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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-248
)	
LESLIE MURDOCK,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions of identity theft were affirmed where the circumstantial evidence was sufficient to prove that defendant knew that the personal identification information that he used belonged to other people.
- ¶ 2 Following a bench trial, defendant, Leslie Murdock, was convicted of six counts of identity theft (720 ILCS 5/16-30(a)(4) (West 2014)). Defendant was sentenced to concurrent five-year terms of imprisonment on three of those counts. On appeal, defendant claims that the State failed to prove him guilty beyond a reasonable doubt, because the evidence did not show

that he knew that the names and social security numbers that he used belonged to real people. For the reasons that follow, we affirm defendant's convictions.

¶ 3

I. BACKGROUND

¶ 4 On March 27, 2014, defendant was indicted on 11 counts of identity theft, in violation of section 16-30(a)(4) of the Criminal Code of 2012 (Code) (720 ILCS 5/16-30(a)(4) (West 2014)). Common to those counts were allegations that defendant used the personal identification information of certain individuals to obtain utility services, knowing that the information was stolen or produced without lawful authority. Counts 1 and 2 alleged that defendant used James Donnelly's name and social security number to obtain Peoples Gas service at 2931 West Lexington Street, Floor 2, Chicago, Illinois. Counts 3 and 4 alleged that defendant used Donnelly's name and social security number to obtain Comcast services at 4122 West 15th Street, Apt. 2, Chicago. Counts 5 and 6 alleged that defendant used James Keller's name and social security number to obtain ComEd services at 5515 West Hirsch Street, Unit 2, Chicago. Counts 7 and 8 alleged that defendant used Richard Hejnal's name and social security number to obtain ComEd services at 12732 South Bishop Street, Calumet Park, Illinois. Count 9 alleged that defendant used James Bolton's name to obtain an account with T-Mobile associated with phone number (309) 807-6018. Counts 10 and 11 alleged that defendant used Larry Brookson's name and social security number to obtain ComEd services at 2931 West Lexington Street, Unit 1, Chicago. Defendant was indicted on two other counts of identity theft, in violation of section 16-30(e)(1)(D) of the Code (720 ILCS 5/16-30(e)(1)(D) (West 2014)). Specifically, counts 12 and 13 alleged that defendant knowingly committed three or more violations of the identity theft statute within a 12-month period.

¶ 5 A bench trial commenced on January 24, 2015. Du Page County probation officer John Mains testified that, when he prepared defendant's pretrial bond report, defendant told him that he was living at 4122 West 15th Street, Apt. 2, with his fiancé.

¶ 6 Larry Brookson testified that he lived in Glen Ellyn, Illinois, and worked for the U.S. Postal Service in Aurora, Illinois. He testified that he received a bill from ComEd for services at 2931 West Lexington Street. Brookson testified that he never lived at that address and never opened a ComEd account there. He never gave anyone permission to use his name or social security number to set up ComEd services at that address. Brookson did not know anyone who resided at 2931 West Lexington Street, and he did not know defendant.

¶ 7 Rick Hejnal testified that he lived in Downers Grove, Illinois, and worked for the U.S. Postal Service in Aurora. Hejnal believed that his personal identification information was stolen when he received a call from a postal inspector as well as a bill from ComEd for an address in Calumet Park. Hejnal testified that he never lived at 12732 South Bishop Street in Calumet Park, never obtained ComEd services there, and never gave anyone permission to use his name or social security number to obtain ComEd services there. Hejnal also testified that he did not know defendant.

¶ 8 James Donnelly testified that he lived in Naperville, Illinois, and worked for the U.S. Postal Service in Aurora. Donnelly testified that he filed a police report with the Naperville Police Department after he received a bill from Peoples Gas for services connected to a Chicago address. Donnelly testified that he never lived at 2931 West Lexington Street or obtained utility services there. Nor did he give anyone permission to use his name or social security number to obtain Peoples Gas services at 2931 West Lexington. Additionally, Donnelly testified that he received a bill from Comcast for services at 4122 West 15th Street in Chicago. He testified that

he never lived at 4122 West 15th Street, nor did he obtain Comcast services there. Donnelly did not give anyone permission to use his personal identification information to obtain Comcast service at that address. Donnelly further testified that he never knew anyone who lived at either 2931 West Lexington or 4122 West 15th Street; he did not know defendant.

