2018 IL App (1st) 152168-U

No. 1-15-2168

Order filed August 16, 2018

Fourth Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 CR 02168 |
| | ) | |
| SHANTA CRAIG, | ) | Honorable |
| | ) | Paula M. Daleo, |
| Defendant-Appellant. | ) | Judge, presiding. |

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of identity theft, and the jury instructions did not omit an essential element of the crime.

¶ 2 Following a jury trial, defendant Shanta Craig was convicted of identity theft and sentenced to 90 days in jail, 2 years of probation, and 200 hours of community service. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that she was accountable for the actions of Carlton Pitts, who lived with her, where there was no evidence she

facilitated or participated in his scheme to produce fraudulent credit cards. In the alternative, defendant contends that she should be granted a new trial because the jury was provided instructions that omitted the definition of felony theft, an essential element of identity theft as charged in the indictment.

¶ 3 For the reasons that follow, we affirm.

¶ 4 Defendant was charged by indictment with four counts of aggravated identity theft and two counts of identity theft. The State proceeded to trial on two counts of aggravated identity theft and one count of identity theft. As relevant here, the charge of identity theft alleged that on December 20, 2011, defendant knowingly possessed document-making implements – including a credit card reader, blank credit card stock with magnetic strips, ink rolls containing a bank name and logo, hologram and signature stickers, and software and pamphlets for card printing instruments or devices that are used to make fraudulent personal identification documents – with knowledge that they would be used by herself or another person to commit felony theft or another felony.

¶ 5 The State's theory of the case was that defendant had constructive possession of credit card-making equipment found in her home, and that she was accountable for the illegal actions of Pitts, who lived with her. The defense theory was that Pitts was involved in an identity theft scheme, but that defendant was not aware of the illegal activities taking place in her house.[1]

¶ 6 At trial, Berkeley police officer Daniel Bresnahan testified that about 12:40 p.m. on the day in question, he responded to a 911 call of a residential burglary in progress. When he and the other responding officers arrived at the identified address, a single story house with a basement,

[1] We note that Pitts was not a codefendant and is not a party to this appeal.

they began checking windows and doors, looking for points of entry. After noting the front door was closed, Bresnahan saw a man backing out of the house's side door carrying a large item. Bresnahan announced his office and told the man, later identified as Joshua Perkins, to put the item on ground, which he did. Officers handcuffed Perkins and placed him in a squad car. The item Perkins had been carrying was later determined to be a card printer with a card reader attached to it.

¶ 7 An officer who had entered the house radioed a message that a person inside was running for the front door. In response, Bresnahan ran around the house to the front door. There, he saw a man, later identified as Damion Scott, kick the front door open from the inside. Bresnahan identified himself as a police officer and told Scott to stop, but Scott started running across the street. As Bresnahan gave chase, Scott threw the contents of his pockets into the air and onto the ground. Among the items were multiple credit cards, keys, a watch, a flash drive, and a cell phone. Eventually, Bresnahan and another officer caught up to Scott, handcuffed him, and placed him in a marked police car.

¶ 8 At this point, Bresnahan and other officers entered the house through the side door. The two teenaged residents of the home who had placed the 911 call, later identified as Donche Wilson and Lewis Stamps, were located and removed from the house. Officers roped off the entire house and began to take photos inside and outside. Bresnahan described the first floor of the house as having a master bedroom, a child's bedroom, a kitchen, a living room, and a bathroom, and the finished basement as having a large main room, a laundry area, and another bedroom. Outside, Bresnahan noted a car backed up to the detached garage with one rear door open. In the back seat were two card printers, two laptop computers, and a box of items. Later, it

was determined that house's residents did not own the car, and that the keys Scott had thrown while being chased by Bresnahan did belong to it. Bresnahan characterized the car as belonging "to the burglars."

¶ 9 In the master bedroom, the closet of which contained men's and women's clothing, Bresnahan observed a printer. On a nightstand next to the bed, he observed multiple credit cards. He also observed credit cards inside a laundry hamper that held women's clothing. Bresnahan noted a printer and a "couple" of laptops in the living room, and in the child's room on the main floor, an ironing board and boxes with multiple computers and printers. In the kitchen, he located a card loader for blank card stock. Along the staircase from the side door / kitchen to the basement, Bresnahan observed multiple stacks of credit cards and a stack of card stock. At the bottom of the steps he saw a box full of items, including a computer program for check printing, mail addressed to defendant, and mail addressed to Carlton Pitts and "E Dry Cleaners." In the basement's main room he saw boxes piled on top of and below two folding tables. Among the boxes were two boxes of card stock. One of the tables also held a tarp.

