

**NOTICE**

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2018 IL App (4th) 170071-U

NO. 4-17-0071

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 8, 2018

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
REBECCA MINICK,	)	No. 13CF1995
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Holder White and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding (1) the State provided sufficient evidence for the trial court to find defendant committed theft and (2) defendant has not shown ineffective assistance of counsel. The appellate court also modified defendant’s restitution amount to \$10,213.

¶ 2 Following a 2016 bench trial, defendant, Rebecca Minick, was found guilty of three counts of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)). In January 2017, the trial court sentenced defendant to 30 months of conditional discharge and repayment of \$10,500 in restitution and fines. Defendant appeals, arguing (1) the State failed to prove her guilty beyond a reasonable doubt and (2) trial counsel was ineffective. We affirm the trial court’s ruling but modify the restitution amount to reflect the State’s concession it should be lowered by \$287.

¶ 3 I. BACKGROUND

¶ 4 In December 2013, the State charged defendant with three counts of theft, a Class 3 felony (720 ILCS 5/16-1(a)(1)(A) (West 2010)) (counts I, II, and III). The charges were amended in August 2015 as counts IV, V, and VI. Counts IV and V allege defendant knowingly exerted unauthorized control over property exceeding \$500 by taking cash currency during the course of her employment at The Blind Pig and The Twilight Lounge, respectively. Count VI alleges defendant knowingly exerted unauthorized control over property exceeding \$500 in the form of unauthorized bonuses while employed at The Twilight Lounge. The following is a summary of the evidence presented during defendant’s bench trial on counts IV, V, and VI.

¶ 5 A. State’s Case in Chief

¶ 6 1. *David Krchak*

¶ 7 David Krchak, an employment law attorney, testified that Christopher Knight, owner of the Blind Pig and Twilight Lounge, requested a meeting with him on July 20, 2011. Christopher Knight sought Krchak’s opinion on whether and how to terminate defendant as manager of The Blind Pig and The Twilight Lounge.

¶ 8 2. *Andrew Gravlin*

¶ 9 Andrew Gravlin is the current manager of both the Blind Pig and The Twilight Lounge and was instructed in his managerial duties by defendant. He testified his responsibilities and the steps required to carry them out are substantially the same as when defendant was the manager. He stated as manager of both businesses, he has significant control over day-to-day operations as well as exclusive control over payroll, quarterly taxes, and generating W-2 forms for tax purposes.

¶ 10 Gravlin described the daily process of “counting down the drawers” of the registers for both businesses in the morning for the previous day. First, he removed \$440 from

the total cash of each register and put it back in the register. This money was called “the float” and was used by the bartenders to make change. He would then count the remaining money from each register for The Blind Pig and The Twilight Lounge separately. Finally, he wrote the total amount of cash for each business on the daily envelopes and filled out a deposit slip to take with the cash to the bank. He stated this is a job almost exclusively done by the manager.

¶ 11 After the money was counted and the envelope and deposit slip filled out, the money was kept on a desk being monitored by a security camera at the Blind Pig and in a locked office at the Twilight lounge, as it was when defendant was the manager of both businesses. Gravlin stated usually the money was and should have been deposited on the same day, leaving little time for someone to take any cash. Gravlin also testified that any discrepancy between money “counted down” and money deposited at the bank would not be attributable to an employee stealing during a work shift as any such money would already be missing prior to being “counted down.” He testified two possible reasons for a discrepancy between the daily envelope and the deposit slip were either a miscount of the money initially or someone taking money from the amount to be deposited. After the money was “counted down,” Gravlin testified managers were required to send a daily email to Knight stating the amount of money recorded on the envelope.

¶ 12 In 2013, Gravlin compared past daily envelopes and deposit slips filled out and submitted at the bank by defendant in the defendant’s handwriting. He was able to identify in court 46 instances of defendant depositing “shortages,” meaning that the amount deposited by defendant was less than what was recorded on the daily envelopes. Gravlin testified he was not permitted as a manager to take money from the deposits and the persistent pattern of shortages

ceased after defendant stopped working at the two locations. While shortages do occasionally still happen, Gravlin testified there have only been “a handful” in the past three years.

