

No. 1-13-3503

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 22753
)	
DOLORA ROMAN,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's felony theft conviction was affirmed where the State presented evidence that she purchased personal items with a credit card linked to her employer's bank account. In addition, the State could establish the \$500 amount needed for felony theft through a series of smaller transactions.

¶ 2 Following a bench trial, Dolora Roman, the defendant, was convicted of felony theft for the repeated use of a credit card linked to her employer's bank account to make purchases

totaling more than \$500. On appeal, defendant contends her use of the credit card did not constitute a theft because her employer, for whom she worked as a nanny, gave her the card to purchase food and other things for the family. Defendant further argues the State did not establish the \$500 amount required for felony theft because it was not shown her individual purchases were in furtherance of a single intention and design, as required by the statute. We affirm.

¶ 3 A one-count indictment charged the defendant with felony theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)) and alleged that defendant "in furtherance of a single intention and design, knowingly obtained or exerted unauthorized control over credit, United States currency and gift cards exceeding \$500 in value but not exceeding \$10,000 in value." The indictment further alleged that defendant intended "to deprive Erica Thomas [*sic*] permanently of the use or benefit of said property."

¶ 4 At trial, Erika Thomas testified that she employed defendant from January 18, 2010, until June 5, 2012. About three or four months after defendant started work, Thomas gave defendant an American Express credit card in defendant's name that was linked to Thomas's account. Thomas testified the card was to be used to purchase groceries or items the family needed and that she gave defendant a credit card because it left a "better paper trail."

¶ 5 Defendant initially left itemized receipts for her purchases, which Thomas would check against the monthly credit card statements. After about a year, defendant did not regularly submit receipts to Thomas. Thomas testified she "started to trust [defendant]" and defendant would leave receipts for Thomas's review less frequently. Thomas said she would review the receipts and "make sure that she wasn't charging anywhere besides basically the grocery store, unless I had authorized it." Thomas did not review each item purchased by defendant.

¶ 6 Thomas testified that on June 4, 2012, a couple who had previously employed defendant sent Thomas an e-mail that led Thomas to begin reviewing defendant's purchases more closely. The only recent receipt Thomas could obtain was from a Whole Foods supermarket, which showed defendant was "making charges for things that she wasn't authorized" to buy, such as "yoga magazines, lip balm, glucosamine vitamins, stuff that my family would never use."

¶ 7 On June 5, 2012, Thomas arrived home at about 2 p.m. and told defendant they needed to talk about the credit card charges. Defendant denied the charges at first but "eventually [] admitted to stealing." Thomas told defendant she was fired and told her to leave. Defendant locked herself in the bathroom. When Thomas opened the door, defendant ran to the kitchen and grabbed a knife, holding it up. Thomas called 911, and defendant put the knife down. Thomas asked defendant to return the credit card and her keys to the house, and defendant did so and left.

¶ 8 Thomas contacted American Express and received itemized receipts for the previous three months. Defendant's card had a different credit card number that was linked to Thomas's account, which enabled Thomas to isolate the charges made by defendant. The State introduced into evidence a summary of defendant's American Express charges during 2011 and 2012, and several receipts from two grocery stores. Defendant purchased more than \$7,000 in gift cards to Starbucks, iTunes, American Express and Sports Authority. Thomas testified that she had asked defendant to purchase one \$25 Target gift card in the past for a friend of Thomas's daughter. The receipts also showed purchases totaling about \$700 during times of the day and days of the week that defendant was not working for Thomas. For purposes of comparison, Thomas testified that defendant charged \$6,430.95 and \$5,354.98 in the first and second quarters of 2012, while the family's new nanny hired to replace defendant charged \$839.28 and \$819.99 in the third and fourth quarters of that year.

¶ 9 On cross-examination, Thomas stated that she and defendant had an oral employment agreement by which defendant arrived at 5:30 or 5:45 a.m. and stayed until 4:30 p.m. Thomas said defendant worked about 55 hours per week but only 40 hours were "on the books." Thomas paid defendant for the remaining 15 hours per week in cash. When asked if defendant and Thomas had "an arrangement [] using the credit card to offset certain charges with her against the overtime that was owed," Thomas replied, "Absolutely not."

¶ 10 Thomas said defendant shopped and cooked for the family and did laundry in addition to caring for her child. Defendant also had a Citibank MasterCard in Thomas's name that defendant used to pay for dry cleaning. Regarding the American Express card in defendant's name, Thomas said defendant was authorized to use that card "for the stuff I told her to use it for." Thomas did not scrutinize defendant's spending until she was contacted by defendant's prior employer.

¶ 11 Thomas said she recorded the June 5, 2012, conversation with defendant because she was concerned about her safety. Thomas did not tell defendant she was recording the conversation and did not know it was against the law to record someone without their consent. An audio recording of the conversation was played for the court. Thomas acknowledged, as memorialized on the recording, that she threatened to report defendant to "immigration" and told defendant she should leave Chicago.

¶ 12 At the close of the prosecution's case, defense counsel moved for a directed verdict, arguing the State had not presented proof of a "single intention or design" as charged in the indictment. The trial court denied the motion, noting that defendant purchased items for herself that totaled more than \$500. The defense presented no evidence.

¶ 13 The trial court found defendant guilty of felony theft as charged in the indictment. Defendant was sentenced to 18 months of probation.

¶ 14 On appeal, defendant seeks *de novo* review, arguing that her appeal involves whether the uncontested facts presented to the trial court satisfied the statutory elements of the charged crime. Defendant attempts to frame this issue as a question of law, citing *People v. Chirchirillo*, 393 Ill. App. 3d 916, 921 (2009). However, in this appeal, we find the defendant is challenging whether the evidence is sufficient to support her conviction. Therefore, the relevant question is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard does not allow the reviewing court to substitute its judgment for that of the finder of fact on questions involving the weight of the evidence or the credibility of the witnesses. *Jackson*, 232 Ill. 2d at 280-81.