¶ 10 In all, the police recovered about 270 credit cards, false identification cards, and gift cards from the house, the yard, and the car. The credit cards had a variety of different names on them. Bresnahan testified that the Secret Service was contacted, and that further investigation ensued after their arrival. About 4 p.m., defendant arrived at the house.

¶ 11 On cross-examination, Bresnahan agreed that the house was "trashed" when he arrived, that he did not know who caused the mess, and that he did not know whether the items he observed in plain view may have been put away before the burglars entered the house.

¶ 12 Berkeley police officer Jeff Parker, an evidence technician, testified that after the initial police investigation of a burglary turned up evidence of another crime, *i.e.*, numerous credit cards and equipment with the ability to make and print credit cards, a search warrant was obtained for the house. About 11:30 p.m. on the night in question, Parker went to the house with other officers and Secret Service agents to assist in executing the warrant and to recover evidence.

¶ 13 Upon entering through the front door, Parker observed "a lot" of debris, paperwork, and computer equipment. In the front closet, he noted a laptop computer on an eye-level shelf. In the kitchen, he saw a table covered with paperwork, a stack of credit cards, a couple of computer hard drives or external hard drives, several memory disks or cards, and a roll of transfer film for a data card. Among the paperwork was mail addressed to defendant and an operation guide for card technology. Also on the table were a stack of 52 blank card stock and a second stack of white card stock with magnetic strips.

¶ 14 Parker recovered items found on, in, and near the nightstand in the master bedroom. On top of the nightstand were two credit cards bearing the name C. Pitts and one credit card bearing the name T. Craig. The items in the nightstand drawer included an airline itinerary with multiple names, two credit cards in the name of Darnell Murray, three blank credit cards, and eight credit cards bearing the name Carl Pitts or Carlton Pitts. The items on the floor in front of the nightstand included credit card bills in multiple names.

¶ 15 Parker also recovered items found on, under, or around two tables in the basement. Under the tables were five empty boxes with labels that read, "SW cards inside, no signature, no hole slots, quantity 500," as well as a plastic bag containing two new and three used re-transfer films

from a printer and a card printer, a white card with a magnetic strip, and a white card bearing a name and credit card number. On top of the tables were an open box of blank credit card stock with magnetic strips; an unopened package of 500 credit card stock with magnetic strips; a stack of paperwork with the personal information of several individuals, including full names, addresses, phone numbers, social security numbers, dates of birth, email addresses, and phone numbers; an envelope containing holograms of various types of credit cards, as well as signature lines; mail addressed to defendant; two opened bags of white credit card stock; and several bills and a credit card in the name of Robert Rudisill. Near the tables Parker observed an unopened package of topping foil for a data card printer; a partially used transfer film bearing the backs of various types of credit cards; an installation guide, instruction manual, and driver disk for a card printer; and a registration packet and installation guide for another printer.

¶ 16 U.S. Secret Service agent Eugene Cacovean testified that sometime during the afternoon of the day in question, he arrived at the house, observed its interior and exterior, and, along with other law enforcement personnel, decided a search warrant was needed. After obtaining the warrant, which named an individual other than defendant, Cacovean, other Secret Service agents, and Berkeley police officers executed the warrant. During the search, numerous items were recovered. The items were later inventoried.

¶ 17 Among the recovered items Cacovean identified at trial were a card printer for making debit and credit cards, a card printer containing white card stock, a printer with the ability to emboss credit cards that had a printer ribbon in it, a barcode reader and writer / encoder, several opened and unopened printer ribbons and cartridges, and several rolls of silver or chrome stripping foil. On at least five of the used rolls of tipping foil, Cacovean could see the name “S.

Craig" along with different account numbers. Cacovean also identified boxes of white plastic cards with magnetic strips, plastic cards with magnetic strips and holograms, three laptop computers, a thumb drive, and an external hard drive.

¶ 18 Cacovean testified that on December 22, 2011, he went to defendant's place of business and placed her under arrest. On January 10, 2012, he obtained a search warrant for the electronic media contained in the recovered computers, hard drive, and thumb drive. Cacovean then requested forensic analysis of the electronic media.