¶ 13 Gravlin also testified to his knowledge of the existence of defendant’s roof loan from Knight. He explained the printouts from “QuickBooks,” the restaurants’ payroll and accounting system, indicated defendant had paid off \$6000 her roof loan with bonuses ranging from \$250 to \$3000 in 2011 and 2012, oftentimes using nearly all of her paycheck to make roof loan payments. Gravlin testified as manager the largest bonus he had received was for \$1000, he never received bonuses in consecutive pay periods, and he received bonuses five or six times in the three years since becoming the manager. Gravlin received bonuses orally from Knight and only from Knight then manually entered them in “QuickBooks” himself as Knight did not have the password and would have to ask either Gravlin or Overstreet, the businesses’ accountant, for the password. In Gravlin’s three years as manager, he testified Mr. Knight had never asked for the password.

¶ 14 *4. Bob Overstreet*

¶ 15 Bob Overstreet testified he is the accountant for The Blind Pig and Twilight Lounge and has been since its inception. His responsibilities include preparing the yearly, federal income taxes. He testified from 2009-12, he would receive the tax information from defendant in the form of “QuickBooks.” If he had questions about any information contained in “QuickBooks,” he would ask defendant for clarification. After Overstreet finished preparing the taxes, Knight would come in to sign the forms, but Overstreet testified Knight never questioned any aspect of the tax preparation.

¶ 16 He also testified Knight had never questioned him about individual compensation. Overstreet explained in the preparation of the corporate tax forms, Knight’s compensation would

be individually recorded as an officer of the corporation, but the compensation for the remaining employees would be added together to form one figure. Knight would have to specifically inquire of an individual's compensation in order to know that amount. For this reason, Overstreet was not able to spot "red flags" in the preparation of taxes because sums were not individualized. Further, Overstreet testified in his knowledge as an accountant W-2 forms do not breakdown pay rate changes or bonuses.

¶ 17 Overstreet testified he received a copy of defendant's roof loan and repayment schedule as part of the information needed to prepare the businesses' taxes. He did not speak with Knight about the roof loan until 2013 when Knight specifically inquired as to how and in what increments defendant paid off the loan.

¶ 18 *3. Christopher Knight*

¶ 19 Knight testified as the owner of The Blind Pig and The Twilight Lounge. Knight's system of ownership can be described as hands off. Knight testified that he did not handle or oversee the payroll, tax preparation, or daily accounting and deposits; use the "QuickBooks" system; or take charge of the day-to-day management or problem solving of the business. He testified those duties had always been handled by the manager, but the manager never had authorization to take "any currency from the daily revenue of the business." Occasionally, he would take deposits to the bank if the manager was busy and he had time. He had never had or requested to know the password to "QuickBooks."

¶ 20 In 2010, Knight's father died, and he began spending extended periods of time in England to settle his father's estate. In October 2010, Knight loaned defendant \$22,000 for a new roof. He testified in July 2011 he sought legal counsel from Krchak regarding defendant's employment. Knight testified that his working relationship with defendant had become

“untenable” as “she was rude and harder to deal with and wasn’t responding to things I would ask her to do.” He ultimately decided not to fire defendant because she informed him she would be leaving within the year. Also, Knight testified because he was out of the country for weeks at a time, it would have been difficult to quickly find and train another manager.

¶ 21 Knight testified at no point after his conversation with Krchak did he authorize any bonuses for the defendant because he was unsatisfied with her performance. He further testified he did not authorize bonuses to expedite defendant’s loan repayment or ever give bonuses in consecutive pay periods, and certainly not in the amount of \$3000. Knight stated he never used “QuickBooks” or checked individual payroll information and did not know defendant was receiving sometimes thousands of dollars in bonuses to pay back the roof loan he gave her. By the time defendant quit in April 2012, Knight was under the impression defendant had paid off the entirety of her loan.

¶ 22 Knight became suspicious in April 2013 when he saw defendant socially and had the impression “she really disliked [him]” to the point that “she may not have been as honest as [he] thought.” After this incident and speaking with Overstreet, Knight was made aware of the unauthorized bonuses. Upon further investigation with the help of Gravlin, Knight discovered the 46 instances of shortages.

¶ 23 As to the shortages, Knight testified defendant was aware she had the duty to alert him of any shortages in her daily emails and had in the past. In fact, defendant’s reporting of such instances had resulted in Knight and defendant discovering an employee had been stealing from the businesses. Defendant did not alert Knight of any of the 46 shortages at issue here. Knight testified the security videotape keeps prior footage for two weeks and because defendant did not alert him to any shortages, he did not check the tape.

