

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).

FILED

February 14, 2017
Carla Bender
4th District Appellate Court, IL

2017 IL App (4th) 140736-U

NO. 4-14-0736

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Scott County
RODNEY A. STURGEON,)	No. 12CF1
Defendant-Appellant.)	
)	Honorable
)	John P. Schmidt,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to support defendant's conviction for theft and the trial court's restitution order improperly included losses that were not the result of defendant's criminal conduct.

¶ 2 In December 2013, at a bench trial, the trial judge found defendant, Rodney A. Sturgeon, guilty of theft (720 ILCS 5/16-1(a)(1)(A), (b)(4.1) (West 2008)) because he used government funds from his employer, Alsey-Glasgow Water Commission (Commission), for unauthorized purchases. In June 2014, the court sentenced defendant to 30 months of probation with conditions including four weekends in jail and a payment of \$9,903.41 in restitution. Defendant appeals, arguing (1) the State failed to prove he knowingly committed theft and (2) the restitution order was unreasonable. For the following reasons, we affirm in part, vacate in

part, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 On February 9, 2012, the State charged defendant, ultimately amending the information three times. Count I of the last amended information charged defendant with theft of governmental property over \$300 and not exceeding \$10,000 (720 ILCS 5/16-1(a)(1)(A), (b)(4.1) (West 2008)) in that defendant knowingly exerted unauthorized control over property of the Commission by making unauthorized debit card transactions with the intent to permanently deprive the Commission use of said property. Count II charged defendant with official misconduct and alleged defendant acted in his official capacity to obtain a personal advantage for himself, knowing his acts were in excess of his lawful authority, when he made personal purchases with the Commission's funds (720 ILCS 5/33-3 (West 2008)).

¶ 5

These allegations against defendant arose from events occurring in October 2011, when defendant worked for the Commission as the comptroller. Sandy Reardon, the Commission's billing clerk, opened a bank statement that revealed debit card transactions she did not recognize. Reardon believed defendant was the only person with a debit card linked to the account because when the account was first opened, he requested that she get a debit card for him. The record reveals numerous debit card transactions, including purchases at fast food restaurants, hardware stores, grocery stores, a hotel, technology companies, Walmart, and office supply stores. When Reardon discovered these transactions, she brought them to the attention of the commissioners.

¶ 6

On October 19, 2011, the three commissioners (Mark Ryan, Chris Parker, and Charles Kline), defendant, and Reardon met. The commissioners confronted defendant about the

debit card purchases. Defendant said transactions were on the account that should not have been on there and he was willing to pay it back. The Commission told defendant he could resign or face termination. Defendant resigned and surrendered the debit card.

¶ 7

A. The State's Witnesses

¶ 8

1. *Sandy Reardon*

¶ 9 Reardon testified in October 2011, she was the billing clerk for the Commission, and her primary duties involved billing customers and paying the Commission's bills with checks. Reardon did not balance the account and stated that was defendant's responsibility. She never saw a bank statement until she opened the one in October 2011, giving rise to the case at bar. Reardon noticed debit card transactions on the bank statement that she did not recognize and knew only defendant had a debit card to the account, because he requested her to get it for him. Reardon brought this issue to the Commission.

¶ 10

Reardon testified when she began her training for her role as billing clerk, defendant told her not to worry about opening the bank statements and that he would take care of reconciling the checkbook. Reardon also testified she received reimbursement for gas from the Commission. Once a month, she would present a record of any mileage she put on her vehicle for the Commission. She would present this record to defendant, who would approve it and write her a check. On average, Reardon received \$67 per month for gas reimbursement. She was unaware of any other person receiving gas reimbursement and no one else knew about it. According to Reardon, she never used the debit card and the only instance she recalled the purchase of food occurred when the Commission purchased food for people working on a commission project during mealtime. Reardon stated prior to October 2011, no policy was in

place to approve bills before they were paid.

¶ 11

2. Mark Ryan

¶ 12 Mark Ryan testified in October 2011, he was a commissioner for the Commission. Ryan stated the Commission's bank statements revealed numerous charges that should not have been on there because they were unrelated to the Commission's business. There were charges for gas stations and convenience stores, including Baskin-Robbins ice cream. The Commission did not authorize any of the purchases made with the debit card. Until Reardon brought these items to the Commission's attention, Ryan was unaware there was a debit card issued on the Commission's account. The commissioners requested the past three years' worth of bank statements to review past transactions made on the account. Ryan's review of the statements revealed defendant had been writing himself paychecks two and three times a month for some time. Once defendant quit writing himself multiple paychecks a month, he began using the debit card. Ryan testified none of the debit card transactions were authorized by the Commission and he was unaware these purchases were being made.