¶ 19 U.S. Secret Service agent Jonathan Lorenzi, an accredited forensic examiner, testified that on January 10, 2012, he received a request to analyze the electronic media on devices recovered in this case. He conducted the requested analysis, prepared a report, and took photos. At trial, he identified photos he took of data found on five of twelve devices.

¶ 20 Lorenzi first testified about photos of data found on the hard drive of the IBM laptop that was recovered from the rear seat of the car in the driveway. The photos depicted blank card stock with genuine bank logos and text files with "track information," which he explained includes a 16-digit credit card number and name, "so that what's embedded in that stripe on the back of your card also matches the name that's embedded or embossed on the card." Among the track data were several names, including "Craig, S.," which corresponded to two different numbers. The photos also depicted a list of bank identification numbers (BINs) with corresponding issuing banks, a manual for a "Datacard 159" desktop card personalization system, a billing invoice issued to Carl Pitts from a business named Encode Corp., and blank templates for credit cards.

¶ 21 Lorenzi next identified photos of data found on the HP laptop that was recovered from the back seat of the car. In those photos, he identified blank templates for credit cards, track data,

and lists of BINs. From the HP laptop recovered from the front hall closet, Lorenzi photographed a guide for software called Exeba, which he explained is used to pull numbers off of credit card skimmers, ATM skimmers, and other types of skimming devices. He also photographed a list of the "pagefile.sys items" found on the hard drive, showing that a user of that computer accessed multiple websites which, according to Lorenzi, are for the buying and selling of functioning credit card numbers. From the thumb drive recovered outside the house, Lorenzi photographed a blank credit card template, track data, and several names, addresses, zip codes, and phone numbers. From the external hard drive found on the kitchen table, Lorenzi photographed a blank credit card template, a PDF guide showing how to manufacture a credit card, and photographs of a roll of credit card holograms, foils, and signature panels.

¶ 22 Joyce Wehrli, who was 81 years old at the time of trial, testified that one of the pieces of paper recovered in defendant's basement contained her personal identifying information, including her name, former address, phone number, and social security number. According to Wehrli, she did not write the information on the paper, and did not give defendant or anyone else permission to use the information.

¶ 23 Defendant made a motion for a directed verdict, which the trial court denied.

¶ 24 Defendant testified that on December 20, 2011, she lived with Carlton Pitts, whom she identified as "the father of my son"; their son; her son from a prior relationship; and her nephew. According to defendant, Pitts owned an e-dry cleaner business, which she described as "pick up, drop off" and stated was run through the internet. In 2008, defendant had taken out a second mortgage on her house so that she could loan Pitts $20,000 to start his business. In 2011, defendant was aware that Pitts was on parole for a federal offense.

¶ 25 While defendant was at work on the day in question, she received a phone call from her son and nephew. In response, she left work and headed to her house. When she arrived, the police would not let her inside. After several hours, she went to the police station with her son and nephew. Defendant was questioned and then allowed to leave. Because she still could not get into her house, she stayed at a hotel.

¶ 26 Defendant stated that her bedroom had two nightstands, one of which belonged to Pitts. When she was shown a photograph of a nightstand with credit cards and mail on top of it, she identified it as Pitts's nightstand, as opposed to her own. Defendant stated that when she left for work on the day in question, the nightstand did not look how it did in the photograph, and said that she did not "go into" that nightstand and was not aware of the contents of its drawers. Defendant also identified a photo of her basement steps, but stated it did not depict how the area looked when she left for work that morning. She described an area of the basement as "where [Pitts] had his computers and his table that they sat on." Defendant stated that she would go into the basement to use the washing machine. During those times, if Pitts was working on the computer, she could not see what was on the monitor, and if Pitts was not home, he would cover "everything" with a tarp.

¶ 27 According to defendant, she was not aware that the printers in her house were being used for unlawful purposes. She did not pay attention to them, and never saw them printing anything. She did see the white card stock, but thought it was for a rewards program for Pitts's dry cleaning business. Defendant testified that she had never seen any of the credit card samples that the photos depicted lying around her house, that her bedroom did not consistently have mail all over the place, and that there were not credit cards everywhere all the time. When shown a piece

of paper with Joyce Wehrli's personal information on it, defendant stated that she had never seen it prior to her arrest. Additionally, she had never heard of Joyce Wehrli and was not aware her information was in the house. Defendant identified a photo of her kitchen table, but asserted that it did not look the way it was depicted in the photo at the time she left the house for work on the day in question. She acknowledged owning a computer and having it in her house, but stated it was not functional and had not been discussed "in extent" in court.