¶ 24 Knight acknowledged other people had access to the area where the deposit money was kept. He further testified he did not analyze the tax returns prepared by Overstreet or access “QuickBooks” to monitor payroll even though he would have had access had he asked for the password. Knight confirmed he gave bonuses orally without any written confirmation, and he did not specifically remember any bonus given to either defendant or Gravlin. In addition, he did not require a promissory note for the loan he gave defendant. Knight admitted the shortages could have been the result of a miscount but again stated defendant never alerted him to such occurrences as was the policy.

¶ 25 B. Defendant's Case in Chief

¶ 26 1. *Defendant*

¶ 27 Defendant testified she was the manager of The Blind Pig and The Twilight Lounge from 2009 to 2012. Defendant maintained her innocence in regard to the charges of felony theft relating to both the missing currency from the deposits for the businesses and the disputed bonuses. She agreed as to the daily procedures and tasks she was to follow in running the businesses as testified to by Gravlin.

¶ 28 Defendant claimed she was never aware Knight was unsatisfied with her performance as manager. Defendant maintained Knight orally gave her all of the bonuses she recorded in “QuickBooks” and had she not wanted him to know, she would not have entered them in software to which both she and Knight had access. She could not explain, however, how she managed to pay her other bills and expenses when oftentimes, almost all of her paycheck went to paying off her roof loan.

¶ 29 Defendant agreed that if someone had stolen money from the deposits before she counted it, that money would be reflected in the “over/under” for the day and would not result in

a discrepancy between the daily envelope and the deposit slip. She claimed a miscount was probably the reason for the differing figures but any other employee could have taken the money. Defendant described the area where the deposits were kept as open to all other employees in the businesses. She testified bartenders would be in the basement multiple times a day in the course of their work but she also acknowledged there were security cameras recording the area and someone would have to pass by the camera to reach the money. Further, she acknowledged she made enough mistakes filling out deposit slips resulting in her being corrected at the bank to “feel silly about it.” She testified depending on who was working at the bank, she would either initial a change on the deposit slip or be asked to fill out a new one. Upon looking at the State’s evidence of shortages, defendant agreed that 39 of the 46 shortages were for over \$100. She also agreed that 25 of the 46 errors were for exactly \$120 and all but one shortage was for an even amount in \$10 increments. Defendant testified she had brought instances of shortages to Knight’s attention in the past, and he had not made any changes to the daily accounting procedures so she felt it was pointless to continue alerting him although she knew it was part of her duties. Defendant never took the deposits to her house.

¶ 30 C. Trial Court’s Guilt Finding, Posttrial Motions, and Sentencing

¶ 31 In July 2016, the trial court found defendant guilty on counts IV, V, and VI. Following the appointment of new counsel, in December 2016, defendant filed a motion for a new trial. Defendant alleged, in relevant part, the State failed to prove her guilty beyond a reasonable doubt and she was provided ineffective assistance of counsel. The trial court denied this motion. In January 2017, the trial court sentenced defendant to 30 months of conditional discharge and repayment of \$10,500 in restitution and fines.

¶ 32 This appeal followed.

¶ 33

## II. ANALYSIS

¶ 34 On appeal, defendant argues (1) the State failed to produce sufficient evidence for the trial court to convict her on the three counts of theft and (2) trial counsel was ineffective in failing to introduce exculpatory evidence and subpoena a witness to present impeaching evidence.

¶ 35

### A. Sufficiency of the Evidence

¶ 36 Defendant argues the State failed to prove her guilty beyond a reasonable doubt because (1) the State did not prove the *corpus delicti* of the crime, *i.e.*, it failed to prove a crime had been committed, and the trial court failed to examine all of the exhibits and draw the proper conclusions (counts IV and V); and (2) Knight is an unreliable witness who made conflicting statements with regard to giving bonuses and failing to remember them (count VI). We disagree.