¶ 13

The day after Reardon discovered the debit card activity and notified the commissioners, Ryan and the other commissioners met with defendant to discuss the bank statements. When confronted with the debit card transactions, defendant said he did extra work for the Commission and was "due some extra stuff." Defendant tried to get the Commission to let it go and offered to pay it back. Ryan did not remember if defendant indicated the transactions were work-related but did recall defendant stated he needed gas to get to work. Defendant admitted he had the debit card and returned it to the commissioners. Defendant resigned.

¶ 14 Ryan did not recall whether the Commission had a gas reimbursement policy and stated the Commission allowed the purchase of food for a project one time. Regarding specific charges on the account, Ryan could not say whether the hardware store purchases were work-related since the bank statement was not itemized. In January 2012, defendant came to Ryan's home to discuss the ongoing investigation. Ryan informed defendant he turned him in to the State's Attorney and defendant stated "[i]f he was going down, [Ryan] was going down with him."

¶ 15 *3. Chris Ingram*

¶ 16 Chris Ingram testified he was a commissioner from around 2007 to 2009, and defendant was in his role as comptroller. He stated the Commission would vote on bills before they were paid. He did not recall ever authorizing the reimbursement of gas or meals to employees. Ingram recalled the Commission often needed plumbing and office supplies and never told defendant he could not purchase those.

¶ 17 *4. Arnold Timmerman*

¶ 18 Arnold Timmerman was a commissioner for less than a year in 2010. Timmerman resigned because he felt he was not receiving answers on financial reports and the Commission was not holding regular meetings. The financial statements he received from defendant cross-referenced a pamphlet he did not receive. Even with a background in finance, Timmerman was unable to decipher the financial reports defendant provided. Timmerman was unaware of any reimbursement policies.

¶ 19 *5. Tom Hoots*

¶ 20 Tom Hoots testified he was a commissioner for about 15 years, until 2010. While

he served on the Commission, defendant was a commissioner and then comptroller. Hoots stated defendant often took care of the bills and the commissioners would only see the bills if there was a large bill. Hoots was unaware of any Commission policy that authorized the purchase of gas, meals, food, hotels, or satellite television service for employees. Further, the Commission did not preauthorize defendant to pay for any of those items. Hoots discussed a time when the Commission did not meet for over a year and defendant continued to pay the bills. During that time, he purchased items needed for the Commission, such as valves, meters, fittings, office supplies, and the like.

¶ 21

6. Chris Parker

¶ 22 Chris Parker testified he became a commissioner in 2011 when defendant was serving as comptroller. Parker first became aware defendant had a debit card linked to the Commission's account in September 2011, when defendant said he picked up parts for the Commission. The commissioners asked defendant how he paid for the parts and he said he used the debit card.

¶ 23

Parker explained the Commission was broke in October 2011, when the unauthorized purchases were discovered by Reardon. The Commission looked into its finances and discovered unauthorized debit card transactions and checks. Parker said the unauthorized debit card transactions included Baskin-Robbins ice cream, Meehan's Grocery Store, parking at the Hilton Hotel in Springfield, and a hotel in Kentucky. The Commission did not authorize reimbursement to defendant for any of these purchases.

¶ 24

Parker stated when the Commission first confronted defendant about the debit card transactions, defendant stated his personal debit card looks identical to the Commission's

debit card and it was a mistake. Defendant then said he was working in Springfield and did not have money, and he needed money to buy gas. At that time, defendant did not claim the debit card transactions were to purchase plumbing supplies. Defendant offered to pay the money back. Parker was only aware of Reardon receiving gas mileage reimbursement from the Commission for mileage she turned in for "running to get postage and stuff like that."

¶ 25

7. Bank Employees

¶ 26 Nanlyn Carlen and Mary Welsh of United Community Bank and Terry Moore of First National Bank of Winchester testified regarding the transactions made on the Commission's account. Each witness reviewed the Commission's statements and discussed the amount of the charges, dates, transaction locations, and the debit card associated with the transactions. The record shows initially two debit cards were associated with the Commission's account. Defendant held one debit card, and his sister, Roberta (Birdie) Sturgeon, the billing clerk before Reardon, held the other. The evidence showed which transactions on the Commission's account were initiated using Birdie's card and which were initiated using defendant's card.

¶ 27

8. Brian Jones

¶ 28 Brian Jones testified he was a general manager for Dish Network. Jones reviewed a Dish Network bill for an account associated with defendant's address. He determined on June 29, 2011, a payment to the account occurred utilizing a Visa card ending in 6350 for \$142.97. The Commission's bank statements reveal a Dish Network transaction on the same day for the same amount, however, the Visa card used to pay the bill did not match any of the debit card numbers associated with the Commission's account.