¶ 9 James Keller testified that he lived in Naperville and previously worked for the U.S. Postal Service in Aurora. He filed a police report with the Naperville Police Department after he received a bill from ComEd for services at an address in Chicago that he did not recognize. Keller testified that he never lived at 5515 West Hirsch Street, never obtained ComEd services for that address, and never gave anyone permission to use his name or social security number to obtain services there. Keller testified that he did not know anyone who lived at that address and he did not know defendant or Bergita Brown.

¶ 10 Bergita Brown testified that she lived at 5515 West Hirsch Street, Unit 2. Before April 2010, she had ComEd utility services registered in her name at that address. She later lost her employment, was unable to pay her ComEd bills, and her services were disconnected. Brown testified that she contacted her aunt, Vicki Ware, who referred her to a man named “Doc.” Ware explained that “Doc” could reconnect Brown’s services. Brown called “Doc” at a phone number with a (309) area code. She gave “Doc” her address and told him that her ComEd services had been disconnected. After speaking with “Doc,” Brown’s ComEd services were restored in the name of James Keller. Nevertheless, Brown later failed to make ComEd payments, and her services were again disconnected. She then contacted “Doc” a second time. Brown testified that she met “Doc” in person and paid him \$100. After meeting with “Doc,” her ComEd services were restored in the name of Roy Mathem. Brown testified that “Doc” never explained how he intended to restore ComEd services at her address.

¶ 11 Brown further testified that, in July 2013, she met with two detectives of the Naperville Police Department. She viewed a photographic lineup and selected the man she identified as “Doc.” Brown made an in-court identification of defendant as the man she identified in the photographic lineup. On cross-examination, Brown testified that detectives from the Naperville Police Department first came to her apartment in January 2012; she lied to the detectives by telling them that the utility services were in her name. Brown also testified that Naperville police officers returned in April 2012, and she then admitted that she had ComEd utility services registered in others’ names.

¶ 12 Jeffrey Birkmeier testified that he worked for ComEd and was in charge of managing and storing the data associated with phone calls made to ComEd. Birkmeier explained how ComEd records, stores, and manages the data. Additionally, Birkmeier testified that State’s Exhibit 2 was a copy of a recorded phone call made on March 14, 2012, to ComEd from phone number (309) 807-6018. On the recording, a person identifying himself as Richard Hejnal set up a ComEd account for 12732 South Bishop Street using a social security number, date of birth, and an Illinois driver’s license number.

¶ 13 Donald Bisch, a civilian investigator with the Naperville Police Department, testified that in December 2011 he began an investigation concerning the stolen identities of U.S. Postal employees. On January 5, 2012, Bisch went to 5515 West Hirsch Street and spoke to Brown about her ComEd services; Brown stated that the services were always registered in her name. After Bisch obtained a grand jury subpoena for ComEd records associated with the 5515 West Hirsch Street address, he discovered that accounts had been set up in Keller’s and Mathem’s names. Bisch returned to 5515 West Hirsch Street and confronted Brown with that information. Brown then informed Bisch that she had contacted a man named “Doc” at (309) 807-6018 who

was able to reconnect her delinquent utility services under different names. Bisch also testified that Brown identified defendant in a photographic lineup as the person she knew as “Doc.”

¶ 14 Bisch further testified that the (309) 807-6018 phone number was “connected” to the name of James Bolton at the address of 4122 West 15th Street. Bisch spoke to Bolton in Plainfield, Illinois, and Bolton informed Bisch that he was unfamiliar with the phone number and that it did not belong to him. On July 12, 2012, Bisch and several other officers went to 4122 West 15th Street, where a woman named Elise Liberty answered the door. Defendant was also inside the apartment. Bisch testified that defendant agreed to talk about the investigation. Defendant told Bisch that he had a cell phone with the number (309) 807-6018, and he showed the phone to Bisch. Defendant also told Bisch that he was the only one who used that cell phone. Additionally, defendant stated that he previously lived at 2931 West Lexington before moving to 4122 West 15th Street. Bisch testified that the 2931 West Lexington address was associated with fraudulent accounts that postal authorities were investigating in connection with the stolen identities of other postal employees. Defendant was then arrested.

