

NOTICE
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2019 IL App (5th) 160303-U

NO. 5-16-0303

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Fayette County.
)	
v.)	No. 15-CF-99
)	
RACHAEL STEWART,)	Honorable
)	M. Don Sheafor Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Welch concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the State failed to prove beyond a reasonable doubt that the defendant intended to permanently deprive the Horizons Childcare and Learning Center of files the defendant removed after her employment was terminated, we reverse the conviction of burglary and vacate the sentence.
- ¶ 2 Defendant, Rachael Stewart, was convicted of burglary after a jury trial. She received a sentence of 36 months of probation. She appeals the conviction on the basis that the State failed to prove her guilt beyond a reasonable doubt on the element of “intent to permanently deprive.” For the reasons stated in this order, we reverse the conviction and vacate the sentence.

¶ 3

BACKGROUND

¶ 4 On May 7, 2015, the defendant was asked to submit her resignation as the director of the Horizons Childcare & Learning Center (Horizons Childcare) for work-related issues not relevant to the crime charged by the State. The termination was effective immediately and the defendant turned in her keys.

¶ 5 On May 20, 2015, at about 12:30 p.m., the defendant entered Horizons Childcare, made small talk with an employee, Jonathan Davis (Davis), looked at and selected a stack of files, and then left the facility with the files. Davis notified Pastor Tracy Zimmerman (Pastor Zimmerman), the acting executive director of Horizons Childcare, that the defendant had walked out of the center with a number of files. Another employee, Shelby Sieben (Sieben), had received a text message the day before from the defendant asking her to bring her a specific file. Sieben declined. The next day, Sieben witnessed the defendant come into the office and leave with a large stack of files. The stack of files contained board meeting files, staff meeting files, a Department of Children and Family Services (DCFS) file, and a Great START file. She returned to Horizons Childcare later that same afternoon at about 3:30 p.m. with a smaller stack of files to return. She asked to see Pastor Zimmerman, who was not then on site. The defendant left Horizons Childcare with the files. She returned at about 6:30 p.m. with the same files and returned them to Pastor Zimmerman.

¶ 6 Later that night, after learning that the defendant had not returned all of the files she had removed from Horizons Childcare, Pastor Zimmerman called the Vandalia Police Department to report the missing files. That evening, the investigating officer, Dustin

Cade (Officer Cade), went to Horizons Childcare and interviewed witnesses and took statements. Officer Cade then returned to the Vandalia Police Department where he met and interviewed Sieben, who showed him the text message exchange with the defendant. She informed Officer Cade that she refused to get the file for the defendant because she did not want to risk her own employment.

¶ 7 That same evening, Officer Cade went to the defendant's house. The defendant told Officer Cade that she only grabbed files that belonged to her, and that although she knew she went about this in the wrong manner, she had already returned everything that did not belong to her. Officer Cade informed the defendant and her husband that they had been barred from entering the property of Horizons Childcare as well as Family Worship Center, the church where Horizons Childcare was located. He stated that if they were caught on the property, they would be charged with trespass. Officer Cade then returned to the Vandalia Police Department and finished his report.

¶ 8 On May 22, 2015, the State formally charged the defendant with one count of burglary in violation of section 19-1(a) of the Criminal Code of 2012 (720 ILCS 5/19-1(a) (West 2014)). Later that day, Officer Cade went to the defendant's house, retrieved the box of files the defendant had put together for return to Horizons Childcare, and returned the box of files to Pastor Zimmerman at Horizons Childcare. At 11 p.m. on May 22, 2015, Pastor Zimmerman prepared a statement and noted that all the files had been returned, and he wished to drop the charge against the defendant. Amber Durbin (Amber), the employee who replaced the defendant as the director of Horizons Childcare, also made a statement on May 22, 2015, advising that from her review of the files

returned, no files were missing. She also expressed her desire that the charge against the defendant be dropped.

¶ 9 The defendant was formally arrested on the charge of burglary on May 27, 2015.

¶ 10 Jury Trial

¶ 11 After failing to reach a negotiated disposition to the burglary charge, the defendant's case went to trial on February 22, 2016. The State called six witnesses to testify at trial. The defendant did not testify in her own defense. We summarize the relevant witness testimony.