¶ 37

#### 1. *Standard of Review*

¶ 38 When a reviewing court considers a challenge to the sufficiency of the evidence it must determine, “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The function of a reviewing court is not to retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). Instead, it is “to carefully examine the evidence while giving due consideration to the fact that the [trial] court and jury saw and heard the witnesses.” *Id.* The trier of fact is not required to find each link in the crime proved beyond a reasonable doubt but rather assess whether the evidence, taken together, is sufficient to prove defendant’s guilt beyond a reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750 ¶ 60, 958 N.E.2d 227. The trier of fact is

not required to seek out all probable explanations consistent with finding the defendant innocent and equate them with reasonable doubt, nor disregard reasonable inferences stemming from the evidence presented. *Id.* This court will not reverse a conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276 (1985).

¶ 39 2. Cash Deposits

¶ 40 Defendant asserts the State failed to meet its burden to establish theft from the currency deposits of The Blind Pig and The Twilight Lounge. A person commits the offense of theft when she “knowingly: (1) [o]btains or exerts unauthorized control over property of the owner \*\*\* and (A) [i]ntends to deprive the owner permanently of the use or benefit of the property” 720 ILCS 5/16-1(a)(1)(A) (West 2010). “A conviction can be based solely on circumstantial evidence.” *People v. Friedland*, 202 Ill. App. 3d 1094, 1102, 560 N.E.2d 1012, 1018 (1990).

¶ 41 Defendant relies on *People v. Frig*, 100 Ill. App. 3d 602, 426 N.E.2d 1251 (1981). In *Frig*, the State charged Barbara Frig with theft under the theory that she had stolen money from a restitution fund for which she was responsible. *Id.* at 603. An audit of the fund revealed over \$8000 was missing. *Id.* at 604. The money was not kept in a locked enclosure, everyone in the office knew where it was, there were no regular procedures required in terms of depositing the money to the bank, and the money had been transported irresponsibly during an office move. *Id.* at 603-05. The court emphasized the State provided no evidence in change of lifestyle saying, “There was no evidence that Mrs. Frig had made any large purchases, deposited more money in her personal bank account than she \*\*\* received as earnings, \*\*\* or had upgraded her standard of living in any way. There was no evidence that she was in any financial difficulty.” *Id.* at 606.

The court said it would not guess or speculate whether she had taken the money and reversed her conviction. *Id.* at 605.

¶ 42 This case is distinguishable from *Frig* as the court here does not have to guess or speculate as to who took the money. Unlike *Frig*, defendant had daily accounting responsibilities. *Id.* at 603. At trial, the State established defendant had control over the deposits and was not permitted by Knight to take money from the deposits. Defendant would count out the deposits in the morning for the previous day and knew of the expectation the deposit be taken to the bank on the same day barring an extenuating circumstance. Any money missing from the total amount up to that point would be recorded as an “over/under” and not a shortage. Defendant was responsible for filling out the daily envelope as well as the deposit slip and would have to initial any changes on the deposit slip if the amount originally written was less than the amount to be given to the teller to be deposited. Unlike in *Frig* where the money was not discovered to be missing until the office moved locations, defendant was put on notice of each of the 46 times the deposit slip was less than the amount recorded on the daily envelope. See *Frigg*, 100 Ill. App. 3d at 605.

¶ 43 Like in *Frig*, defendant established at trial should any time lapse occur between counting out the money and taking it to the bank, multiple other people had access to the area where the money was kept. See *Frig*, 100 Ill. App. 3d at 604. However, defendant did not alert Knight any of the 46 times that a shortage in question occurred. The trial court stated, “she knew her job as manager was to call [shortages] to Mr. Knight’s attention. She had done so before. \*\*\* She never mentioned to Mr. Knight that there were sizable amounts of cash, over \$5000, total, that were missing.” If defendant had alerted Knight in relation to any of these incidents, he could have checked the security camera but the footage is only kept for two weeks. Defendant was

aware of the camera and its recording settings but claimed she had told Knight of shortages in the past and he had done nothing about it. This conflicts with defendant's testimony she had alerted Knight to shortages in 2009 resulting in catching and firing an employee who was stealing.

¶ 44 Here we have evidence of a change in lifestyle the court emphasized in *Frig* as conspicuously missing. See *Frig*, 100 Ill. App. 3d at 606. Before the start of the series of repeated shortages, defendant took out a roof loan from Knight. Oftentimes defendant would make payments toward that loan in amounts for nearly the total amount of her paycheck. Defendant could not explain how she made roof payments using almost all of her pay and continued to pay for her other expenses. The roof loan was also conveniently paid off by the time defendant left her job as manager.