¶ 28 When asked about 11 files, found on a recovered Lenovo laptop, that had a file name matching a credit card with the name "S. Craig," defendant stated that the computer belonged to Pitts and she never used it or even knew its password. She had no idea that information with credit card numbers corresponding to her name were on the computer. Similarly, defendant testified that she never used the HP computer, which she said belonged to Pitts; that she did not know what was on the external hard drive, which she said also belonged to Pitts; and that she did not know who owned the flash stick and was not aware it had been in her house. With regard to why there were three or four printers found on or near an ironing board in the child's room on the first floor of her house, defendant explained that some of them no longer worked and "sometimes HP will give you money back if you buy another one through their company."

¶ 29 On cross-examination, defendant explained that she had known Pitts for about 20 years, that she bought her house in 2004, and that Pitts began living with her "when he was released" in 2006. Defendant testified that she lived in the house with Pitts until about six months before trial, which took place in June 2015. At that point, she moved out. While she no longer lived with Pitts at the time of trial, she still owned the house, Pitts still lived there, and she went to the house about every other day due to Pitts picking up their son from school and baseball games.

¶ 30 Defendant stated that she went to the police station voluntarily on the day in question, but did not sign a complaint for burglary because the police never asked her to do so. When shown a photo of the datacard printer recovered from her side steps, defendant stated she had never seen it in her house. While she had seen the attached card reader, at the time, did not know what it did. She also saw the boxes of card stock, but never looked inside the boxes or found out what they were. She never saw magnetic tape dispensers in her house, and never saw credit cards on her basement stairs. She had seen an external hard drive on the table in the basement, but did not know it was "part of a computer" and did not ask Pitts about it. Defendant reiterated that Pitts would cover the basement tables with a tarp, and stated that she never looked beneath the tarp or asked Pitts what was under it. He also covered a cart in the basement with a sheet.

¶ 31 When shown the photograph of the bedside table, defendant acknowledged that some items on top of it were hers, including her nephew's obituary and Mary Kay cosmetic items. When shown a photograph of an IBM laptop, defendant said it belonged to Pitts, could have been in her house, and she did not know how to use it. When shown a photograph of the HP laptop found in the front closet, she said it could have belonged to her son. Defendant stated that she never saw holograms or signature stickers in her house. Defendant testified that she did not put her name, "S. Craig," on a roll of tape, did not give Pitts permission to put her name on any debit or credit cards, and did not give him permission to make debit or credit cards in her house.

¶ 32 The parties stipulated that Agent Cacovean would have testified defendant never signed a burglary complaint.

¶ 33 At the jury instruction conference, defense counsel objected to Illinois Pattern Jury Instruction, Criminal, No. 13.77 (approved Mar. 19, 2018) (hereinafter IPI No. 13.77), which provides the definition of identity theft. Defense counsel argued:

> "Judge, my objection is that the indictment indicates that [defendant] is charged with this offense in that [document-making implements] will be used by her to commit a felony theft or any felony. I think felony theft should be included in the instruction and a definition should be of either felony theft or any felony should be given to the jury because, clearly, if the intent was to commit some type of misdemeanor, then she wouldn't be culpable under the law."

After the prosecutor responded, "Judge, we're following the IPI on this," the trial court stated that over the defense objection, IPI 13.77 would be given as written. Defense counsel also objected to Illinois Pattern Jury Instruction, Criminal, No. 13.78 (approved Mar. 19, 2018) (hereinafter IPI No. 13.78), which sets forth the issues in identity theft. Counsel argued, "Same objection in terms of defining felony theft that I raised with the prior instruction." Again, the court decided that over objection, the instruction would be given.

¶ 34 In closing, the prosecutor argued that defendant was "part of an operation," along with Pitts, to take others' identities. The prosecutor asserted that there was no question defendant knew what was going on in her house, that she was responsible and accountable for everything Pitts did, and that she constructively possessed both the personal identification information of others as well as document-making instruments and equipment.

