

2014 IL App (1st) 132445-U

No. 1-13-2445

September 26, 2014

FIFTH DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of Cook County.
Plaintiff-Appellee,)
)
v.) No. 10 CR 14515
)
)
YOLANDA KOZICZ,) The Honorable
) James M. Obbish,
Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited her claim that the State failed to bring charges against her within the statute of limitations and the State proved that the relevant acts occurred within the statute of limitations. Defendant's challenge to the sufficiency of the evidence was without merit where the circumstantial evidence was sufficient to prove the elements of the crime beyond a reasonable doubt. Defendant was not denied a fair trial where the trial court's alleged improper comments did not indicate bias against defendant or that the court prejudged the case. The judgment of the circuit court of Cook County was affirmed.

¶ 2 Following a bench trial, defendant Yolanda Kozicz was found guilty of theft of an amount greater than \$10,000 and was sentenced to a term of three years' imprisonment. On appeal, defendant contends that the State failed to prove her guilt beyond a reasonable doubt and that she was denied a fair trial because the trial judge was biased against her. For the reasons that follow, we affirm.

¶ 3 Defendant was arrested and charged in a two-count indictment with theft of an amount greater than \$10,000 from St. Pascal School, a Catholic school in Chicago, Illinois. At all relevant times, defendant was in charge of St. Pascal's Tuition Reduction Incentive Program (TRIP) and during that time defendant allegedly obtained unauthorized control over checks and gift cards associated with the TRIP program. The case proceeded to bench trial, where the following evidence was presented.

¶ 4 Susan Simmons testified that she was a former board member at St. Pascal and that she ran the TRIP program from 1997 until approximately July or August of 2002. Simmons explained that through the TRIP program, St. Pascal purchased gift certificates from vendors at a discounted price and then sold them to families at full price. A portion of that profit would go to the purchasing family as a tuition rebate, and the rest would go to the school to apportion to families in need. Simmons testified that the TRIP program never lost money while she was the program's administrator. Simmons used a large envelope that had the gift certificates listed on it. Purchasers wrote the number and type of gift certificate they wanted to purchase on the outside of the envelope and then placed payment, either cash or a check, inside the envelope. Simmons picked up the envelopes from school and filled the orders. She then deposited the money in the TRIP checking account and made an entry into a computer program used to track purchases and maintain an inventory of which cards were in the school's possession and which certificates were purchased by which families. Simmons did not keep an inventory by certificate number. Simmons testified that she was assisted by others when she administered the TRIP program. For example, the school tried to offer the certificates to families who did not have children in the school and other school board members helped by selling to parishioners after Sunday mass.

¶ 5 Simmons further testified that as the administrator of the TRIP program, she was responsible for purchasing the gift certificates. She contacted the school's gift certificate supplier, a company named Scrip, to purchase certificates from various vendors. The

program paid for these certificates up front with money from the TRIP account. Families also paid for the certificates up front and received them immediately upon payment. While Simmons was the TRIP administrator, the program would issue profit checks to St. Pascal. During Simmons's tenure as administrator, the average value of the inventoried gift certificates was between \$20,000 and \$25,000 and the average value the TRIP checking account was between \$20,000 and \$25,000. Simmons also regularly gave profit reports to the school board indicating the value of the gift certificates on hand and the value of the TRIP bank account. She would also take questions from board members about the TRIP program's finances.

¶ 6 Simmons relied upon school board minutes and e-mails to testify to the values of the gift certificate inventory and the TRIP checking account. In May 2001, the gift certificate inventory was \$25,339 and the checking account value was \$21,230.21. In September 2001, the certificate value was \$25,849 and the checking account value was \$21,470.27. On January 29, 2002, the gift certificate inventory was \$21,604 and the checking account value was \$26,353.20. Simmons testified that when she left the TRIP program in July or August of 2002, the value of the gift certificates and the checking account were each between \$20,000 and \$25,000.

¶ 7 Simmons acknowledged that she had no independent recollection of the value of the gift certificates or checking account at any given time. She did not keep an inventory by certificate number and neither did the computer program. Simmons kept the TRIP account check book at her home and she was authorized to purchase the gift certificates from the suppliers. A second signature was not required to purchase certificates and she never had to obtain a second signature when writing checks on the TRIP account. For some suppliers, payment was taken automatically from the TRIP account via an automatic-debit system. Although she stopped running the program in June or July, Simmons' signature was still required on checks through at least November 4, 2002.

¶ 8 Denise Akana testified that she has been the principal at St. Pascal school since 2002. Akana also began attending school board meetings in August of 2002, when defendant became president of the school board and began running the TRIP program. At school board meetings, defendant did not provide detailed reports about the TRIP program but instead gave only "very general" information, such as the number of families using the program.