¶ 12 Testimony of Dustin Cade

¶ 13 Officer Cade testified about his investigation of this case. He testified that two days after the initial report, he spoke with Pastor Zimmerman, who remained concerned about the missing files. Later, Officer Cade was advised that there was a warrant out for the defendant's arrest on this burglary charge. He attempted to contact the defendant, but she was not at home. He returned to the defendant's home at about 10 p.m. that evening to once more attempt to speak to the defendant. The defendant was still not home. Officer Cade spoke with the defendant's husband, Jerry Stewart. Jerry Stewart advised Officer Cade that he had a box of files that the defendant wanted to turn over to the police—the files from Horizons Childcare. Officer Cade then returned the box of files to Horizons Childcare that night and met with Pastor Zimmerman and Amber, who confirmed that all files had been returned. Both witnesses prepared statements that evening requesting that the charge against the defendant be dropped.

¶ 14

Testimony of Tracy Zimmerman

¶ 15 Pastor Zimmerman testified that he had been the pastor of Family Worship Center since 2006. Family Worship Center also operates a daycare facility and preschool (Horizons Childcare) in the same building. Horizons Childcare has been open since June 4, 2012, and serves children from 6 weeks to 12 years of age. Pastor Zimmerman knows the defendant and indicated that she had been the director of Horizons Childcare from its inception, months prior to the date it opened. The defendant's employment with Horizons Childcare ended on May 7, 2015, after the Horizons Childcare board voted to terminate her employment.

¶ 16 On May 20, 2015, Pastor Zimmerman was notified that the defendant had taken files from Horizons Childcare, including files regarding a program through the Illinois State Board of Education and a DCFS renewal manual. Pastor Zimmerman testified that the DCFS renewal manual was critical because Horizons Childcare's renewal (completed every three years) was due the following week. He explained that the State could have revoked its DCFS certification without the paperwork, and that the DCFS certification was important in order to receive public funding to service low income at-risk children. However, Pastor Zimmerman acknowledged that the DCFS renewal manual was available online.

¶ 17 After Pastor Zimmerman was informed that the defendant removed files, he sent her a text message reminding her that she was no longer employed at Horizons Childcare and to bring the files back. The evening of May 20, 2015, Pastor Zimmerman drove back to Family Worship Center for a church service and saw the defendant sitting in her

vehicle on the parking lot. He approached her and asked about the files. The defendant told Pastor Zimmerman that she was looking for some minutes from a board meeting. He informed the defendant that the board meeting minutes belonged to Horizons Childcare. Later that evening in looking at the files she returned, Pastor Zimmerman realized that the defendant had not returned all of the files. After the church service that evening, he contacted the police.

¶ 18 Pastor Zimmerman testified that between May 20, 2015, when the files were taken and May 22, 2015, when the files were returned by Officer Cade, he received several voice mails from the defendant, but he did not respond to the messages. He and Amber reviewed the files on May 22, 2015, and determined that all files had been returned. He and Amber then prepared statements that they wanted the charge against the defendant to be dropped.

¶ 19 Testimony of Shelby Sieben

¶ 20 Sieben testified that she is the defendant's cousin, and that she works at Horizons Childcare as a cook and a teacher. On May 19, 2015, the defendant texted her and asked her to collect a file for her. Sieben believed that the requested file was a staff meeting file. The next day, the defendant walked into Horizons Childcare. Sieben could not leave her post to see what the defendant was doing because she was watching children. She saw the defendant leave with a large stack of files. Sieben testified that the defendant returned at about 3:30 p.m. with a smaller stack of files and, in seeing Sieben, the defendant made a gesture to her by putting her finger to her lips, as if to say, "shh, quiet." Sieben believed that the defendant left again with this smaller stack.

¶ 21

Testimony of Jonathan Davis

¶ 22 Davis testified that he is a preschool teacher at Horizons Childcare. Davis stated that he knows the defendant because she was a former employee at Horizons Childcare. On May 20, 2015, Davis was doing volunteer work for Family Worship Center and witnessed the defendant walk into the office. He testified that he was surprised to see her because she had lost her job. Davis testified that he did not know if she had permission to be at Horizons Childcare. The defendant went to a filing cabinet and removed files. Davis did not know what files she took. He immediately contacted Pastor Zimmerman and the new director, Amber.