¶ 35 Defense counsel argued that while Pitts was engaged in illegal activity, defendant had no knowledge of it. Rather, counsel asserted that defendant was a victim of a burglary, during which

her house was "trashed," and was also a victim of Pitts. Defense counsel further argued, "[Y]ou didn't hear one thing about a dollar value. *** So where is the intent to commit a felony?" and "There is no knowledge that they'll be used by anybody to commit any kind of felony. There's no loss in this case. They don't have to prove it, but it would help you to know whether or not they proved the felony intent." Counsel urged the jury to find defendant not guilty on all charges, asserting that defendant did not knowingly possess another's personal identification information or document-making implements, and was not accountable for Pitts's criminal acts.

¶ 36 The jury was instructed, *inter alia*, on circumstantial evidence, constructive possession, accountability, aggravated identity theft, and identity theft. For identity theft, the jury was instructed in accordance with IPI 13.77 as follows:

> "A person commits the offense of identity theft when he knowingly possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony."

The jury was further instructed as follows in accordance with IPI 13.78:

> "To sustain the charge of identity theft, the State must prove the following proposition:
>
> That the defendant, or one for whose conduct he is legally responsible, knowingly possessed document-making implements to produce false documents with knowledge that they will be used by the person or another to commit felony theft."

¶ 37 Following deliberations, the jury found defendant not guilty of aggravated identity theft and guilty of identity theft. The trial court entered judgment on the verdict, and defense counsel filed a posttrial motion arguing, among other things, that defendant was not proven guilty beyond a reasonable doubt and that the trial court erred in denying the request to define "felony theft" in the jury instructions. The trial court denied the motion. Subsequently, the court sentenced defendant to 90 days in jail, 2 years of probation, and 200 hours of community service.

¶ 38 On appeal, defendant first challenges the sufficiency of the evidence. She acknowledges that Pitts "ran a fraudulent credit card operation out of the home." Nevertheless, she argues that the State failed to prove her guilty of identity theft under a theory of accountability where the evidence merely showed her knowledge of the presence of computer equipment and card stock used by Pitts to produce fraudulent credit cards, but failed to show that she facilitated or participated in Pitts's scheme in any way. Defendant argues that the evidence did not show she shared a common criminal design with Pitts, that she had any knowledge of Pitts's identity theft scheme, or that she used or accessed any of the devices or equipment found in her home.

¶ 39 At the time defendant was charged, section 16G-15(a)(5) of the Criminal Code of 1961 provided, in relevant part, that a person commits identity theft when he or she knowingly "possesses document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony theft or other felony violation of State law." 720 ILCS 5/16G-15(a)(5) (West 2010). When a question as to a defendant's accountability for an offense is raised on appeal, a reviewing court must determine 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. Fernandez*, 2014 IL 115527, ¶ 13. This court will not substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses, conflicts in the testimony, or the weight of the evidence. *People v. Doolan*, 2016 IL App (1st) 141780, ¶ 40 (citing *People v. Brown*, 2013 IL 114196, ¶ 48). "Circumstantial evidence is sufficient to sustain a conviction, and the trier of fact 'is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *Id.* (quoting *People v. Jackson*, 232 Ill. 2d 246, 281 (2009)). Reversal is justified only where the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.* (citing *People v. Hall*, 194 Ill. 2d 305, 330 (2000)).

¶ 40 Here, in order to prove defendant accountable for Pitts's actions, the State was required to show that either before or during the commission of the crime, and with the intent to promote or facilitate such commission, defendant solicited, aided, abetted, agreed, or attempted to aid Pitts in the planning or commission of the crime. 720 ILCS 5/5-2(c) (West 2010). A defendant's intent to promote or facilitate a crime may be inferred from the character of his or her acts and from the circumstances surrounding the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). A defendant will be found to have the intent to promote or facilitate a crime if he or she either (1) shared the criminal intent of the principal or (2) there was a common criminal design. *Id.* at 266.