¶ 45 Defendant also argues the trial court incorrectly labeled the 46 instances of shortages as a pattern instead of random miscounting errors and in fact some deposits were not shortages at all. The State concedes that mislabeling occurred as to some deposits. We agree the evidence indicates the exhibit the trial court relied upon states extra amounts of restitution and therefore reduce defendant's restitution by \$287. As to the other recorded shortages – over 40 – the evidence produced at trial shows defendant deposited less money than what should have been deposited in an aggregate amount of over \$500 and never alerted Knight to these shortages. The evidence also showed half of the shortages were for the same amount, \$120; a vast majority were for over \$100; and all but one were for even amounts in multiples of \$10.

¶ 46 The State presented the trial court, as the trier of fact, with sufficient evidence to reach the conclusion defendant had committed the crime beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 278. The trial court found sufficient evidence, in the aggregate, to

hold that the defendant had stolen the money from the deposits. See *Jonathon C.B.*, 2011 IL 107750 ¶ 60. The evidence here was neither so unlikely or improbable as to reach the threshold level of a reasonable doubt as to defendant's knowing, unauthorized control over the money with the intent to deprive Knight of it permanently.

¶ 47 *3. Unauthorized Bonuses*

¶ 48 Defendant also asserts the State failed to meet its burden to establish theft in the form of unauthorized bonuses issued on her paycheck from The Twilight Lounge. A person commits the offense of theft when she “knowingly: (1) [o]btains or exerts unauthorized control over property of the owner \*\*\* and (A) [i]ntends to deprive the owner permanently of the use or benefit of the property” 720 ILCS 5/16-1(a)(1)(A) (West 2010). The function of a reviewing court is “to carefully examine the evidence while giving due consideration to the fact that the [trial] court \*\*\* saw and heard the witnesses.” *Smith*, 185 Ill. 2d at 541. Thus, the trial court's findings regarding witness credibility and resolving conflicts in evidence will be given great weight. *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007). We will not reverse a conviction “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.” *Collins*, 106 Ill. 2d at 261.

¶ 49 Defendant asserts the State failed to meet its burden where it relied on Knight's testimony which defendant classifies as unreliable. Knight repeatedly testified he could not remember circumstances of particular bonuses or whether he authorized them. Defendant also argues Knight was put on notice of defendant's bonuses when he signed his tax return. These arguments ignore the weight the trial court gave certain pieces of evidence and testimony when finding for the State.

¶ 50 The trial court did not rely solely on Knight's testimony. The trial court stated "there is one more factor that corroborates Mr. Knight's position, and that is the contact with his lawyer, Mr. Krchak." Krchak testified without "motive [or] bias, and did not bolster the later investigation." "[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228, 920 N.E.2d 233, 242 (2009). Here, Krchak's testimony corroborated Knight's testimony he did not authorize those bonuses because he was unhappy with defendant's work.

¶ 51 Defendant's contention Knight was put on notice of the bonuses when he signed his taxes ignores the unrebutted testimony, *i.e.*, tax returns do not separate employee wages or payroll.

¶ 52 The trial court found "a legitimate argument here that the State has made that the timing of the bonuses are important, and how they tie in then to the roof loan does take on significance." The trial court further found "it's just unreasonable to believe that Mr. Knight would be giving her those bonuses to pay off her loan after he'd sought out legal counsel and consulted with him, and that they would coincide so neatly with what was owed before she left the business." Here the trial court's finding was not so unreasonable as to rise to a level of reasonable doubt, and the trial court was best situated to assess the testimony and evidence.

¶ 53 B. Ineffective Assistance of Counsel

¶ 54 1. *Standard of Review*

¶ 55 Defendant argues trial counsel was ineffective since he failed to (1) submit evidence favorable to the defense or (2) subpoena a witness to present impeaching evidence. A criminal defendant has a constitutional right to effective assistance of counsel. U.S. Const., amend. VI. Claims alleging ineffective assistance of counsel are governed by the *Strickland* test.

