2018 IL App (2d) 160278-U
No. 2-16-0278
Order filed June 7, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ERNEST R. JENKINS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 14-CF-784 Honorable James K. Booras, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved venue beyond a reasonable doubt: although defendant was in Georgia, the accounts he stole from, and the computer he used to access them, were maintained in Illinois; (2) the trial court properly denied defendant's motion to suppress evidence that he alleged was collected pursuant to an improper investigation independent of the grand jury: the police officers were duly-appointed grand-jury investigators and thus they properly reviewed evidence gathered pursuant to grand-jury subpoenas, used that evidence to obtain search warrants, and turned the resulting evidence over to the grand jury; (3) the trial court properly admitted summaries of business records: although the summaries were prepared in anticipation of litigation, the underlying records were admissible; (4) per *Castleberry*, any error in defendant's sentence did not render it void.

¶ 2 Defendant, Ernest R. Jenkins, appeals the judgment of the circuit court of Lake County finding him guilty of theft (720 ILCS 5/16-1(a)(1)(A), (a)(2)(A) (West 2014)), money laundering more than $500,000 (720 ILCS 5/29B-1(a)(1)(A) (West 2014)), and knowingly accessing a computer to defraud (720 ILCS 5/17-50(a)(3) (West 2014)) and sentencing him to concurrent 18-year, 12-year, and 7-year terms of imprisonment, respectively. Because defendant does not raise any reversible error, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of theft by unauthorized control of more than $1 million (720 ILCS 5/16-1(a)(1)(A) (West 2014)) (count I), one count of theft by deception of more than $1 million (720 ILCS 5/16-1(a)(2)(A) (West 2014)) (count II), one count of money laundering theft proceeds of more than $500,000 (720 ILCS 5/29B-1(a)(1)(A) (West 2014)) (count III), and one count of knowingly accessing a computer as part of a scheme to defraud (720 ILCS 5/17-50(a)(3) (West 2014)) (count IV). Defendant, who represented himself, opted for a jury trial.

¶ 5 Before trial, defendant filed a motion to quash grand-jury subpoenas and suppress evidence obtained via those subpoenas. Defendant argued that, although the police were properly authorized as grand-jury investigators, they examined the evidence gathered pursuant to the subpoenas before turning it over to the prosecutor or the grand jury, thereby conducting an investigation independent of the grand jury. The trial court denied the motion.

¶ 6 The State filed a motion *in limine*, seeking to have admitted as business records numerous financial documents and summaries of those documents prepared by the police and other investigators. Although defendant did not object to the admission of the financial documents themselves, he did object to the summaries as made in anticipation of litigation. The

trial court granted the State's motion as to both the records and the summaries, finding that the summaries were based on voluminous records, would facilitate the jury's understanding of the records, and would promote judicial economy.

¶ 7 The following evidence was established at the trial. Aon Corporation (Aon) had its global headquarters in Lincolnshire. Aon was the record administrator for several retirement funds, including those of Sears and HCA. Aon maintained a computer system to manage its various client accounts.

¶ 8 Defendant was employed by Aon as a business operations manager. His responsibilities included working with the retirement accounts of Sears and HCA. Defendant lived in Georgia but had remote access to Aon's computer system.

¶ 9 George Giese was an internal investigator employed by Aon. In February 2014, Giese was notified by a fellow employee of suspicious activity in a retirement account of a deceased Sears employee. Giese discovered that there had been numerous suspicious transactions involving the retirement accounts of two deceased Sears employees. Those transactions involved computer transfers from the accounts to defendant's Bank of America account. The total amount of those transfers was approximately $5 million.

¶ 10 After discovering that defendant, who had been terminated for unrelated reasons a few months before, had access to the retirement accounts of the deceased Sears employees, Giese checked the retirement accounts of other companies to which defendant had access. In doing so, he learned that defendant had also made unauthorized transfers of over $2 million from an HCA retirement account into defendant's Bank of America account.

¶ 11 Giese compiled a summary of the various transfers from the HCA account (exhibit No. 21). Exhibit No. 21 was admitted without objection.

¶ 12 Giese also created summaries related to the HCA and Sears transfers, respectively (exhibit Nos. 27 and 28). Both of those exhibits were admitted without objection.

¶ 13 Curt Young was a defined-contributions practice leader for Aon. He assisted in the investigation regarding both the Sears and HCA accounts. In that role, he examined the various transactions conducted by defendant.