¶ 15 Additionally, Bisch testified that he interviewed defendant after he was taken into custody. Defendant again stated that (309) 807-6018 was his cell phone number and that he was the only person who used that phone. Defendant also stated that he simply made “referrals” for people with delinquent utility services. Specifically, defendant referred people with delinquent accounts to two other individuals who actually set up the accounts. Defendant explained that he was paid \$20 to \$40 for each referral, and he made only six or seven referrals in the past. Defendant also acknowledged that he “assisted” Vicki Ware and one of her relatives with utility services. Bisch testified that defendant further claimed that he was a low-level “middleman” who had nothing to do with the identities or names that were used to restore services. Defendant

made no comment in response to Bisch's questions as to why his cell phone placed a large number of phone calls to ComEd. Additionally, Bisch testified that defendant initially stated that he knew a "couple" mail carriers, but he later recanted and stated that he did not know anyone at the U.S. Postal Service. Bisch also testified that defendant did not provide any information as to the individuals who were "attaching" the stolen identities to the utility service accounts.

¶ 16 In addition to personally speaking to defendant, Bisch testified that he listened to several phone calls that defendant made from the Du Page County jail. Bisch was thus able to identify defendant as the person making the phone call to ComEd in State's Exhibit 2. Specifically, Bisch testified that he recognized defendant's voice as the one using Richard Hejnal's name and social security number to establish ComEd services at 12732 South Bishop Street. Bisch testified, however, that the date of birth and driver's license number that were used for Hejnal were incorrect.

¶ 17 On cross-examination, Bisch testified that he did not visit the 2931 West Lexington address, nor did he seek a "witness to say that Brookson or Donnelly's name was put on the account[s]" for that address. Bisch did not know who set up the accounts at 2931 West Lexington. Similarly, Bisch testified that he did not know who set up the Comcast account in Donnelly's name at 4122 West 15th Street. He also testified that defendant "essentially" stated that other people's names were being placed on delinquent accounts to restore services, although Bisch acknowledged that he never wrote that in his police report. Instead, Bisch wrote in his police report that defendant "denied knowing where the stolen identities came from and where the source of the information is."

¶ 18 After the close of the State's evidence, the trial court denied defendant's motion for a directed finding. Defendant did not present any evidence.

¶ 19 In its written decision, the court noted that *Flores Figueroa v. United States*, 556 U.S. 646 (2009), and *People v. Sanchez*, 2013 IL App (2d) 120445, required the State to prove, among other elements, that defendant knew that the personal identification information that he used belonged to real people. As to counts 1 and 2, which concerned the use of Donnelly's information at 2931 West Lexington, the court found defendant not guilty. The court reasoned that no evidence was presented as to when defendant lived at 2931 West Lexington, and the fact that he once lived there was insufficient to prove identity theft. For those same reasons, the court found defendant not guilty as to counts 10 and 11, which charged defendant with using Brookson's personal identification information to obtain ComEd services at 2931 West Lexington. Because the court found defendant not guilty as to counts 1, 2, 10, and 11, it necessarily found defendant not guilty of counts 12 and 13, which charged defendant with committing three or more identity theft violations in the specified time periods.

¶ 20 On the other hand, the court found defendant guilty as to counts 3 and 4, which charged him with using Donnelly's information to obtain Comcast services at 4122 West 15th Street. The court reasoned that the successful use of Donnelly's information with respect to the 2931 West Lexington address proved that defendant knew that Donnelly's identification information belonged to a real person when it was used at 4122 West 15th Street, which was defendant's address. The court further found defendant guilty as to counts 5 and 6, which charged him with using Keller's information to obtain ComEd services at 5515 West Hirsch Street. The court reasoned that ComEd services were established in Keller's name at that address after Brown contacted "Doc," whom she later identified as defendant. The court also found defendant guilty as to counts 7 and 8, which charged him with using Hejnal's information to obtain a ComEd account at 12732 South Bishop Street. The court found that State's Exhibit 2 established that

defendant used his cell phone to establish ComEd services in Hejnal's name, and Bisch identified the caller as defendant.

¶ 21 At the sentencing hearing, the court merged count 3 into count 4, count 5 into count 6, and count 7 into count 8. The court then sentenced defendant to concurrent five-year terms of imprisonment on the respective counts. Defendant timely appealed.