Defendant did not provide reports disclosing the specific amount of money in the program. At a 2004 school board meeting, Joanne Powrezek, the school board's bookkeeper, asked defendant why there were no financial reports about the TRIP program given to the board. Defendant responded that she would provide a report "at a later date" or at the next meeting. Defendant had a subsequent conversation with Akana in which defendant said that she no longer wanted Powrezek at the school board meetings because she "asked too many questions," or that Powrezek could attend the meetings but could not ask questions. In 2005, the inventory for the TRIP program was being held at defendant's home and Powrezek spoke to the pastor and business manager at the parish because she wanted the inventory to be held in the rectory or the school office. However, this change was not made. In 2007, defendant made a change to the TRIP program by requiring families to pay for gift certificates up front but then requiring them to wait for up to three weeks for the certificates. Previously, families received the certificates immediately upon payment.

¶ 9 Akana testified that she spoke to defendant about the TRIP program in 2007. Akana told defendant the school needed to make more money from the program, so the gift certificates needed to be held in the school office so that they could be purchased throughout the day. Defendant responded that she would keep the certificates herself until after the Christmas season because the holiday season was approaching and no one in the office besides defendant knew how to order the certificates or manage the inventory. Akana agreed to this although she did not like the arrangement. Defendant had not returned the gift certificates as of January 2008 so Akana told Scrip that defendant was no longer authorized to purchase gift certificates for the TRIP program. Akana also called the bank and had defendant removed from the checking account in January of 2008. Akana and the church pastor remained as signatories on the account. Defendant became upset by these developments and brought the TRIP box containing the gift certificates back to the school. The box contained only three certificates with a face value of \$30 to \$40. Defendant also returned a computer disk with a program used to keep track of the TRIP program, but Akana was unable read any information on that disc. Akana also explained that she could not determine the profit from the TRIP program between 2003 and 2008 because the school never received any profit reports and that in fact the program did not receive any profits during that time period.

¶ 10 On cross-examination, Akana testified that between 2001 and 2007, the school's enrollment dropped "greatly" by about 60 students and that this affected enrollment in the TRIP program. After families stopped getting their gift certificates immediately upon payment, Simmons received two or three complaints from families about having to wait for their certificates. Akana did not remember if she ever received a complaint that a check had been cashed and no gift certificate had been received. Akana also testified that from 2001 to 2008, she never saw defendant write a check to herself and take the money and she never saw a check that was made payable to defendant. Akana also never saw defendant take and use any of the gift certificates for herself.

¶ 11 Joanne Powrezek testified that she had been St. Pascal school's bookkeeper since March 1999. Powrezek began attending the monthly school board meetings in 1999 and recalled that Simmons gave detailed reports to the school board about the amount in the TRIP bank account and the gift certificate inventory. The combined total value of the two was always a minimum of \$45,000. Powrezek testified that Simmons also had several school board members assist her in selling gift certificates and that during that time the certificates were kept in a safe in the church rectory. According to Powrezek, the program was a "moneymaker" during Simmons' tenure as the program's administrator and there was never a point during that time in which the school did not receive a check for its share of the profit.

¶ 12 Powrezek further testified that defendant made changes to how the TRIP program was administered when she took over the program in July of 2002. Defendant began keeping the TRIP box containing the gift certificates at her home and also began to fill out the gift certificate order forms from her home. Specifically, the order forms would be sent home from school with the children, the parents would place their orders and the children would bring the forms and payment back to school the following day. Defendant's daughter would then take the orders and the money home to defendant, and the following day defendant would send the certificates back to school with her daughter for distribution. The biggest change, however, was that the school was no longer receiving the detailed monthly reports about the balance of the TRIP checking account or the value of the gift certificate inventory. Unlike Simmons, defendant also did not have other board members assist her in selling certificates.

¶ 13 Powrezek testified that she stopped attending meetings at some point after defendant began running the TRIP program. Powrezek stopped attending when the principal told her that defendant had said that, according to the by-laws of the constitution, Powrezek was not allowed to speak or ask questions at school board meetings. Therefore, the principal told Powrezek to stop attending the meetings. Before she stopped attending meetings, Powrezek asked a lot of questions as to why defendant did not provide the school board with detailed profit reports regarding the TRIP program.

¶ 14 Powrezek further testified that during the period that defendant ran the TRIP program, the school never received a profit check for its portion of the profit. The school did receive the checks for the portion of the money that a gift certificate purchaser designated to go to the school for a needy family for tuition reduction. However, it never received a check for the portion that was the school's "pure profit." Powrezek spoke to defendant about this in 2005. Defendant had given her a check for "over a thousand dollars" for tuition reimbursement and Powrezek said "if this is what we're giving them (for tuition reduction), shouldn't we be getting this amount also in profits." Defendant responded that "that amount was used to handle mailing – postage and shipping costs." When the school took the TRIP program from defendant in January 2008, there was no "bank account to keep going," so the pastor lent the school \$9,000. Since that time, the \$9,000 had been repaid and the program had made \$10,000 in profit. Powrezek testified that defendant did not return the computer program that kept track of the number of gift certificates and their value. Defendant said that her "hard drive crashed."