¶ 29

At the conclusion of the State's evidence, defendant requested a directed verdict

and the trial court granted defendant's request as to count II, the official misconduct charge.

¶ 30 B. Defendant's Witnesses

¶ 31 1. Steven Gilbreth

¶ 32 Steven Gilbreth testified he was a public professional land surveyor and he worked for Benton Associates for 22 years, where he mostly dealt with rural water groups and writing grants. The Commission had been a client of Benton Associates since before Gilbreth started working for them. Gilbreth primarily dealt with the Commission's account and assisted it with water projects and writing grants. Gilbreth would assist the Commission in preparing maps and plans, construction permit applications, and the like. Gilbreth testified he has known defendant for about 20 years and defendant was the only contact for information. Defendant would sometimes drop information into Benton Associates' drop box located in Jacksonville, Illinois. Gilbreth was familiar with the Commission's systems and stated its regular maintenance would result in replacing parts, which could be purchased at a hardware store in an emergency. However, he opined he would contact the suppliers and receive the parts directly to prevent voiding the warranty

¶ 33 2. *Gordon Jumper*

¶ 34 Gordon Jumper testified he was a certified public accountant and performed audits for governmental entities. Jumper audited the Commission for the first time in 2004 and knew defendant since around 2000. Defendant would provide information to Jumper for the audits. Jumper did not believe defendant left out or concealed information. In conducting the Commission's 2009 audit, Jumper did not see any questionable expenses. Jumper disclosed in his engagement letter the purpose of the audit was not to detect fraud, but if there were an issue

giving rise to fraud, he would have brought it to the attention of the Commission. Jumper explained if the Commission's books agreed with his independent verification of a bank statement, he would presume all transactions were included in the provided documentation for the audit. Last, Jumper said travel expenses such as fuel and food could be legitimate business expenses if specifically authorized by the Commission.

¶ 35

3. Kristine Hamilton

¶ 36

Kristine Hamilton testified she was friends with defendant's wife and was living with her and defendant. Hamilton was going through a divorce and defendant's wife needed assistance due to a medical condition. Hamilton moved into defendant's home to help with cooking, cleaning, and laundry. Defendant and his wife added Hamilton to their personal bank account, and she used the account, often daily for household items. At first, defendant would give Hamilton his personal debit card to make the purchases, but after a while, he would tell her to get into his wallet and get the debit card. Hamilton was never aware defendant had another debit card and never looked at the name on the card. She stated she used the debit card at the grocery store and gas stations. Hamilton looked over the Commission's bank statements and identified a number of transactions that she believed to be hers because they were near her work and would have been out of defendant's way to work.

¶ 37

4. Bill Clemons

¶ 38

Bill Clemons testified he served as a commissioner from 2005 to 2009 and married defendant's mother in 2005. Clemons testified defendant had a wide variety of duties while he served as comptroller such as running meetings, taking care of the books, and making purchases on behalf of the Commission. At times, Clemons would need to purchase items for

the Commission, and he did not have to seek approval before making the purchases. While he was on the Commission, he would sometimes call defendant and ask defendant to pick up some of these items for the Commission. Clemons believed defendant purchased these items at ILMO Products Company and Ace Hardware. He was unaware defendant had a debit card linked to the Commission's account and stated the Commission had a charge account with ILMO and Dorseys Sentry Hardware store.

¶ 39

5. Defendant

¶ 40 Defendant testified he worked for the Commission from 1981 until he was forced to resign in 2011. Defendant graduated from college in 1983 with a business degree with a focus in accounting. He started working for the Commission to help with its financial problems because it was not forcing collections on water bills. In 2004, the previous bookkeeper retired and defendant implemented an automated billing system. The Commission hired Birdie (defendant's sister) as a billing clerk to transition its information into the new computer program. Shortly after, defendant began using his personal debit card to make purchases for the Commission and decided to get a debit card linked to the Commission's bank account for Birdie and himself. The Commission never told defendant he could not get a debit card, and the Commission never voted on the issue. There was no policy for debit cards but defendant considered it to be the same as a check.