¶ 41 Under the common design rule, where two or more persons engage in a common criminal design or agreement, any acts committed by one party in furtherance of that common design are considered to be the acts of all parties to the design or agreement, and all parties are responsible

for the consequences of the further acts. *Perez*, 189 Ill. 2d at 267. Accountability may be proven through a defendant's knowledge of and participation in the criminal scheme; neither words of agreement nor direct participation in the criminal act itself are required. *Perez*, 189 Ill. 2d at 267. Rather, a trier of fact may infer accountability from the circumstances that surround the perpetration of the unlawful conduct. *Doolan*, 2016 IL App (1st) 141780, ¶ 43. Factors that may be considered when determining whether a defendant is accountable include the defendant's presence during the planning of the offense, presence during its commission, failure to report the crime, and continued affiliation with the other offender or offenders after the commission of the crime. *Perez*, 189 Ill. 2d at 267; *People v. Velez*, 388 Ill. App. 3d 493, 512 (2009). However, none of these factors is required for a finding of accountability. *Doolan*, 2016 IL App (1st) 141780, ¶ 43.

¶ 42 In the instant case, the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish a common criminal design. Defendant was the sole owner of the house, maintained control over the house, and allowed Pitts to move in with her in 2006. In 2008, defendant loaned Pitts $20,000. She lived in the house with Pitts until about December 2014, approximately three years after the police searched her home. It was not until about six months before trial that defendant moved out. Even then, she allowed Pitts to keep living in the house and continued to see him about every other day.

¶ 43 There is no dispute that the house was used as the physical location of a fraudulent credit-card making operation. In and around the house, the police found a mountain of evidence: about 270 credit cards, false identification cards, and gift cards with a variety of names on them; over 550 blank cards or card stock; multiple card printers and card readers; several computers, hard

drives, external hard drives, and memory disks or cards, some of which were determined to have track information and skimming software on them; new and used transfer film; topping foil for a data card printer; several rolls of tipping foil, on which defendant's name could be seen with different account numbers; an operation guide for card technology; an instruction manual for a card printer; a computer program for check printing; holograms of various types of credit cards; and paperwork with the personal information of a number of different people. These items were found in places defendant had access to – including the front closet, kitchen table, child's bedroom, basement, basement stairs, master bedroom bedside table, and laundry hamper – and from the State's witnesses' testimony, as well as the photos taken at the scene, it appears the items were easily visible.

¶ 44 We are mindful of defendant's testimony that her house did not look the way it was depicted in the police photographs at the time she left for work the morning of the day in question, as well as her testimony that she was not aware that Pitts was using the printers for unlawful purposes, that she thought the blank card stock was for a rewards program for Pitts's dry cleaning business, and that she either never saw the other items, did not know what they were, or had no idea what Pitts was using them for. The jury heard this testimony and apparently rejected it, which was its prerogative as the trier of fact. See *People v. Jackson*, 391 Ill. App. 3d 11, 30 (2009) (jury rejected the defendant's testimony that he was not aware his codefendant had used another's personal identifying information to make purchases). As explained above, this court will not substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses. *Doolan*, 2016 IL App (1st) 141780, ¶ 40.

¶ 45 The circumstantial evidence sufficiently established defendant's knowledge of Pitts's scheme and indirect participation in it. Defendant provided Pitts with a significant amount of start-up money; was living in the house with Pitts during the time when Pitts would have planned and engaged in his credit card-making business, in circumstances indicating she knew of and observed the scheme in operation; and continued to affiliate with Pitts for years after the police and Secret Service searched her home. See *Perez*, 189 Ill. 2d at 267; *Velez*, 388 Ill. App. 3d at 512. Here, the jury properly inferred accountability from the circumstances surrounding the perpetration of the unlawful conduct. *Doolan*, 2016 IL App (1st) 141780, ¶ 43. We cannot say that the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant guilty.

¶ 46 Defendant's second contention on appeal is that she should be granted a new trial because the jury instructions did not include a definition of felony theft. She argues that where an essential element of identity theft, as charged in the indictment, was knowledge that document-making implements would be used to commit "felony theft," that crime should have been defined for the jury. Absent such a definition, defendant asserts, the jury's decision could have been based on finding she had knowledge that the document-making implements would be used to commit any theft, even one with a value below $500, which would have only constituted misdemeanor theft. Defendant concludes that because the instructions misstated the law by omitting an essential element of the crime, the jury may not have arrived at the correct conclusion when they found her guilty of identity theft.

¶ 47 As an initial matter, we note that the parties disagree as to the standard of review. Defendant argues that because the question presented is whether the jury instructions accurately conveyed to the jury the law applicable to the case, our review is *de novo*. The State, in contrast, maintains that the question is whether the trial court abused its discretion when it rejected defense counsel's request to give a modified, non-IPI instruction. We need not determine which standard applies in this case, as our decision would be the same under either.