¶ 15 Defendant first contends her use of the American Express card did not constitute a theft. She argues Thomas willingly gave her the card to use, along with "the accompanying line of credit," and her use of the card was therefore authorized. Defendant contends the State only alleged that she "violated the scope of the agreement" with Thomas as to the card. The State responds defendant exerted unauthorized control over the credit card, pointing to Thomas's testimony that defendant was given the card to purchase items for the family.

¶ 16 To sustain a conviction for theft under section 16-1(a)(1), the State must establish that (1) the defendant obtained or exerted control over the property of another, and (2) the control was unauthorized. *People v. Bailey*, 409 Ill. App. 3d 574, 589 (2011). Unauthorized control is

defined as control exercised over the property of another without the consent of the owner. *People v. Bullock*, 123 Ill. App. 2d 30, 33 (1970).

¶ 17 The State presented evidence that even though the American Express card bore defendant's name, the card was linked to Thomas's account and the charges were paid by Thomas. The State also presented evidence which established that contrary to the verbal agreement by which Thomas gave defendant the credit card, defendant used the card to charge items that were not for the family. Thus, it was shown that defendant spent Thomas's money in a way that was not authorized by Thomas and to which Thomas did not consent. Therefore, the State presented evidence which established that defendant used the credit card in an unauthorized manner, *i.e.*, in a way that exceeded her agreement with Thomas.

¶ 18 Defendant next contends that even if the elements of theft were established, the State did not prove felony theft because no single purchase exceeded \$500. She argues the State only showed she made a series of smaller purchases that individually constituted misdemeanor theft and did not prove she acted "in furtherance of a single intention and design."

¶ 19 Section 111-4(c) of the joinder statute (725 ILCS 5/111-4(c) (West 2010)) provides that two or more acts or transactions in violation of the theft statute may be charged as a single offense in a single count of the same indictment, information or complaint if such acts or transactions by one or more defendants are in furtherance of a single intention and design. Pursuant to section 111-4(c), the State may charge separate acts of misdemeanor theft as a single count of felony theft if the aggregated value is more than \$500 and if the separate acts are in furtherance of a single intention and design. See *People v. Walton*, 2013 IL App (3d) 110630, ¶ 22. 725 ILCS 5/111-4(c) (West 2010). When that is done, the allegation that the acts were in

furtherance of a single intention and design is an essential element of the offense. *Walton*, 2013 IL App (3d) 110630 at ¶ 23.

¶ 20 Defendant cites *People v. Brenizer*, 111 Ill. 2d 220 (1986); however, that case actually conflicts with her position. At issue in *Brenizer* was whether a series of individual acts by the defendant that by themselves would qualify as misdemeanor thefts could be charged as a single crime. *Id.* at 221. The *Brenizer* court held that a series of misdemeanor takings could be charged as a single felony offense if it was alleged the acts were "in furtherance of a single intention and design to obtain the property of a single owner" or persons having a common interest in the property and that the total value of the property taken will determine whether the theft constituted a misdemeanor or a felony. *Brenizer*, 111 Ill. 2d at 228-29. In this case, the indictment met that requirement by alleging that defendant knowingly obtained or exerted unauthorized control over credit, currency and gift cards totaling between \$500 and \$10,000 in value "in furtherance of a single intention and design."

¶ 21 For the same reason, the other case primarily relied upon by defendant on this point, *People v. Rowell*, 229 Ill. 2d 82, 96 (2008), is also distinguishable. In *Rowell*, unlike this case, the information did not cite the joinder statute or allege the thefts were in furtherance of a single intention or design. The *Rowell* court found the defense was not aware the State had to prove the thefts were in furtherance of a single intention or design. *Rowell*, 229 Ill. 2d at 97. The *Rowell* Court reversed the defendant's conviction for felony retail theft because the defendant was prejudiced when the information did not apprise the defense with sufficient specificity that the State would attempt to combine several thefts to establish a single felony. *Rowell*, 229 Ill. 2d at 96-97.

¶ 22 Defendant further argues the prosecution did not introduce any direct evidence of her mental state; however, a defendant's intent, as well as the element of unauthorized control, can be proved by circumstantial evidence. See *People v. Rucker*, 294 Ill. App. 3d 218, 226 (1998). Here, the State presented direct evidence that defendant exercised unauthorized control over the credit card because Thomas testified and explained the manner in which defendant was allowed to use the card. The State also presented evidence which established that defendant's acts were in furtherance of a single intention and design which was to steal from her employer. Defendant ended her practice of leaving receipts for her purchases for Thomas to review and began purchasing items that were not for use by the Thomas family. The items for defendant's personal use were purchased at stores at which defendant customarily purchased groceries for the Thomas family or were in the form of gift cards for other stores, which could be disguised in a charge on the American Express bill that would list a transaction at the grocery store but would not describe the items purchased.

¶ 23 In conclusion, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for the trial court to find the elements of the crime were proved beyond a reasonable doubt. The State's evidence established that even though defendant's employer gave her the American Express credit card to use and the card was in defendant's name, defendant used the card in an unauthorized manner. Additionally, the State alleged and presented evidence which established that defendant acted in furtherance of a single intention and design in making purchases with the card totaling more than \$500, thus meeting the threshold amount for felony theft.

¶ 24 Accordingly, the judgment of the trial court is affirmed.

¶ 25 Affirmed.