¶ 22

II. ANALYSIS

¶ 23 Defendant argues that the State failed to prove him guilty of identity theft beyond a reasonable doubt. Specifically, he argues that the evidence did not show that he knew that the names and social security numbers that he used belonged to real people.

¶ 24 In evaluating the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the 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. Hernandez*, 2012 IL App (1st) 092841, ¶ 13. "The standard for reviewing the sufficiency of the evidence in a bench trial is the same as in a jury trial and is applied by the reviewing court regardless of whether the evidence is direct or circumstantial." *Hernandez*, 2012 IL App (1st) 092841, ¶ 13. We will overturn a conviction if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the accused's guilt. *Hernandez*, 2012 IL App (1st) 092841, ¶ 13. But in assessing the sufficiency of the evidence, we do not retry the defendant, reweigh evidence, or substitute our judgment for the trier of fact concerning the credibility of a witness. *Sanchez*, 2013 IL App (2d) 120445, ¶ 18.

¶ 25 Section 16-30(a)(4) of the Code provides that a person commits identity theft when he or she knowingly "uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that

such personal identification information or personal identification documents were stolen or produced without lawful authority.” 720 ILCS 5/16-30(a)(4) (West 2014). The State must prove that the defendant acted knowingly. *Sanchez*, 2013 IL App (2d) 120445, ¶ 17. Knowledge is ordinarily proven by circumstantial evidence. *Sanchez*, 2013 IL App (2d) 120445, ¶ 25; see also *United States v. Valerio*, 676 F.3d 237, 244 (“When a crime has a knowledge element, it is well-established that knowledge may be proven by circumstantial evidence alone; indeed, it frequently cannot be proven in any other way.”).

¶ 26 Here, the State does not dispute that it was required to prove that defendant knew that the personal identification information that he used belonged to real people. Indeed, the State concedes that the authority relied on by defendant “provides the applicable law for the elements of identity theft.” Consequently, our analysis will focus solely on whether the State proved that defendant knew that the names and social security numbers that he used belong to other people.

¶ 27 We begin by noting that the State unquestionably proved that defendant knowingly used personal identification information that was not his. The evidence at trial showed that defendant personally used Hejnal’s name and social security number to establish ComEd services at 12732 South Bishop Street. Additionally, defendant used, either directly or indirectly as a “low-level middleman,” Keller’s personal identification information to establish ComEd services at 5515 West Hirsch Street (Bergita Brown’s residence). The evidence also showed that Donnelly’s identification information was used in 2010 to establish Peoples Gas service at 2931 West Lexington, as well as Comcast service at 4122 West 15th Street. Defendant lived at both addresses, which is circumstantial evidence that he was involved, whether directly or indirectly, in using Donnelly’s information to establish Comcast service at 4122 West 15th Street.

¶ 28 We must next determine whether the State proved that defendant knew that the personal identification information that he used belonged to other people. Defendant relies solely on *Sanchez*. In that case, the defendant bought a social security card and an Illinois identification card from a “random guy.” *Sanchez*, 2013 IL App (2d) 120445, ¶ 5, 8. The social security card had the defendant’s name imprinted on it, but it had a social security number that was not hers. *Sanchez*, 2013 IL App (2d) 120445, ¶ 6. The defendant used the social security card to obtain employment, during which time she showed the card to others, allowed it to be photocopied, and filled out federal and state tax forms using the information on the card. *Sanchez*, 2013 IL App (2d) 120445, ¶ 6. The defendant testified that she thought that the social security number was a “random and unassigned” number, a statement that she also made to investigators. *Sanchez*, 2013 IL App (2d) 120445, ¶ 8. The social security number, however, belonged to “an extremely good friend” of the defendant’s mother, whom the defendant denied knowing. *Sanchez*, 2013 IL App (2d) 120445, ¶ 9. But at trial, the victim testified for the defense that she was aware of the defendant’s excellent reputation for truthfulness and honesty. *Sanchez*, 2013 IL App (2d) 120445, ¶ 10.