¶ 15 Terrance Knight testified for the State as an expert in forensic accounting. Knight testified that he was the managing partner in the Chicago office of an accounting firm specializing in forensic accounting. St. Pascal's pastor reported a shortfall in the TRIP program to the Archdiocese, which then asked Knight to investigate the program. Knight's investigation lasted three years, from 2005 to 2008. Knight interviewed St. Pascal's pastor, Akana and Powrezek, but did not interview defendant. He also relied upon bank statements regarding the TRIP account and statements from Scrip. St. Pascal purchased some gift certificates directly from the retailer instead of Scrip, and Knight relied upon invoices from those retailers as well. Knight further reviewed minutes from school board meetings to the extent they were available.

¶ 16 Knight further testified that when he accessed the computer accounting software used to manage the TRIP program, it "appeared" that the information had been erased. Knight explained that he spoke to the software developer and obtained the code to access the software. However, when he accessed the system, "there was nothing there." He explained "[t]here was no client data available, there was nothing essentially to retrieve. When I took a look at the list of the files that were stored on the computer, everything was empty." Knight also explained that because defendant was not "forthcoming" with the financial records from her tenure, he had to rely on the bank and Scrip records to reconstruct the activity that took place in the TRIP program during defendant's tenure.

¶ 17 Using all of the above information, Knight produced a report dated April 29, 2010, in which he calculated the TRIP program's losses during defendant's tenure. In determining the TRIP's program's losses, Knight considered the assets of the program, which would include cash and gift certificates. He also took into account "legitimate" activity such as profit payments to the school and families, bank fees and incidentals such as postage. Knight was able to determine the total purchases made through the TRIP account during the relevant time period. This included expenditures on gift certificates as well as payments to the school. He then calculated a gross profit or a markup on the gift certificates, applied that to the purchases identified through the bank records and determined that the gross profits earned through the TRIP program during the relevant period (July 1, 2001 through December 24, 2007). He calculated a gross profit of \$53,333. After comparing the profit value with the inventory and checking account balances remaining after defendant's departure, Knight calculated a loss of \$51,942 for the period June 2001 to December 2007. He also stated that the total gift certificate sales exceeded the total gift certificate purchases.

¶ 18 Knight testified that after learning that June 2001 was not the date closest to the beginning of defendant's tenure as administrator of the TRIP program, Knight produced another report which analyzed the period of January 30, 2002, until December 31, 2007. He calculated a loss during that time period of \$50,532.41. Knight testified that he lacked the records to independently verify exact inventory balances, including the balance on July 1, 2002. Therefore, his report was based on the assumption that the inventory balance provided to the school board by Simmons, as reflected in school board minutes, was accurate. Additionally, Knight was able to calculate a loss even if he assumed a zero inventory balance

of gift cards on July 1, 2002. Assuming the gift card inventory balance was zero on July 1, 2002, and that the TRIP program earned no profits during defendant's tenure, he calculated a loss of \$23,425.94.

¶ 19 Knight further testified that his report documented that "over time the bank balance depleted, the volume of purchases and the volume of deposits decreased, and there was just continuing evidence that there is less and less money in the fund to work with." There was "some reduction" in the account balance in 2003 but the account was still stable. However, the balance was a "little over \$5,000" as of April of 2005 and "plummet[ed]" and never again recovered back to \$5,000. Knight testified that the decrease in student enrollment did not impact his loss calculations because his calculations were based on actual activity during the relevant time period. He also testified that few inventory controls were in place regarding the TRIP program and that this was common at churches. The lack of serial numbers on the gift certificates also did not affect his loss calculation and he would not have expected serial numbers for small items like gift certificates to have been tracked.

¶ 20 Knight testified that he did not find any checks payable to defendant that raised his "suspicions" and he did not believe that funds were stolen by way of check. However, in his expert opinion, the theft could have occurred in two other ways. Defendant could have either ordered gift certificates she wanted and then stolen those certificates or stole the cash that families gave in return for certificates. He said there was the "opportunity" to steal cash because many parishioners paid in cash and cash was deposited into the bank account. Knight ultimately calculated a loss to the TRIP program, to a reasonable degree of accounting certainty, of over \$50,000.