*Strickland v. Washington*, 466 U.S. 668 (1984). The Illinois Supreme Court adopted the *Strickland* test in *People v. Albanese*, 104 Ill. 2d 504, 526, 473 N.E.2d 1246, 1255 (1984). A defendant shows ineffective assistance of counsel when he shows “counsel’s representation fell below an objective standard of reasonableness and that counsel’s shortcomings were so serious as to deprive defendant of a fair trial.” *Id.* at 525. Specifically, “a defendant must show that counsel’s performance was objectively unreasonable under prevailing professional norms and that there is a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’ ” *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767 (quoting *Strickland*, 466 U.S. at 694). “ ‘A reasonable probability is a probability sufficient to undermine confidence in the outcome.’ ” *People v. Coleman*, 2015 IL App (4th) 131045, ¶ 80, 25 N.E.3d 82 (quoting *Strickland*, 466 U.S. at 694). This court reviews *de novo* whether counsel’s omission supports an ineffective assistance claim. *Coleman*, 2015 IL App (4th) 131045 at ¶ 66.

¶ 56

## 2. Evidence Favorable to Defendant

¶ 57 Defendant claims “substantial exculpatory evidence was available to defense counsel” but was not admitted at trial, thereby constituting ineffective assistance of counsel. Defendant claims defense counsel allowed the trial court to conclude defendant only ever had shortages when in fact she also had overages. Defense counsel had evidence other employees also experienced shortages and some dates listed as shortages were not in fact shortages at all. Finally, defendant contends had defense counsel introduced notes from Krchak’s meeting with Knight with “sexual harass” written on them, he could have advanced the theory Knight was paying defendant to stay silent about defendant’s knowledge of Knight’s sexual harassment.

¶ 58 Defendant must show this behavior was objectively unreasonable and a reasonable probability this act undermines the confidence of the ruling. *Strickland*, 466 U.S. at 694. A defendant must overcome the strong presumption counsel’s challenged actions were a part of a sound trial strategy and not due to incompetence. *People v. Coleman*, 183 Ill. 2d 366, 397, 701 N.E.2d 1063, 1079 (1998). The mere fact defendant experienced overages does not negate a showing of 46 different instances when she deposited an amount substantially less than what was recorded on the daily envelops. Although other employees also had shortages, as confirmed in Gravlin’s testimony, defendant had 46 shortages and Gravlin has only had a “handful” in the three years since defendant left The Blind Pig and The Twilight Lounge. These instances would be insufficient to persuade the trial court against its finding of a pattern. As to the dates when there were not actually shortages, the State has already conceded the issue, and we have amended the restitution amount to correctly reflect the amount owed by defendant. Finally, a single phrase in Krchak’s notes would not be sufficient to support defendant’s contention the bonuses were bribes. Trial counsel presented this theory to the trial court but she did not believe the note would lead to an interpretation Knight bribed defendant. We do not see any reasonable probability had these facts been highlighted at trial, the outcome of the proceeding would have been any different.

¶ 59 *3. Impeachment Witness*

¶ 60 Defendant argues trial counsel was ineffective for failing to introduce into evidence a document which would have impeached Knight’s statement he never gave defendant bonuses. An attorney’s decision to call a witness is an element of trial strategy. *People v. Watson*, 2012 IL App (2d) 091328 ¶ 32, 965 N.E.2d 474. Failing to impeach a witness when

significant impeachment is available is not trial strategy and may constitute ineffective assistance of counsel. *People v. Salgado*, 263 Ill. App. 3d 238, 246-47, 635 N.E.2d 1367, 1373 (1994).

¶ 61 Here, defense counsel would have been precluded from impeaching Knight using Officer Kelly Patrick's police report. Police reports can be used for impeachment purposes but only to impeach the officer who wrote the report. *People v. Gagliani*, 210 Ill. App. 3d 617, 629, 569 N.E.2d 534, 542 (1991). Although this evidence may have been used to undermine Knight's credibility, the trial court considered Krchak's corroborating testimony to be the linchpin factor securing a verdict against defendant. We disagree that failing to subpoena Officer Patrick was objectively unreasonable and not part of trial strategy when any evidence elicited from Officer Patrick would merely undermine Knight's credibility and the trial court relied on other testimony when reaching its finding defendant gave herself unauthorized bonuses.

¶ 62 III. CONCLUSION

¶ 63 We affirm defendant's convictions on all counts but modify the restitution amount to \$10,213. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 64 Affirmed as modified.