directing this court to accept defendant's notice of appeal. Defendant filed a notice of appeal on March 8, 2012.

¶ 19 On appeal, defendant argues that the State failed to prove she knowingly obtained unauthorized control of the money of PLS "as she was following the orders of her superior." In a similar vein, defendant also argues the State failed to prove that she intended to permanently deprive

PLS of the money where she was following her supervisor's directions for the transfer of funds to another branch of PLS.

¶ 20 We initially reject defendant's assertion that we must review her claims *de novo*. Where, as here, defendant disputes the inferences to be drawn from the facts, we apply the deferential standard of review. *People v. Gilmore*, 356 Ill. App. 3d 1023, 1034 (2005).

¶ 21 Under that standard, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The decision of the trier of fact will not be disturbed unless it is so improbable as to leave a reasonable doubt to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996). To sustain a conviction for theft, the State must prove beyond a reasonable doubt that a person knowingly obtained or exerted unauthorized control over property of another with the intent to deprive the owner permanently of the use of benefit of the property. 720 ILCS 5/16-1(a)(1)(A) (West 2006).

¶ 22 Defendant admits that she exerted control over the money in question, but maintains that she believed her actions were authorized because she was taking orders from her supervisor. A similar argument was made by the defendant in *People v. Greeson*, 28 Ill. App. 3d 94 (1975), where the defendant maintained that he lacked the requisite intent for theft because he believed that he had the authority to remove the property. In affirming defendant's theft conviction, this court held that the question of whether a defendant knows his control was unauthorized is for the trier of fact and can be established by inference from the surrounding facts. *Id*. at 96-97.

¶ 23 Here, the facts and reasonable inferences which may be drawn from them demonstrate defendant knew she was not authorized to remove $34,500 in cash from PLS's safe. Defendant used the computer access code of another employee on December 29, 2007, and deposited fraudulent checks and money orders, but later voided the deposit. On December 31, 2007, defendant then cashed the same checks, totaling about $34,000 and had them sent to Banco Popular for deposit.

PLS records, however, did not show a check deposit on that date. The checks were not processed according to PLS procedures. On December 31, although defendant was not scheduled to work, she punched in at 1:02 a.m. and punched out at 2:40 a.m. Defendant's time punches were later removed from the PLS's punch system. During the time she was at the PLS store, defendant entered a secured area in violation of PLS procedures and removed over $34,000 from the safe. Defendant left the store with the money through a back door. She told the police she took the money out of the store by placing it in her pants. According to defendant, she removed the money in order to transfer it to another PLS branch. Defendant instead brought the money to the home of Mr. Hopkins in Calumet City without getting a receipt. The trial court, in finding defendant guilty, stated that defendant's reasons for bringing the money to Mr. Hopkins–because she was too tired and scared to bring the money to the nearby PLS branch, a much closer location than Calumet City–did not make sense. Ms. Arizaga testified that defendant told her she knew that taking the money was wrong. Detective Schaedel testified that defendant told him that she wanted to apologize to Ms. Arizaga. The evidence sustains the trial court's conclusion that defendant knowingly exerted unauthorized control over the money.

¶ 24 Defendant next argues the evidence did not prove beyond a reasonable doubt that she intended to permanently deprive PLS of the money because she believed Mr. Hopkins was going to transfer the money to another PLS branch. Evidence of intent to permanently deprive the owner of property may be inferred from the surrounding circumstances. *People v. Day*, 2011 IL App (2d) 091358, ¶ 41. Defendant entered a prohibited area of the PLS store and took the money to Mr. Hopkins' home in Calumet City in the early hours of December 31. Defendant disguised the removal of the money by questionable actions relating to the deposits of the fraudulent checks. Defendant was at the PLS store at an unscheduled time, and her time records were later altered. Defendant's assertion that she believed Mr. Hopkins would take the money to the other PLS branch does not negate the overwhelming evidence of her intent to permanently deprive PLS of the use of the money.

See, generally, *People v. Morrissey*, 133 Ill. App. 3d 1069, 1072 (1985) (affirming the defendant's conviction of theft by deception where his intent to permanently deprive the owner of property was not negated by the fact that he may have intended to repay the owner in the future).

¶ 25 In reaching this conclusion, we find *People v. Baddeley*, 106 Ill. App. 2d 154 (1969), relied upon by defendant, distinguishable from the case at bar. In *Baddeley*, the owner had his car repaired at defendant's service station. Three days later, the car broke down again. While the owner was out of town, the defendant towed the car from his driveway to the service station where further repairs were made. The defendant left the owner a note explaining what he did with the car. The owner refused to pay the bill, and the defendant refused to return the car. The defendant was subsequently charged and convicted of theft. This court reversed the conviction, finding that the defendant did not intend to permanently deprive the owner of his car where he informed the owner where the car was taken, made repairs upon the car, and stored it on the garage premises. Unlike *Baddeley*, however, the facts here show defendant took money from the PLS store at a time she was not scheduled to work and took actions to disguise the removal of the money. Based on all the evidence viewed in favor of the State, we conclude that any rational trier of fact could have found defendant intended to permanently deprive PLS of the money beyond a reasonable doubt.

¶ 26 Defendant finally contends that the restitution order must be vacated where the trial court failed to consider her ability to pay. We disagree.

¶ 27 The restitution order was entered pursuant to the authority granted by article 5-6-6 of the Unified Code of Corrections. 730 ILCS 5/5-5-6 (West 2008). Subsection 5-5-6(f) provides:

> "Taking into consideration the ability of the defendant to pay, including any real or personal property or any other assets of the defendant, the court shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years, except for violations of Sections 16-1.3 and 17-56 of the Criminal Code of 1961 or the Criminal Code of 2012, or the period of time specified in subsection (f-

1), not including periods of incarceration, within which payment of restitution is to be paid in full. Complete restitution shall be paid in as short a time period as possible." 730 ILCS 5/5-5-6(f) (West 2008). Although this statute does not require the court to find defendant has an ability to pay before ordering restitution, it does require a court to consider a defendant's ability to pay in conjunction with the time and manner of payment. *Day*, 2011 IL App (2d) 091358, ¶ 56.

¶ 28 At sentencing, the trial court noted defendant was unemployed, but that she was in good health with no disabilities and had attended two years of college. In ordering defendant to make monthly restitution payments as part of defendant's sentence, the trial court stated: "I'm also going to order that you make some restitution, every month *** if that means you have to find employment to do so, then so be it." Specifically, the sentencing order directed defendant to pay $34,500 to the Chubb Group by October 16, 2014, and that payments were to be made on a monthly basis. The record shows the trial court considered defendant's ability to pay restitution in determining the amount of restitution, the time by which restitution should be paid (a period of time less than five years), and that restitution should be paid in monthly installments. The trial court complied with subsection 5-5-6(f).

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 30 Affirmed.