¶ 14 Young identified a summary based on the retirement account of one of the deceased Sears employees (exhibit No. 22). That exhibit showed that the total amount transferred from the account was approximately $2.5 million. Exhibit No. 22 was admitted without objection.

¶ 15 Young identified a summary regarding the retirement account of the other deceased Sears employee (exhibit No. 23). That summary showed unauthorized transfers totaling approximately $2.2 million. Exhibit No. 23 was admitted without objection.

¶ 16 Young referred to another summary that showed how much money had to be reimbursed to the two Sears retirement accounts (exhibit No. 25). Exhibit No. 25 was admitted without objection.

¶ 17 Exhibit No. 24 was a similar summary related to HCA. Exhibit No. 24 was admitted without objection.

¶ 18 Sergeant John-Erik Anderson of the Lincolnshire Police Department investigated the thefts. As part of his investigation, Sergeant Anderson interviewed defendant. According to Sergeant Anderson, defendant admitted that he stole between $2 million and $3 million.

¶ 19 Officer Adam Hyde of the Lincolnshire Police Department also participated in the investigation. He conducted a forensic analysis of the various bank accounts involved, looking for irregular transactions.

¶ 20 Officer Hyde created a summary of the various bank records (exhibit No. 26). Exhibit No. 26 was admitted without objection.

¶ 21 Officer Hyde also created a summary regarding defendant's Bank of America account (exhibit No. 29). Exhibit No. 29 was admitted without objection.

¶ 22 According to Officer Hyde, after defendant estimated that he had stolen between $2 million and $3 million, Officer Hyde showed him exhibit No. 29, which indicated a total loss of approximately $4.6 million. When Officer Hyde asked defendant if that amount was correct, defendant answered that it was.

¶ 23 The jury found defendant guilty of all charges. Defendant filed a motion in arrest of judgment, contending that the State never established that he committed any of the charged acts in Illinois. In contending that jurisdiction was proven, the State pointed to Aon's corporate headquarters being in Illinois and that Aon administered the various accounts from which defendant stole the funds. Agreeing with the State, the trial court found that the State had established jurisdiction.

¶ 24 Defendant also objected to the admission of the various summaries (exhibit Nos. 21-29) as having been made for the purpose of litigation. The trial court rejected that argument.

¶ 25 Defendant further argued that his conviction of money laundering should be vacated, because the law did not allow for aggregation of multiple acts of money laundering. The trial court rejected that contention.

¶ 26 The trial court sentenced defendant to 18 years' imprisonment on count I, merged count II into count I, imposed a 12-year prison sentence on count III, and sentenced defendant to 7 years' imprisonment on count IV. All terms of imprisonment were concurrent.

¶ 27 Defendant filed a motion to reconsider the sentence. He contended, among other things, that his sentence for money laundering was void because the State had improperly aggregated his conduct to arrive at an amount in excess of $500,000. The trial court denied the motion to reconsider the sentence, and defendant filed this timely appeal.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant, *pro se*, contends: (1) the State failed to prove that he committed any of the charged acts within Illinois; (2) law enforcement officers, who were duly-appointed grand-jury investigators, acted outside that authority by reviewing the evidence gathered via grand-jury subpoenas and using that evidence to obtain search warrants; (3) the trial court abused its discretion in admitting exhibit Nos. 21-29, as they were prepared for the litigation; and (4) the State improperly aggregated his conduct for purposes of the money-laundering charge.

¶ 30 We address defendant's first contention. Illinois has jurisdiction over a crime that occurred wholly or partly within the state. 720 ILCS 5/1-5(a)(1) (West 2014); *People v. Moody*, 2016 IL App (1st) 130071, ¶ 29. An offense is committed partly within Illinois if either the conduct, or a result that constitutes an element of the offense, occurred in Illinois. 720 ILCS 5/1-5(b) (West 2014); *Moody*, 2016 IL App (1st) 130071, ¶ 29.

¶ 31 Jurisdiction in a criminal case is an essential element that must be proved beyond a reasonable doubt. *People v. Young*, 312 Ill. App. 3d 428, 430 (2000). As with any element, the State may satisfy its burden of proving jurisdiction with either direct or circumstantial evidence. *Young*, 312 Ill. App. 3d at 430. In deciding whether the evidence was sufficient to establish jurisdiction, the reviewing court must view the evidence in the light most favorable to the prosecution and decide whether any rational trier of fact could find beyond a reasonable doubt that jurisdiction existed. *Young*, 312 Ill. App. 3d at 430.