¶ 48 Supreme Court Rule 451(a) (eff. July 1, 2006) requires a trial court to instruct the jury pursuant to the IPI criminal instructions unless the trial court determines that the IPI instruction does not accurately state the law. *People v. Hudson*, 222 Ill. 2d 392, 399-400 (2006). The purpose of jury instructions is to guide the jury in its deliberations and assist the jury in reaching a proper verdict through application of legal principles to the evidence and law. *Parker*, 223 Ill. 2d at 501. Our task on appeal is to determine whether the instructions, taken as a whole, fairly, fully, and comprehensively apprised the jury of the relevant legal principles. *Id.*

¶ 49 In this case, the trial court gave the jury the IPI instructions as written. IPI No. 13.77, defining identity theft, provides, as relevant here, that a person commits identity theft when he or she knowingly possesses "document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony." The corresponding issues instruction, IPI No. 13.78, provides that to sustain the charge of identity theft, the State must prove that the defendant or one for whose conduct he or she is legally responsible knowingly possessed document-making implements to produce false documents "with knowledge that they will be used by the person or another to commit _____." A

committee note for IPI No. 13.78 instructs the court to insert "the name of the felony" in the blank. Here, the trial court inserted "felony theft."

¶ 50 Our research has revealed no cases on the topic of whether, after giving IPI No. 13.78, a court must also give an instruction defining the felony inserted in the blank in order for the instructions to fully apprise the jury of the relevant legal principles, and the committee notes to IPI 13.77 and IPI 13.78 are silent on the topic. However, the committee notes to the IPI instruction defining burglary – Illinois Pattern Jury Instruction, Criminal, No. 14.07 (4th ed. Supp. 2009) (hereinafter IPI No. 14.07) – give some guidance by analogy. Burglary is analogous to the version of identity theft at issue in the instant case because both crimes involve a completed action (entry for burglary, possession for identity theft) and a possible future offense (a felony or theft for burglary, felony theft or other felony for identity theft). 720 ILCS 5/16G-15(a)(5), 19-1(a) (West 2010).

¶ 51 The text of IPI 14.07 provides that a person commits burglary when he, without authority, knowingly enters a building, house trailer, watercraft, aircraft, railroad car, motor vehicle, or any part thereof, "with intent to commit therein the offense of _____." A committee note accompanying IPI 14.07 instructs the court to insert in the blank "the intended offense alleged in the charge." A separate committee note provides as follows: "The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the objective of the burglary."

¶ 52 We find it significant that the committee did not direct the court to define the offense alleged as the objective of the burglary, but rather, merely recommended that the court do so. By analogy, we find that in this case, where defendant was charged with identity theft based on

possessing document-making implements with knowledge that they will be used to commit felony theft, it was not necessary for felony theft to be defined in order for the jury to be fully apprised of the relevant legal principles.

¶ 53 Moreover, even if we were to find to the contrary, a jury instruction that omits an element of an offense is an error subject to harmless-error review. *Neder v. United States*, 527 U.S. 1, 15, (1999); *People v. Thurow*, 203 Ill. 2d 352, 368 (2003). The omission of an element of an offense from a jury instruction is harmless if the reviewing court determines, beyond a reasonable doubt, that the error did not contribute to the verdict. *Neder*, 527 U.S. at 15.

¶ 54 Here, defendant's position is that the jury instructions omitted an essential element of the law by not defining the "felony" aspect of "felony theft." The difference between theft and felony theft in this case is one of monetary value: theft of property not exceeding $500 in value is a Class A misdemeanor. 720 ILCS 5/16-1(b)(1) (West 2010). Thus, the question here is whether we are persuaded, beyond a reasonable doubt, that the jury would have found defendant possessed document-making implements with knowledge that they would be used to commit a theft exceeding $500 in value.

¶ 55 As discussed above, the recovered evidence presented in this case included about 270 credit cards, false identification cards, and gift cards; over 550 blank cards or card stock; and multiple card printers and card readers. Given this volume, we are convinced beyond a reasonable doubt that the jury would have found the omitted "element" of $500. Any error in not defining the felony aspect of felony theft was harmless in this case.

¶ 56 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 57 Affirmed.