¶ 41 Defendant stated he used the debit card to purchase electronic parts, pumps, specialized light bulbs, and copper tubing and fittings. In October 2009, Birdie lost her position with the Commission. Defendant described this as a "bad time" and there were rumors that there was an investigation of the Commission. Birdie transferred \$3,000 of the Commission's funds to

herself, and once confronted, she admitted she stole the money and returned the funds. Subsequently, the Commission fired her. In mid-2010, Reardon was hired to replace Birdie. Reardon did the billing, printed checks, and retrieved the mail from the post office. Defendant said he would only get the mail when the Commission did not have a billing clerk and Reardon always opened the bank statements. Eventually, the Commission switched banks, and defendant received a new debit card. Reardon declined a debit card because defendant ordered the office supplies online and she found that more convenient than going to the store. Defendant said he paid the Commission's regular monthly bills without approval but did present large payments to the Commission. The Commission did not require prior approval to purchase office supplies or parts for equipment maintenance. Defendant stated, once he was no longer a commissioner and only comptroller, he became eligible to for gas and travel reimbursement for the Commission. Defendant provided many examples of the gas reimbursement policy. When the water mains began to fail, volunteers would help the Commission make repairs, and they would receive a \$100 check for their time and mileage. Clemons received payment for labor and mileage for his trips to pick up parts for repairs. Reardon received reimbursement for mileage used to go to the bank.

¶ 42 The Commission did not have its own vehicle, so defendant used his own vehicle while working on the Commission's projects. Defendant believed 80 to 90% of his driving was for the Commission, and he would use the debit card to fill up his gas tank about once a week. However, he never claimed this reimbursement on his income taxes. He stated prior to 2011, he would purchase gas on the debit card for his personal reimbursement, generators, pumps, and the local village's vehicle they used to transport gravel at tank sites. Defendant stated if someone

wanted gas reimbursement, they would turn in a sheet of paper with their mileage on it and he would give them a check. He stated gas reimbursement approval was not a policy of the board but it was "regular business."

¶ 43 Defendant recalled a few times the Commission reimbursed meals for those working on projects mentioned by the other witnesses. He also stated the food purchases on the debit card occurred when he was working at a church in Springfield but would use his lunch hour or work late for the Commission's business.

¶ 44 Defendant stated his personal debit card and the Commission's debt card were identical in appearance, except for their numbers. Defendant kept his personal debit card in the front of his wallet and the Commission's debit card in the back. Defendant would lend his debit card to Hamilton to make household purchases but never told her he had two identical cards on two different accounts. He did not think it was an issue to tell her there were different cards since he kept them separated in his wallet. Both debit cards had the same personal identification number.

¶ 45 Defendant identified the Ace Hardware purchases on the Commission's bank statement as purchases he made for cleaning supplies, trash bags, weed killer, rat poison, copper tubing to repair pumps, wiring, and other miscellaneous maintenance supplies. When defendant would visit Ace Hardware, he would make sure he used the Commission's debit card for its maintenance items and would pay for his personal purchases on a different transaction. Defendant identified a Home Depot charge as being for the Commission because he would have had enough Home Depot charges on his own account and he could not specify what was purchased.

¶ 46 Next, defendant explained the hotel charge on the Commission's debit card. He stated he traveled to Kentucky with his wife to visit Hamilton. Due to his personal debit card being declined, defendant used the Commission's debit card to hold the room. However, somehow the charge ended up on the Commission's debit card. When he returned home, he wrote a check to reimburse the Commission and deposited it himself.

¶ 47 Defendant explained the Walgreens transactions were for office supplies. If defendant was at Walgreens on a personal errand and knew the Commission needed something, he would get it at the same time but use separate transactions. Defendant explained the \$32.05 AT&T purchase was for a phone headpiece because he was making a number of calls on his way to work in Springfield for the Commission. The \$277.67 charge from AT&T was a payment on his phone bill for the "extra things and all the extra time [he] used for the *** Commission."

¶ 48 C. The Trial Court's Findings

¶ 49 The trial court filed a finding of the court and found defendant guilty of count I. The court made the following findings beyond a reasonable doubt.

¶ 50 The Commission is a water district that serves approximately 180 customers in Alsey and Glasgow, Illinois. The Commission is governed by a board of trustees who are appointed to serve the water district. Defendant served as a commissioner and as comptroller. As comptroller, defendant was responsible for paying the bills, accounting for receivables, and generally managing the finances of the Commission. Without the Commission's approval, defendant obtained a debit card associated with the Commission's account. Members of the Commission testified they never voted or approved the application for a debit card. In October 2011, Reardon reviewed a bank statement and saw charges she did not recognize. Many of the

charges were to merchants located in Springfield. Reardon notified the Commission and an investigation followed.

¶ 51 On October 19, 2011, the commissioners confronted defendant with the unauthorized debit card charges. A recording of the meeting shows defendant admitted he made the charges but had inconsistent explanations for his actions. Defendant claimed the charges were a mistake, but then he stated he felt the Commission owed him for all his time and effort, and finally he claimed he was broke and needed the money. Defendant told the Commission it had the power to make all this go away.