¶ 32 A person commits theft when he knowingly obtains or exerts unauthorized control over another's property. 720 ILCS 5/16-1(a)(1) (West 2014). A person commits theft by deception when he knowingly obtains such control by deception. 720 ILCS 5/16-1(a)(2) (West 2014). An essential element of computer fraud is accessing a computer. *People v. Davis*, 353 Ill. App. 3d 790, 801 (2004). A required element of money laundering is a financial transaction involving criminally-derived property. 720 ILCS 5/29B-1(a)(1) (West 2014); *People v. Fields*, 339 Ill. App. 3d 689, 697 (2003).

¶ 33 Here, the evidence established that when defendant committed his fraudulent acts he was employed by Aon, whose global headquarters were in Lincolnshire. Although defendant was in Georgia, his conduct resulted in Aon suffering a loss in Illinois. Additionally, Aon maintained the computer system through which defendant effectuated his fraud. Therefore, he accessed a computer system, at least part of which was in Illinois. See *People v. Ruppenthal*, 331 Ill. App. 3d 916, 923 (2002) (citing *People v. Baker*, 268 Ill. App. 3d 16 (1994)). He also laundered funds that had been derived from his fraudulent Illinois conduct. Viewed in the light most favorable to the State, there was sufficient evidence to establish that defendant committed at least part of the charged conduct in Illinois. Thus, the State proved jurisdiction.

¶ 34 We next address defendant's contention that law enforcement officers improperly used grand-jury subpoenas to obtain search warrants and gather evidence against him. They did not.

¶ 35 The grand jury is an investigative body charged with determining whether there is probable cause to believe that a crime has occurred. *People v. DeLaire*, 240 Ill. App. 3d 1012, 1021 (1993). A grand-jury investigation is not complete until every available clue has been investigated and all witnesses have been examined. *DeLaire*, 240 Ill. App. 3d at 1021. The State is not required to justify the issuance of a grand-jury subpoena by establishing probable cause, as

the very purpose of such a subpoena is to ascertain whether probable cause exists. *DeLaire*, 240 Ill. App. 3d at 1021.

¶ 36 The subpoena power of the grand jury is designed for its own use, and not to further independent investigations by the police or the prosecutor. *DeLaire*, 240 Ill. App. 3d at 1023. Subpoenas may be issued without advance authority of the grand jury, but only if the purpose of the subpoenas is to produce evidence for the use of the grand jury. *DeLaire*, 240 Ill. App. 3d at 1023.

¶ 37 Further, a law enforcement officer may be appointed by the grand jury to act as its investigator. 725 ILCS 5/112-5(b) (West 2014); *DeLaire*, 240 Ill. App. 3d at 1025; see also *People v. O'Dette*, 2017 IL App (2d) 150884, ¶ 51. As such, a duly-appointed investigator acts as an agent of the grand jury. *DeLaire*, 240 Ill. App. 3d at 1025.

¶ 38 Here, although defendant contends that there was no cause to support the appointment of over 400 law enforcement officers as grand-jury investigators, he does not dispute that Sergeant Anderson and Officer Hyde were duly-appointed grand-jury investigators. In that capacity, they were authorized to gather evidence, including via subpoenas, to assist the grand jury in its assessment of whether probable cause existed to indict defendant. As part of that responsibility, the officers reviewed the evidence gathered pursuant to the grand-jury subpoenas. They also used that evidence to obtain warrants to collect further evidence. More importantly, the evidence collected was ultimately turned over to the grand jury. The grand jury, in turn, relied on that evidence in determining that there was probable cause to charge defendant. Thus, the police did not conduct an investigation independent of the grand jury.

¶ 39 Although defendant relies on *DeLaire*, that case is distinguishable. In *DeLaire*, the police officer who gathered the evidence was not an authorized grand-jury investigator. *DeLaire*, 240

Ill. App. 3d at 1025-26. Therefore, this court held that the contents of the subpoenaed records could not be properly divulged to the officer. *DeLaire*, 240 Ill. App. 3d at 1026. Here, on the other hand, the officers were properly authorized grand-jury investigators.

¶ 40 Defendant's contention that the evidence collected pursuant to the subpoenas could not be used to obtain search warrants also lacks merit. The officers were authorized to gather evidence on behalf of the grand jury. One of the ways in which they did so was to obtain search warrants. Those warrants were supported by the evidence developed as part of the officers' duties as grand-jury investigators. Thus, the use of the warrants was entirely consistent with the officers' obligations to investigate on behalf of the grand jury.[1]

¶ 41 We next address whether the trial court abused its discretion in admitting exhibit Nos. 21-29, which consisted of summaries of business records maintained by Aon and several financial institutions. Relying on section 115-5 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-5 (West 2014)), defendant contends that those exhibits were created during the course of an investigation and in anticipation of litigation.