¶ 21 On cross-examination, Knight acknowledged that he found no evidence that defendant negotiated a parishioner's check for her personal use or that she directed a check payable to herself. He disagreed that there was no thefts via the use of checks because "the concept is purchase of gift cards" and "some of those were made via check and then those gift cards were likely stolen." Knight acknowledged that the gift certificates had serial numbers on them and that he never contacted any stores to determine if individuals who cashed gift certificates could be identified by those serial numbers or by video surveillance footage from those stores. Knight found no evidence that defendant cashed a gift card on any given day. Knight acknowledged that his April 29, 2010, report was based on an inventory in 2001, and

those balances were based on a report found in the minutes of the church school board. When asked if an accountant would normally rely upon the records of a bookkeeper instead of such school board minutes, Knight responded that in forensic accounting such records were not always available, as in this case, and that "[i]f records are missing, or destroyed, or never produced to begin with, we have to work with what we're given." Knight acknowledged that his loss calculations had been changed 3 times due to mistakes. However, Knight testified that he republished his reports after mistakes were found because he wanted to "get to the truth." Knight never spoke to any individuals who purchased certificates from the TRIP program, and he therefore never received a complaint that someone did not receive the certificates they purchased. Knight also testified that if the information is accessible, he routinely obtains the bank records of a person accused of embezzling funds. Knight did not obtain defendant's bank records.

¶ 22 The State then rested its case. The trial court denied defendant's motion for a directed verdict.

¶ 23 Defendant presented the testimony of Max Wayman, who the trial court allowed to testify as a certified fraud examiner and expert in the field of financial crime. Wayman was a former special agent in the Criminal Investigation Division of the Internal Revenue Service who prosecuted individuals charged with financial crimes.

¶ 24 Wayman testified that he believed it was critical to interview the person being investigated when conducting a forensic investigation and to obtain copies of that person's bank statements. After reviewing Knight's report, Wayman did not discover any misappropriation of bank account funds or gift certificates. Wayman noted that the two principal areas in which Knight calculated a loss were a reduction in gift certificate inventory and a reduction in the TRIP bank account balance. Wayman believed that Knight's reports were based on unreliable inventory figures because his starting inventory values were from before defendant began running the TRIP program. Wayman explained that if one of the reasons Knight gave for his loss calculation and theft conclusion was a reduction in inventory, then "a good starting inventory point" was necessary. Wayman believed that Knight's analysis regarding gift certificate purchases was "a good analysis." Thus, Wayman did not believe that Knight's loss calculations were accurate because "the two main components of Mr. Knight's loss [conclusions] were a reduction in bank account balances out

of a bank account where there was no misappropriation of funds in the account, and a reduction in inventory when we don't have a good inventory starting figure." Wayman therefore opined that to a reasonable degree of fraud examination certainty, the loss amount reported by Knight was unreliable. He also opined that to a reasonable degree of forensic examination certainty, there was no evidence of misappropriation of the money from the checking account or of gift certificates.

¶ 25 Wayman further testified that he had previously conducted investigations into cases similar to the present one and that in these types of cases fraud examiners take different approaches. Wayman explained that he had a "pretty good inventory figure," which Knight did not have. Wayman also testified that he used serial numbers to identify which certificates were sold and which were not and "whenever we saw a card that was not in the inventory and it was not sold, we went and in this particular case we went to Walmart which was the card that was missing" and obtained video footage of the person negotiating that certificate. Wayman agreed with Knight's conclusion that even starting with a zero inventory balance, there would still be a loss of approximately \$23,425.94. However, given that he found no evidence of misappropriation of bank account funds, Wayman still did not agree with Knight's conclusion that this amount represented a "loss." Wayman also agreed with Knight that there were two ways defendant could have stolen from the TRIP program: by stealing cash or by stealing gift certificates. In either case, there would be more gift certificates purchased than were sold. However, Wayman's review did not "show an excess of [gift certificates] available if [defendant] either stole them or stole the cash." Wayman also found that there was rarely an equal profit split between St. Pascal and gift certificate purchasers, as Knight represented in his reports.

¶ 26 On cross-examination, Wayman conceded that he would not be able to identify a theft "if it was the purchase of a gift card and the gift card was then stolen at that point." Wayman also testified that the methods Knight used to calculate loss were "consistent with proper accounting methods."

¶ 27 The trial court found defendant guilty of theft of an amount greater than \$10,000. The court believed that defendant did not misappropriate funds by "cutting a check" to herself. Nevertheless, the court observed that according to Simmons' testimony, the value of the checking account and the gift certificate inventory were always around \$20,000. The court

further observed that the gift certificates continued to be purchased on a regular basis during defendant's tenure as the TRIP administrator. Further, the court noted Wayman's agreement that the calculations done by Knight conformed to "fair accounting principles." The court then observed:

"Clearly to this point there is a very significant difference between what should have gone to the school and what did go to the school. The expert [who] testified on behalf of the State estimated that what should have gone to the school *** should have amounted to somewhere about \$50,000 more than what ended up going into those accounts."