¶ 52 The testimony of the Commission's board proved beyond a reasonable doubt defendant obtained unauthorized control over the Commission's property and he intended to permanently deprive the Commission the benefit of said property. The State proved beyond a reasonable doubt the theft of monies was between \$300 and \$10,000 and the property was government property.

¶ 53 The trial court found defendant's explanation for the taking of the property to be unconvincing. Specifically, the court found defendant's explanation of Hamilton's use of the debit card telling because, as comptroller, it would only make sense he would recognize his mistake and rectify it. Further, defendant's position as comptroller allowed him to conceal his illegal activities and further his scheme to make unauthorized purchases on the Commission's account. Finally, the trial court found defendant's explanation of using the debit card for his gas reimbursement defied logic because he never sought authority to use the debit card in that manner. Instead, "[d]efendant took it upon himself to reimburse himself what he thought he was due ***, that is theft."

¶ 54

D. Sentencing

¶ 55 The presentence investigation report (PSI) indicates the State sought restitution in the amount of \$11,541.64 for debit card purchases and overdraft fees and \$4,685 for the extra paychecks he wrote himself. Attached to the PSI is a detailed list of all the transactions in which the State sought restitution, including the transaction dates, vendors, and amounts.

¶ 56 At the June 2014 sentencing hearing, defense counsel objected to the restitution figures provided in the PSI as being inaccurate and unreliable. More specifically, defendant argued a number of transactions on the State's restitution list were not part of the bill of particulars or the State's evidence at trial. Based on the evidence presented at trial, defendant believed the amount of restitution should not exceed \$4,700.88. Specific objections were made to the (1) hotel transaction that defendant already paid back, (2) \$142.97 Dish Network charge because it was associated with a card number not attributable to defendant, (3) Ace Hardware charges because no testimony was presented as to what those charges were for and they could have been purchases for the Commission, and (4) overdraft charges because those occurred when Birdie had control over the account.

¶ 57 The trial court sentenced defendant to, 30 months of probation including as conditions that he serve four weekends in jail and pay \$9,903.41 in restitution. The court subtracted the Dish Network charge and the overdraft fees from the State's requested restitution amount.

¶ 58 Defendant filed a motion to reconsider the sentence and argued, *inter alia*, the trial court's restitution order was an abuse of discretion because (1) it was not supported by evidence presented at trial or sentencing, and (2) the court relied on information in the State's

restitution list that was part of the PSI that was not accurate or reliable. At the hearing on defendant's motion to reconsider the sentence, he argued the PSI lacked probative value and reliability because the court did not impose restitution for items included on the State's restitution request, such as (1) the extra paychecks defendant wrote himself, (2) the Dish Network charge, (3) overdraft charges, (4) the hotel transaction that defendant already paid back, and (5) a Home Depot charge which was reimbursed by the Village of Alsey. Although, contrary to defendant's argument at the hearing on his motion to reconsider, the record indicates the hotel transaction that defendant paid back was part of the restitution order. Essentially, defendant argued, since the PSI supplement was proved to be unreliable, the court should determine the amount the State actually proved at trial and impose that amount as restitution.

¶ 59 The trial court denied defendant's motion to reconsider the sentence and found the figures in the supplement to be correct, relevant, and reliable.

¶ 60 This appeal followed.

II. ANALYSIS

¶ 62 On appeal, defendant argues (1) the State failed to prove he knowingly committed theft, and (2) the trial court's restitution order was unreasonable because it included transactions that were authorized and transactions that were not made by him. The State responds (1) the record clearly demonstrates the evidence was sufficient to prove defendant knowingly committed theft and, (2) the restitution order was proper and within statutory mandates.

A. Sufficiency of the Evidence

¶ 64 Defendant argues the State failed to establish he knowingly exerted unauthorized control over the Commission's funds. The State responds it presented sufficient evidence to

sustain his conviction.

¶ 65 "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." (Internal quotation marks omitted.) *People v. Davis*, 2014 IL App (4th) 121040, ¶ 27, 22 N.E.3d 1167. This standard of review gives the trier of fact the responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009). A conviction will be reversed when the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Daniels*, 2016 IL App (4th) 140131, ¶ 94, 58 N.E.3d 902.

¶ 66 A person commits the offense of theft of government property when (1) he knowingly obtains or exerts unauthorized control over property, (2) he intends to permanently deprive the owner the use and benefit of the property, (3) the value of the property is above \$300 and does not exceed \$10,000, and (4) the theft was of government property. (720 ILCS 5/16-1(a)(1)(A), (b)(4.1) (West 2008)). Defendant only takes issue with the first element and argues the State failed to prove he knowingly obtained or exerted unauthorized control of the Commission's funds.