¶ 42 We begin by noting that defendant properly raised this issue in the trial court. Although he did not object to the exhibits when they were admitted at trial, he did object to the State's motion *in limine* seeking admission of the exhibits and further challenged their admission in his posttrial motion. See *People v. Denson*, 2014 IL 116231, ¶ 24. Thus, he did not forfeit the issue.

[1] We note that defendant contends that, between February and April of 2014, evidence was gathered improperly via the grand-jury subpoenas. The record shows, however, that, although defendant was charged by information on March 27, 2014, he was not indicted until May 14, 2014. Thus, no evidence was gathered via the grand-jury subpoenas after he was indicted.

¶ 43 Rule 1006 of the Illinois Rules of Evidence (eff. Jan. 1, 2011) provides that, where the contents of voluminous writings, recordings, or photographs, cannot conveniently be examined in court, they may be presented in the form of a chart, summary, or calculation. Case law also has allowed the trial court, in its discretion, to admit exhibits containing summaries when the original documents upon which the summaries are based are voluminous and cannot conveniently be examined by the trier of fact. *People v. Wiesneske*, 234 Ill. App. 3d 29, 40 (1992). The documents that are summarized, however, must be made available in court or at least to the opposing party. *Wiesneske*, 234 Ill. App. 3d at 40. More importantly, if the underlying data is admissible under the business-records exception to the rule against hearsay, a summary of that data may be admitted, thereby permitting a party to present a summary of voluminous business records to convenience the court. *Wiesneske*, 234 Ill. App. 3d at 41 (citing Fed. R. Evid. 1006); see also *People v. Crawford Distributing Co.*, 78 Ill. 2d 70, 77 (1979) (admitting a summary of over 1200 invoices); *F.L. Waltz, Inc. v. Hobart Corp.*, 224 Ill. App. 3d 727, 732 (1992) (admitting a summary of over 9000 invoices). Neither section 115-5(a) nor 115-5(c) requires that a summary of data be kept in the regular course of business. *Wiesneske*, 234 Ill. App. 3d at 41. Rather, it is the underlying data upon which the summary is based that must be kept in the regular course of business. *Wiesneske*, 234 Ill. App. 3d at 41.

¶ 44 In this case, defendant never challenged the admissibility of the business records underlying the summaries. Instead, he limited his challenge to the summaries themselves, contending that they were inadmissible as having been prepared for the criminal litigation. That contention fails, however, as the litigation limitation in section 115-5(c) applies only to the underlying business records and not the summaries. Indeed, such summaries by their nature will have been prepared for litigation. So long as the records that are being summarized qualify as

business records and are too voluminous to be convenient for the trier of fact, the summaries will be admissible, notwithstanding their having been prepared for litigation. Thus, the trial court did not abuse its discretion in admitting exhibit Nos. 21-29.

¶ 45 That leaves defendant's contention that the trial court erred in denying his motion to reconsider his sentence. In that regard, he argues that multiple acts of money laundering were aggregated in violation of section 111-4(c) of the Code (725 ILCS 5/111-4(c) (West 2014)), thereby voiding his sentence for that offense.

¶ 46 Defendant has failed to set forth a developed argument supported by relevant authority that his sentence for money laundering was void. Thus, that contention is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 47 Even if that contention were not forfeited, it lacks merit. His sentence was not rendered void, even if the trial court erred in imposing it. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 17-19. Thus, he cannot challenge his sentence as void.

¶ 48 To the extent that defendant contends that the trial court erred in denying his posttrial motion to vacate his money-laundering conviction, such contention fails. Count III alleged that defendant committed money laundering by engaging in a financial transaction involving proceeds from a theft. In turn, counts I and II each alleged a theft of over $1 million. Because the money laundering, as charged, involved the proceeds of theft exceeding $500,000, there was no improper aggregation.[2]

[2] We note that the amount of the thefts alleged in counts I and II was properly aggregated, as the thefts were part of a single intent and design to defraud Aon. See 725 ILCS 5/111-4(c) (West 2014).

¶ 49 Finally, we note that defendant raised several issues regarding a related civil-forfeiture proceeding. However, we granted the State's motion to strike those portions of defendant's brief. Further, those issues have been raised in a separate appeal. See *People v. Jenkins*, Nos. 2-17-0105 & 2-17-0331 cons. Thus, we do not address those issues here.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Lake County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 52 Affirmed.