¶ 28 The court recognized that Knight issued several reports due to errors but found that they were "relatively minor errors" and that the "figure doesn't really change very much." The court stated that the starting inventory was not zero and that Simmons' testimony established that the starting inventory was "probably \$20 some thousand." The court stated that even if the starting inventory value had been zero, the loss "doesn't even get below the statutory figure." The court noted that Wayman had "distinguished credentials" and that it particularly considered Wayman's disagreement with Knight's conclusion because of Wayman's opinion that Knight lacked an exact inventory value at the time defendant took over the TRIP program. However, the court observed that records which would have revealed the starting inventory levels "disappeared under [defendant's] control" and that the "best evidence" of the starting inventory level was Simmons' testimony that it was approximately \$20,000. The court concluded that it was "clear" that "it started out as a probably very noble, Christian *** effort on the part of [defendant] to assist the school" but that it "turned into something far worse, turned into something criminal."

¶ 29 The trial court denied defendant's motion for a new trial. The court subsequently sentenced defendant to a term of three years' imprisonment. This appeal followed.

¶ 30 Defendant first contends that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that the theft occurred within the applicable statute of limitations. The State responds that defendant's claim is not properly considered a challenge to the sufficiency of the evidence but, rather, an attack on her indictment. The State asserts that a challenge to an indictment must be raised in the trial court and that, because defendant did not do so, her claim is forfeited. The State further argues that forfeiture aside, defendant uses in an improper method of determine when the applicable statute of limitations ended. The

State claims that when the proper method is used, it proved that the charges against defendant were brought within the statute of limitations. Defendant did not file a reply brief in this case and therefore has not responded to the State's arguments.

¶ 31 A defendant may raise for the first time on appeal the claim that the State failed to prove the elements of the crime beyond a reasonable doubt. *People v. Hofer*, 346 Ill.App.3d 1095, 1099 (2004). However, "[i]f a defendant wishes to raise the statute of limitations as a bar to prosecution, [s]he must file a written motion to dismiss before trial and within a reasonable time after arraignment. If the defendant fails to raise the statute of limitations issue in this manner, this ground for dismissal of the charges will be deemed waived." *People v. Gwinn*, 255 Ill. App. 3d 628, 631(1994) (citing 725 ILCS 5/114-1(a)(2), (b) (West 1992) (stating that upon written motion of the defendant prior to trial, the trial court may dismiss an indictment or information on a number of grounds, including that the prosecution was not commenced within the applicable period of limitations); see also *People v. Williams*, 79 Ill. App. 3d 806, 808 (1979) (finding that the defendant waived his claim that the State did not commence prosecution within the applicable statute of limitations where the defendant did not file a written motion to dismiss based on the statute of limitations prior to trial or otherwise raise the issue in the trial court).

¶ 32 In this case, defendant did not raise the statute of limitations issue in the trial court. Accordingly, we find that defendant has forfeited her claim on appeal. In reaching this conclusion, we note that the case upon which defendant relies in raising her argument is distinguishable from the present case and those cases cited above. In *People v. Blithstein*, 192 Ill. App. 3d 281,285 (1989), the court found that the State failed to meet its burden of proving that the offense occurred within the statute of limitations. However, the defendant in that case filed a motion to dismiss based on the statute of limitations prior to trial and therefore the appellate court in *Blithstein* had no occasion to consider whether the issue had been forfeited on appeal. *Id.* at 282.

¶ 33 When a defendant challenges an indictment or information for the first time on appeal, the indictment or information will be deemed sufficient if it apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. *Id.* (citing *People v. Thingvold*, 145 Ill. 2d 441, 448 (1991). The indictment in this case alleged that

defendant knowingly obtained unauthorized control over checks and gift cards in an amount greater than \$10,000 from St. Pascal Catholic school, intending to permanently deprive the school of the use and benefit of that property. The indictment further alleged that the charge was based on a series of acts performed at different times by the defendant for which the statute of limitations began to run when the last such act was committed on or about January 30, 2008. We find that the indictment sufficiently described the offense charged and the conduct giving rise to the State's prosecution of defendant.

¶ 34 We also find that the State proved that it brought charges against defendant within the statute of limitations. The State bears the burden of proving that the offense occurred within the applicable statute of limitations. *Blithstein*, 192 Ill. App. 3d at 284. The statute of limitations for felony theft is three years after the commission of the offense. 720 ILCS 5/3-5(b) (West 2008). Because defendant is alleged to have committed theft through a series of acts, the statute of limitations began "at the time the last such act is committed." 720 ILCS 5/3-8 (West 2008).

¶ 35 We initially note that defendant misapprehends the manner by which the starting date of the statute of limitations is determined. Defendant claims that because the indictment was filed on August 19, 2010, the State was required to prove that the last act of theft occurred on or after August 19, 2007. Defendant arrives at this number by assuming that the statute of limitations begins when the indictment is filed and then subtracting three years from that filing date. However, this is incorrect. The statute of limitations does not run backwards from the date the indictment is filed but, rather, forward from the date of the last criminal act. See 720 ILCS 5/3-8 (West 2008). In this case, the State alleged in the indictment that defendant committed her last act of theft on or about January 30, 2008. Therefore, under the three year statute of limitations, charges were required to be filed against defendant by January 30, 2011. The indictment was filed on August 19, 2010, within the statute of limitations.