¶ 29 This court reversed the defendant’s conviction of identity theft, holding that the State failed to prove that the defendant knew that the social security number belonged to another person. *Sanchez*, 2013 IL App (2d) 120445, ¶ 22. In reaching our conclusion, we reasoned as follows. The only direct evidence on the issue was the defendant’s testimony that she thought the social security number was a random, unassigned number that did not belong to anyone. *Sanchez*, 2013 IL App (2d) 120445, ¶ 22. Additionally, the fact that the defendant knew that the number did not belong to her did not imply “any knowledge” that it belonged to someone else, as the number could have been “made-up.” *Sanchez*, 2013 IL App (2d) 120445, ¶ 24. Furthermore,

the fact that the social security number “worked” in the sense that it allowed her to get a job did not establish that a “reasonable person should have known that it was the social security number of a real person.” *Sanchez*, 2013 IL App (2d) 120445, ¶ 24. Indeed, no evidence showed that the social security number was “identified by the Social Security Administration as being either genuine or fraudulent,” nor was there evidence that a real social security number worked “better” than a made-up number for employment purposes. *Sanchez*, 2013 IL App (2d) 120445, ¶ 24. This court also noted that the victim’s close friendship with the defendant’s mother did not, in itself, prove that the defendant knew that the number belonged to another person. *Sanchez*, 2013 IL App (2d) 120445, ¶ 32.

¶ 30 *Sanchez* is distinguishable. Here, the circumstantial evidence was sufficient to allow the trier of fact to find beyond a reasonable doubt that defendant knew that the personal identification information he used belonged to other people. Unlike in *Sanchez*, defendant did not merely use a single piece of identification information that he bought from a “random guy,” believing it to be made-up or otherwise fabricated. Instead, defendant used two pieces of personal identification information for three separate individuals. With respect to each individual victim, defendant had both the correct name and corresponding social security number. Moreover, and unlike in *Sanchez*, it was not merely a “coincidence” that defendant used names and corresponding social security numbers that belonged to actual people. The victims were not random individuals from the population at large. The victims were connected by the fact that they were all employees of the U.S. Postal Service at its Aurora facility. Defendant initially told Bisch that he knew mail carriers with the U.S. Postal Service, but, after he was asked to identify those individuals, defendant recanted and stated that he did not know any employees. “Statements or conduct indicating the defendant’s consciousness of guilt may

serve as circumstantial evidence supporting a conviction.” *Sanchez*, 2013 IL App (2d) 120445, ¶ 35. Defendant’s recantation, coupled with his explicit admission that he was a “middleman” in a larger scheme, is circumstantial evidence that he knew that the personal identification information that he used belonged to other people who were employees of the U.S. Postal Service.

¶ 31 *Sanchez* is distinguishable for the additional reason that defendant repeatedly used the personal identification information of other individuals to establish utility services at different addresses. In other words, defendant’s use of identification information on three separate occasions supports the reasonable inference that defendant knew that the information belonged to other people. An inference is a “conclusion as to the existence of a particular fact reached by considering other facts in the usual course of human reasoning. (Citation). A reasonable inference may support a criminal conviction.” *Sanchez*, 2013 IL App (2d) 120445, ¶ 28. Here, the successful use of Donnelly’s information at 2931 West Lexington (defendant’s former address), supports the inference that defendant knew that the information belonged to another person when he later used it at 4122 West 15th Street. Additionally, defendant’s willingness to use the identification information of two other U.S. Postal Service employees after “testing” the veracity of one supports the inference that defendant knew that the information belonged to other people.

¶ 32 Furthermore, and contrary to the situation in *Sanchez*, it is immaterial whether there was evidence concerning the verification procedures employed by the companies or whether real information worked “better” than fake information. Defendant’s repeated use of identification information supports the inference that defendant knew all along that utility services, particularly ComEd, requested both a name and social security number. The fact that defendant then

provided each company with accurate names and corresponding social security numbers supports the inference that defendant knew that the information would potentially be verified for authenticity. See, e.g., *United States v. Holmes*, 595 F.3d 1255, 1258 (11th Cir. 2010) (“The government did not prove that Holmes possessed detailed knowledge of the verification processes to which she subjected [the victim’s] personal information, but a reasonable jury could have found that Holmes knew at least that the Florida and federal governments requested and sometimes retained for many weeks detailed personal information to verify the authenticity of that information.”). Based on the above, a reasonable trier of fact could have concluded that defendant would not have used the personal identification information of the three individuals if he were not confident that they were actual people.

¶ 33

III. CONCLUSION

¶ 34 For the reasons stated, we affirm defendant’s convictions for identity theft.

¶ 35 Affirmed.