¶ 67 Defendant raises four arguments to support his contention that the State did not prove he knowingly exerted unauthorized control over the Commission's funds: (1) the State only showed a lack of established policies, (2) the State offered no proof his purchases were illegitimate, (3) he believed he was acting within his authority when he made purchases on

behalf of the Commission, and (4) evidence showed he believed there was a gas reimbursement policy. We address each of these arguments in turn.

¶ 68

1. Policies

¶ 69 Defendant argues the evidence presented at trial showed the Commission had a lack of established policies and held that against him. Specifically, defendant argues no policy was in place requiring prior approval for purchases, and financial practices existed even if others were not aware of them. The State responds it did not need to prove a policy existed to prove defendant committed theft.

¶ 70 The evidence showed the Commission did not have an explicit list of policies but members were aware of its regular business practices. For instance, commissioners testified regarding a time when the Commission purchased meals for volunteers when they helped work on a project and worked through mealtime. The evidence showed the Commission did not have a policy in place that would allow defendant to reimburse himself for gasoline, meals, or expenses he incurred personally while working for the Commission. The evidence showed defendant could not unilaterally reimburse himself for such things as meals, cellular expenses, or gasoline.

¶ 71 Additionally, no one knew defendant was receiving reimbursement for these purchases because of his role as comptroller. Although Reardon received gas reimbursement, this is immaterial because defendant authorized her reimbursements. Evidence also demonstrated the Commission allowed Reardon to receive gas reimbursement. No evidence suggested defendant had ever requested reimbursement from the Commission for gas, meals, or other personal expenses he claimed he incurred while working for the Commission. Rather,

defendant claims this was a "regular practice," but not everyone was aware of it. However, the evidence presented at trial demonstrated this was not a regular practice for anyone on the Commission, other than the defendant.

¶ 72 Although the evidence did demonstrate a lack of established policies, it also showed a general understanding about practices that occurred. Nothing indicated the Commission authorized defendant to reimburse himself for the purchases, and it would be unreasonable for defendant to make this assumption. As the State points out, just because the Commission never told defendant he could not use its funds for reimbursement did not mean that he had the authorization to do so.

¶ 73 *2. Whether Purchases Were Legitimate*

¶ 74 Next, defendant argues the State failed to offer proof demonstrating these purchases were illegitimate. The State responds defendant admitted using the debit card, the evidence showed the purchases were illegitimate, and his conduct and statements once confronted with the transactions demonstrated the purchases were illegitimate.

¶ 75 Defendant focuses on the testimony provided by Ryan and Parker. Both commissioners observed the bank statements in court and testified the Commission did not authorize those transactions. However, defendant takes issue with the fact that Ryan and Parker joined the Commission in January 2011 and they were speaking to purchases made between February 2009 and October 2011. Defendant argues, since "their testimony was the sole evidence that any transactions were unauthorized, the State simply failed to offer evidence that any transaction occurring prior to January 2011 was unauthorized." However, defendant ignores the abundance of other testimony provided which stated the Commission did not provide

reimbursement for the types of purchases defendant made. Assuming *arguendo*, Ryan's and Parker's testimony was improper, defendant still spent more than \$300 of the Commission's funds between January 2011 and October 2011—when these commissioners would have actual personal knowledge of purchases made between those dates.

¶ 76 Defendant also argues no evidence showed the items actually purchased because the documentation regarding the bank transactions did not contain any itemization. The State argues the evidence presented demonstrated defendant admitted he was responsible for the debit card charges and the Commission did not authorize the purchases. The State also argues that defendant's own statements and conduct show the transactions were illegitimate. For instance, the State notes when defendant was first confronted about the transactions, he said he did enough work for the Commission and was "due some extra stuff," offered to pay the money back, and wanted the Commission to "just forget about it." The State also points out Ryan's testimony, that defendant threatened Ryan and stated if he was going down, he was going to take Ryan down with him. We agree with the State. The State presented evidence at trial that showed the Commission did not authorize defendant to reimburse himself for purchases. Again, evidence showed enough transactions totaling over \$300 that the Commission certainly did not authorize. Defendant's guilty state of mind also demonstrates his own belief that the Commission did not authorize reimbursement for his purchases.

¶ 77 3. *Defendant's Belief*

¶ 78 Defendant argues the State failed to prove he knowingly committed theft. Defendant relies on the lack of established policies for this assertion and states, because he helped develop the policies, he was "obviously aware of [them]." The State responds that

defendant's argument only focuses on his own testimony, and it was up to the trial court to determine the witnesses' credibility. For the reasons set forth above, we continue to find the evidence was sufficient to prove defendant used the lack of policies to his benefit and the Commission never authorized reimbursement to defendant. Defendant's argument that he created the policies, so therefore he ought to know what they are, is unconvincing because he was the only person that testified that the transactions he made were the type the Commission would reimburse.