¶ 36 Moreover, the State proved that the relevant acts of theft occurred within the statute of limitations. Akana testified that when defendant returned the TRIP box in January 2008, there were only three gift certificates remaining with a value of between \$30 and \$40, compared to the typical balance during Simmons' tenure of \$20,000 and Powrezek testified that when the TRIP program was taken back from defendant in January 2008, there was essentially nothing left in the bank account and therefore the pastor had to lend the school

\$9,000. Further, Knight's expert testimony indicated that while the trip account was relatively stable in 2003, it plummeted in 2005 and never again rose above \$5,000. This evidence allows for the reasonable inference that defendant's acts of theft continued until the end of her tenure in January of 2008.

¶ 37 Defendant next contends that the State failed to prove her guilt beyond a reasonable doubt. Defendant claims that the State failed to prove that she stole any money from the TRIP program or that the amount she allegedly stole exceeded \$10,000.

¶ 38 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). Under this standard, a reviewing court resolves all reasonable inferences in favor of the State. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Cox*, 195 Ill. 2d 378, 387 (2001).

¶ 39 To sustain a charge of theft of an amount greater than \$10,000, the State in this case was required to prove that defendant obtained or exerted unauthorized control over property of another with intent to deprive the owner permanently of the use or benefit of that property. 720 ILCS 5/16(a)(1)(A) (West 2008). Theft is a Class 2 felony when the value of the stolen property is between \$10,000 and \$100,000. 720 ILCS 5/16-1(b)(5) (West 2008). "When a charge of theft of property exceeding a specified value is brought, the value of that property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value." 720 ILCS 5/16-1(c) (West 2008).

¶ 40 In this case, we find that the circumstantial evidence presented at trial was sufficient to prove defendant's guilt beyond a reasonable doubt. The trial court heard testimony from Akana and Powrozek describing how defendant made changes to the TRIP program after she became its administrator and essentially eliminated any transparency into the program's activities. This included that defendant stopped using the assistance of other school board members to sell gift certificates, that she eventually began keeping the certificates at her house and that she filled out the order forms from home. Departing from the routine of her predecessor, Simmons, defendant also stopped providing the school board with monthly

detailed reports about the financial situation and activities of the TRIP program. The evidence also established that after Powrezek, the school's bookkeeper, began asking questions about the financial situation of the TRIP program at school board meetings, defendant prevented Powrezek from asking any more questions at those meetings.

¶ 41 The trial court also heard testimony about the monetary losses the TRIP program incurred during defendant's tenure. Simmons testified that when she ran the TRIP program from 1997 until 2002, the program's total value was always between \$40,000 and \$50,000 and that the bank account and the gift certificate inventory each had an average value of approximately \$20,000. In contrast, Akana testified that when the TRIP box was taken back from defendant in 2008, there were only three gift certificates left with a total value of \$30 to \$40 dollars. Powrezek similarly testified that at the end of defendant's tenure, the TRIP bank account was so low that the pastor had to lend the school \$9,000.

¶ 42 Finally, the trial court heard expert forensic accounting testimony from Knight regarding the losses incurred by the TRIP program during defendant's tenure. Knight testified that defendant refused to turn over certain program records and that it appeared to him that she had erased the data in the accounting software used to manage the program. Therefore, Knight had to rely upon other documents to establish the gift certificate inventories and checking account values. Based on the records he had, Knight determined that the TRIP program incurred a loss of approximately \$50,532.41 during defendant's tenure. Knight opined that defendant could have stolen this amount by either ordering the gift certificates she wanted and then stealing those certificates or stealing the cash that families gave in return for certificates. Knight testified that there was the "opportunity" to steal cash because many parishioners paid in cash and cash was deposited into the bank account by defendant. Knight also opined that even if the gift certificate balance was zero at the start of defendant's tenure, the loss incurred by the TRIP program was approximately \$23,425.94. Finally, Knight explained how the TRIP account balance depleted over time and how it permanently remained below \$5,000 after April 2005. When the above evidence is viewed in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

¶ 43 Defendant nevertheless claims that the State failed to prove that she stole an amount "in excess of \$10,000 from St. Pascal." Defendant principally takes issue with the method

Knight used to calculate how much was stolen from the TRIP program in that defendant claims the starting inventory values used by Knight were before defendant took over the TRIP program. In making this argument, defendant cites the testimony of her own expert, Wayman, who opined that that Knight's loss calculations were unreliable because he lacked an accurate starting inventory figure for his loss analysis. Defendant further takes issue with the method Knight used to calculate the loss to the TRIP program even if a zero starting gift certificate value was assumed.

¶ 44 Defendant essentially takes issue with the weight the trial court assigned to Knight's expert testimony and argues that the court should have instead credited the testimony of her expert, Wayman. However, in considering a challenge to the sufficiency of the evidence, it is not the function of this court to reweigh the evidence or retry a defendant. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992); *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 602 (2007). Rather, the trier of fact is responsible for assessing the witnesses' credibility, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). More specifically, the credibility and weight to be given to expert testimony are matters for the trier of fact, who is not obligated to accept the opinions of defendant's expert witnesses over those opinions presented by the State. *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007).

¶ 45 In this case, defendant explored all of the alleged inadequacies in Knight's opinions through a vigorous cross-examination of that witness and through the testimony of defendant's expert witness. See *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 602 (2007) (rejecting the respondent's attack on the credibility of the State's expert witnesses and noting that the "respondent explored all of the alleged inadequacies in [the State's experts'] opinions during a vigorous cross-examination of both witnesses and through the testimony of his own expert witnesses"). The trial court recognized Wayman's criticism of Knight's conclusions regarding the inventory values. However, the court credited Simmons' testimony that the average gift certificate inventory value was \$20,000 and the court also noted that many of the records indicating inventory values went missing under defendant's tenure. The court further credited Knight's testimony that, even if he assumed a starting inventory value of zero, the TRIP program incurred an approximate loss of \$23,425 during defendant's

tenure. The trial court was well within its role as the trier of fact to credit the testimony of the State's witnesses and we find no basis in the record to disturb that determination.

¶ 46 Defendant also argues that there was no direct evidence that she stole money from the TRIP program. However, it is well-settled that a conviction can be sustained solely on circumstantial evidence if that evidence proves the elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 379 (1992). In this case, as fully set forth above, the trial court was presented with sufficient circumstantial evidence detailing how defendant had control over the TRIP funds, how she isolated the program from others on the school board, and the financial loss to the program during her tenure. When viewed in the light most favorable to the State, the circumstantial evidence was sufficient to prove defendant's guilt beyond a reasonable doubt.

¶ 47 Defendant's last contention is that she was deprived of a fair trial because the trial court was biased against her and pre-judged her case. Defendant specifically claims that the trial court "repeatedly interfered" with defense counsel's cross-examination of witnesses, advocated on behalf of the State by interrupting defense counsel and issuing *sua sponte* objections, and made personal attacks against defense counsel.

¶ 48 The State initially contends that the defendant forfeited this argument by failing to object during trial to the judge's comments. The rule of forfeiture, however, is not rigidly applied when the trial judge's conduct is the basis for the objection and the failure to object to a judge's comments at trial and in a post-trial motion does not forfeit the issue for review. *People v. Sprinkle*, 27 Ill. 2d 398, 399-400 (1963). As a result, the issue was not forfeited.

¶ 49 A defendant's fundamental right to a fair trial is violated where the trier of fact prejudices the evidence and renders its judgment prior to the conclusion of the trial. *People v. Heiman*, 286 Ill. App. 3d 102, 113 (1996). A defendant is also entitled to a trial that is free from a trial judge's improper or prejudicial comments. *People v. Garrett*, 276 Ill. App. 3d 702, 712 (1995). The judge must refrain from interjecting opinions, comments, or insinuations reflecting bias toward or against any party. *Id.* To establish a violation of the right to a fair trial before an unbiased trier of fact, a defendant must overcome a presumption of impartiality. *People v. Moffat*, 202 Ill. App. 3d 43, 56 (1990). A trial judge's improper comments are reversible error only if the defendant can establish that the comments were a

material factor in his conviction. *Id.* Therefore, even improper comments can be harmless error. *People v. Williams*, 209 Ill. App. 3d 709, 719 (1991).

¶ 50 A trial court has inherent authority to manage its courtroom and its docket. *People v. Coleman*, 358 Ill. App. 3d 1063, 1068 (2005). We have reviewed the trial court's comments of which defendant complains and find nothing in them indicating that the trial court was biased against defendant or that the court prejudged the case. Rather, in each instance, the trial court was simply stopping defense counsel from asking repetitious questions that were irrelevant to the issues in the case in order to manage its courtroom and the trial. For example, during cross-examination, defense counsel asked Akana what she did when she received the TRIP box back from defendant in 2008. Akana replied that she did not examine the cards in the box because she was "shocked" that there were only three gift cards inside the box which, to her recollection, were one gas card and two cards to a pizza restaurant. Defense counsel asked whether the TRIP program had cards from any different vendors and Akana agreed. Defense counsel then attempted to read a list of vendors and ask Akana if the TRIP program purchased cards for each one. The trial court interrupted counsel and stated "[y]ou made your point. You don't need to go through the list. ***It's not going to help. Trust me."

¶ 51 In another instance, counsel asked Akana if she was familiar with a defense exhibit, and Akana replied that she had never seen the exhibit before trial. Defense counsel then began to go month-by-month and ask Akana if she was a member of the school board at that time and, if so, if she had seen documents contained in the exhibit that she had already testified she had never before seen. Again, the court stopped defense counsel's line of questioning and told counsel that the witness had already said she never saw the documents and that it was unnecessary for counsel to go through each month so that the witness could testify she did not see the document that particular month.