¶ 79

4. Gas Reimbursement

¶ 80 Defendant's last argument challenging the sufficiency of the evidence used to convict him is that he believed he was entitled to gas reimbursement, so he purchased gas for himself using the debit card in lieu of writing himself a check. Defendant suggests the State failed to show he knew these gasoline transactions were unauthorized. The State argues the evidence showed the Commission did not approve a gas reimbursement policy for defendant, which was demonstrated by all of the testimony presented that none of the commissioners were aware he was reimbursing himself for gas. The evidence presented showed the Commission never approved gas reimbursement for defendant. Again, as our reasons set forth above indicate, we continue to decline defendant's assertion the State failed to prove he knowingly committed theft.

¶ 81 The evidence presented at trial demonstrated defendant used a debit card linked to the Commission's account for personal expenses. The State proved, beyond a reasonable doubt, defendant committed theft of governmental property above \$300 and not exceeding \$10,000 in that defendant knowingly exerted unauthorized control over property of the Commission by

making unauthorized debit card transactions with the intent to permanently deprive the Commission of the use of said property. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find all of the elements necessary beyond a reasonable doubt.

¶ 82

B. Restitution

¶ 83 Defendant argues the trial court's restitution order of \$9,903.41 was unreasonable because it far exceeded the amount proved or alleged to have been obtained without authorization. More specifically, defendant contends the State's bill of particulars alleged theft of \$6,741.41 and the State did not prove or present evidence of all the transactions alleged in its bill of particulars. Defendant also takes issue with specific transactions included in the court's restitution order: transactions made with Birdie's debit card, charges without evidence as to whose debit card was used, and the hotel transaction that defendant paid back.

¶ 84

The Unified Code of Corrections (Unified Code) statutorily authorizes the trial court to order restitution in a criminal case where a "person received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant." 730 ILCS 5/5-5-6 (West 2012). When a trial court assesses the amount of restitution to be paid in cash, it "shall assess the actual out-of-pocket expenses, losses, damages, and injuries" proximately caused by the defendant's criminal conduct. 730 ILCS 5/5-5-6(b) (West 2012). Those losses may include those not set forth in the charging instrument. See *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 36, 977 N.E.2d 909 ("[W]here a defendant is convicted of theft for the initial taking of items from the victim's possession, losses for items that were taken as part of the same theft but were not specifically listed in the charging instrument

may be included in a restitution order because the theft of multiple items from one victim involves a single course of conduct that constitutes one offense of theft.").

¶ 85 "Section 5-5-6 of the Unified Code does not mandate that the court fix the amount of restitution based upon any specific type of evidence, nor does the statute prohibit the parties from stipulating as to the proper amount ***." *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 40, 25 N.E.3d 1. However, a trial court may not order a defendant to pay restitution for sums extraneous to the charges before it. *People v. Clausell*, 385 Ill. App. 3d 1079, 1081, 904 N.E.2d 108, 110 (2008). A restitution order will only be reversed on appeal where the court abused its discretion. *People v. Graham*, 406 Ill. App. 3d 1183, 1193, 947 N.E.2d 294, 304 (2011). Such an abuse occurs when the court's ruling is fanciful, unreasonable, or when no reasonable person would adopt its view. *People v. Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431.

¶ 86 *1. The Evidence*

¶ 87 Defendant argues the trial court's restitution order was unreasonable because the State did not prove all of the transactions at trial and not all of the transactions were included in the bill of particulars. In essence, the State responds defendant was not authorized to have a debit card, and therefore, he should be accountable for all of the charges incurred. First, we disagree with the State's assertion that any transaction with the debit card was unauthorized because defendant was never authorized by the Commission to have a debit card. Parker testified defendant spoke of the debit card at a board meeting in September 2011, and although no one was aware he had a debit card at that time, the Commission took no action to seize the debit card or investigate the Commission's finances. The Commission only took action once Reardon brought the issue of unfamiliar transactions to its attention. Moreover, according to the

testimony provided by bank personnel, because defendant was authorized to write checks on behalf of the Commission for authorized purchases, we find it immaterial that he had a debit card, because a check and a debit card essentially have the same functionality.