¶ 52 In another instance, during cross-examination, Powrezek testified that she was not aware of the logistics of the TRIP program during defendant's tenure. Defense counsel then attempted to question Powrezek as to whether she was aware of specific logistical matters that occurred while defendant administered the trip program. The court stopped defense counsel and stated "I thought I made it clear, *to both sides*, I don't like all these 'are you aware of things,' and especially when 99.9% of them have come back to, no, I'm not."

(Emphasis added.) Despite the court's instruction, defense counsel immediately started asking the witness if she was "personally aware" of certain logistical matters. The court again stopped the examination and told defense counsel to go into a different line of questioning.

¶ 53 Finally, in another instance, the trial court stopped defense counsel after he spent what amounts to three pages of trial transcript questioning Knight about being paid as an expert witness. Defense counsel spent this amount of time on the subject after Knight had already testified on direct examination that he was paid for his services, and the amount he was paid, and after defense counsel's first question on the subject during cross-examination was a reiteration that under direct examination, Knight testified that he was paid for his services as an expert witness. The court eventually stopped the questioning and told defense counsel that he was "drifting," that the court was not shocked that an expert witness had been paid and that it was "much ado about nothing."

¶ 54 There are other similar comments made by the trial court of which defendant complains. We do not need to set out each comment and the context in which it was made because our review indicates that, similar to the comments set forth above, in each instance the trial court was managing the case by stopping defense counsel from asking repetitive and irrelevant questions to which the court already knew the answer through that witnesses' testimony or the testimony of another witness. We further note that the trial also admonished the prosecutor about asking "are you aware of" questions. Finally, we note that this was bench trial and therefore there was no jury that could have been prejudiced against defendant as a result of the court's admonishments to defense counsel. We find nothing improper in any of the trial court's comments and nothing in the record to indicate that the court prejudged the case or that the court's comments were a material fact in defendant's conviction.

¶ 55 Defendant's final claim is that the trial court personally attacked defense counsel. The complained of remarks occurred during defense counsel's cross-examination of Powrezek, and specifically after the court admonished counsel to stop asking "are you aware of" questions which had already been essentially answered by the witness. After the court admonished defense counsel, the following exchange took place between defense counsel and Powrezek:

"Q. Was [defendant] authorized to be a signatory on the checking account of the T.R.I.P. account - -

A. Yes.

Q. - - in 2001 through 2008?

A. 2002, probably, to 2008.

Q. Was [defendant] authorized to purchase gift cards on behalf of St. Pascal School?

A. Yes.

Q. Was she authorized to maintain the gift cards in her capacity as the coordinator of the program?

A. Yes."

The State objected to the line of questioning and then the following exchange took place.

"THE COURT: Well, none of this is at issue. It's all been put into evidence.

If you want to, perhaps, suggest that those things aren't true, now that the other witnesses have all said those things and you've highlighted them in cross-examination, then go ahead.

But otherwise, what are we doing here? Why do I have to have, you know, the third witness tell me what the Defendant's role was in running the TRIP program? I know she was running the TRIP program, you know it, it's spread of record. Nobody's disputing it.

She was in charge of the TRIP program from sometime in 2002 - - impeached by an earlier statement of 2001 - - but at least 2002 until December of '07 or '08.

How many times do you think I have to hear it? I'm not that stupid. Are you contesting it, are you challenging it?

[Defense counsel]: No, Judge. I have great respect for you.

THE COURT: Well, you know, you don't show it, [defense counsel]. You don't show it, sir. You don't show any respect for my ability to try to listen to the evidence, discern it. I think you should be well aware now that I listen. I – well aware of that, based on my comments.

So, you're not showing respect to this Court. You're showing disrespect to this Court because you want to continue on in conducting the trial in a way that you should be able to see is, in my mind, not getting us to the issues at hand. If we could stick to the issues at hand and not produc[ing] [sic] the same evidence or the same point 20 times, maybe we could be done for the evening today, with the last witness testifying.

As it is, it's 5:30 in the afternoon, and we're not done for the evening. And all I'm hearing is the same stuff again.

So, quite frankly, sir, you are extraordinarily disrespectful to me, and your words to the contrary that you mean no disrespect, absolutely are insincere.

So ask another question."

¶ 56 The trial court's comments were not a personal attack on defense counsel. Instead, they reflect the court's frustration with defense counsel's refusal to follow the court's instructions to stop asking repetitive and irrelevant questions and questions about whether a witness was "aware of something" when the answer was already in the record. We note that immediately after this exchange, during redirect examination, the court admonished the prosecutor to avoid asking the witness repetitive questions. There is nothing in the court's comments that indicate a bias against defendant or that the court's prejudged the case. Accordingly, we find that defendant was not denied a fair trial by the trial court's comments.

¶ 57 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 58 Affirmed.