¶ 88 As to defendant's argument, the Unified Code does not require any specific type of evidence to support an order for restitution. 730 ILCS 5/5-5-6 (West 2012); see also *Hanson*, 2014 IL App (4th) 130330, ¶ 40, 25 N.E.3d 1. The trial court could reasonably order restitution on charges not explicitly discussed at trial because those items are supported by circumstantial evidence. The transactions indicate the location, date, and type of vendor. Defendant was a creature of habit and often frequented the same type of vendors at the same location, and the same can be said about Hamilton when she was purportedly using the debit card. Therefore, the trial court did not abuse its discretion by ordering restitution on specific transactions that were not raised at trial. Additionally, defendant argues the restitution order was unreasonable because the court included transactions that were not included in the bill of particulars. Defendant does not argue the bill of particulars was insufficient, but rather, attempts to confine the State to evidence contained therein. Defendant fails to cite any authority that stands for the proposition that a trial court can only order restitution in a theft case based on the items contained in the bill of particulars. Therefore, this argument was forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); see also *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1 (a reviewing court is not a depository where the appellant may dump the burden of argument and research).

¶ 89 Nevertheless, defendant argues the State's restitution list was shown to be unreliable because the court removed the overdraft charges and the Dish Network charge from

the State's requested restitution amount. Defendant argues, because the court removed these charges from the transaction list, it was unreasonable for the court to adopt the rest of the document. We disagree. Removing charges from the State's restitution request did not render the entire document unreliable but rather demonstrated the court exercised its discretion in imposing restitution for losses it believed were attributable to defendant's criminal conduct. See 730 ILCS 5/5-5-6 (West 2012).

¶ 90

2. Transactions Not Attributable to Defendant

¶ 91

Next, defendant takes issue with the reasonableness of the restitution order because it included transactions the State did not prove to be attributable to him. The State's investigation dated back to February 2009, when two debit cards were associated with the Commission's account. The first debit card ended in 5733 and was assigned to defendant (which was later replaced by 3055) and the second debit card ended in 4611 and was assigned to Birdie (defendant's sister and the billing clerk). The record shows prior to Birdie's termination in October 2009, a number of transactions using the card assigned to her took place. These transactions were included in the restitution order. The court ordered \$4,931.33 in restitution for charges made on the Commission's account between February 2009 and October 2009. The transactions between February 2009 and October 2009 break down as follows: \$1,115.51 from Birdie's debit card; \$2,240.27 from defendant's debit card; and \$1,575.55 that is unaccounted for because no evidence in the record indicates the associated debit card number or purchaser. Additionally, the unaccounted for transactions were irregular and not repeated, which makes identifying the purchaser even more difficult. Since the record shows multiple debit cardholders during this time, it was an abuse of discretion to order defendant to pay restitution for

transactions (1) associated with Birdie's debit card and (2) without an identifying purchaser, as the evidence presented at trial did not show these losses stemmed from defendant's criminal conduct.

¶ 92

3. Hotel Transaction

¶ 93 Defendant also raises issue with the restitution order because it included the hotel transaction for \$202.50 that he already paid back. The State argues defendant forfeited this argument because defendant failed to object to this amount at sentencing and did not specifically include this issue in his motion to reconsider.

¶ 94

At the sentencing hearing, defendant objected to the restitution request and argued it was unreliable because it included items not proved at trial and items not contained in the bill of particulars. Defendant specifically mentioned it included a charge of \$202.50 he already paid back (the hotel charge). In his motion to reconsider, defendant continued his argument that the restitution list was unreliable. Defendant stated the list was unreliable because the court removed items from it before imposing its sentence, suggesting the list was inaccurate. In making this argument, counsel was erroneously under the impression the court removed the hotel charge from the restitution list when he said, "[the] [c]ourt threw out the amount that *** [d]efendant had already paid back on the hotel room." In defendant's brief before this court, he states this issue was preserved for review because "defense counsel specifically mentioned the hotel charge when arguing that the restitution amount was incorrect during the hearing on the motion to reconsider the sentence." Although we agree mention was made of the hotel transaction, counsel stated the hotel transaction was removed from the restitution list, when in actuality, it was not. The only mention of the hotel charge during the hearing on defendant's

motion was concerning why the restitution order was unreliable. No challenge was made to the hotel transaction itself. In fact, at that time, defense counsel believed the hotel transaction *was not* part of the restitution order, even though it was. Therefore, the issue regarding whether the restitution order was proper when it included the hotel transaction has been forfeited.

¶ 95

III. CONCLUSION

¶ 96 Accordingly, the portion of defendant's sentence ordering him to pay restitution in the amount of \$9,903.41 is vacated, and the cause is remanded with directions to the trial court to recalculate defendant's restitution order without Birdie's debit card purchases and transactions between February 2009 and October 2009 where the purchaser was not identified. In all other respects, the judgment of the trial court is affirmed. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 97

Affirmed in part and vacated in part; cause remanded with directions.