¶ 23

Testimony of Abbey Durbin

¶ 24 Abbey Durbin (Abbey) testified that she is employed as a teacher at Horizons Childcare. She stated that she knew the defendant from work. On May 20, 2015, Abbey was in her classroom, but could see the main entrance, and saw the defendant enter Horizons Childcare. The defendant did not speak to anyone and headed to the office. Abbey testified that she believed the defendant had been told to stay away from Horizons Childcare. She based this belief on the fact that the defendant had been terminated from her job. However, Abbey acknowledged that no one told her that the defendant could not be there. Abbey did not witness the defendant leave the building.

¶ 25

Testimony of Amber Norris

¶ 26 Amber Norris was formerly known as Amber Durbin. She was employed as the director at Horizons Childcare in May 2015 when the files were removed and then returned by the defendant. The defendant had been her boss when she began employment

at Horizons Childcare. Amber filled the director position after the defendant's employment was terminated. On May 20, 2015, Amber was notified that the defendant had taken files from the office. Later that evening, Pastor Zimmerman told Amber that the defendant had brought some of the files back. Two days later after the Wednesday church service, Amber noticed that a lot of files were still missing, and it was then that she and Pastor Zimmerman decided to contact the police. Amber does not remember what files the defendant brought back. Files that were still missing included a Great START file and a DCFS file. The DCFS file contained paperwork that was also available online on the DCFS website. Amber testified that she believed that the Great START file contained teacher information including reimbursement information for college classes that one teacher at Horizons Childcare took. Officer Cade brought back the files and she looked through them and determined that all of the files had been returned. Amber testified that she believed that the defendant had no right to be in the office on May 20, 2015. However, she acknowledged that she did not know if the defendant had asked Pastor Zimmerman for permission to come in on that date. Amber stated that she would not have allowed the defendant to take the files if she had been in the office when the defendant arrived.

¶ 27

Motion for Directed Verdict

¶ 28 The defendant's attorney asked the court to direct a verdict on the basis that the State had failed to prove both that she was without authority to enter Horizons Childcare and that she had intent to permanently deprive Horizons Childcare of its files. Prior to the evening of May 20, 2015, when Officer Cade went to the defendant's home and informed

her she was no longer allowed to enter Horizons Childcare or Family Worship Center property, she had never been told to stay away from Horizons Childcare.

¶ 29 In response, the State argued that the defendant returned some of the documents right away but held the rest of the documents for two days and only returned the documents after a warrant for her arrest had been issued. The State argued that the fact that she only returned the files after the warrant was issued supported the argument that she intended to permanently deprive Horizons Childcare of its files. The State also noted that Pastor Zimmerman told her when her employment was terminated that if she forgot anything or needed to obtain anything, she should contact him and he would see that she received whatever she left behind. The State argued that this implied that she did not have authority to enter Horizons Childcare generally and, more specifically, that she did not have authority to enter its office.

¶ 30 The trial court denied the motion, stating that based upon the likely jury instructions to be given, there were questions that should be determined by the jury—whether the defendant entered Horizons Childcare without authority and whether she had the intent to permanently deprive Horizons Childcare of its files.

¶ 31 **Jury Instructions**

¶ 32 The relevant jury instructions included the general elements of a burglary charge as well as the more precise propositions that the State must prove. In addition, the jury received instructions that defined the term “theft” and the phrase “permanently deprive.” The general burglary offense occurs when a person, “without authority, knowingly enters a building with intent to commit therein the offense of theft.” Illinois Pattern Jury

Instructions, Criminal, No. 14.07 (4th ed. 2000) (hereinafter IPI Criminal 4th). “Theft” occurs when a person “knowingly exerts unauthorized control over property and intends to deprive the owner permanently of the use or benefit of the property.” IPI Criminal 4th No. 13.01. The phrase “permanently deprive” occurs when a person “means to defeat all recovery of the property by the owner.” IPI Criminal 4th No. 13.33B. The more specific burglary instruction, pursuant to IPI Criminal 4th No. 14.08, sets forth the three elements to be proven: (1) that the defendant knowingly entered a building, (2) that the defendant did so without authority, and (3) that the defendant did so with the intent to commit the offense of theft.

¶ 33 Verdict, Posttrial Motion, and Sentencing

¶ 34 After deliberation, the jury found that the defendant was guilty of burglary.

¶ 35 The defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The trial court denied the motion on June 9, 2016.

¶ 36 At sentencing on July 12, 2016, the defendant spoke to the court, explaining that she had no intention of committing a crime. She went to Horizons Childcare on May 20, 2015, to retrieve her files. Then, she returned the files that did not belong to her. After Officer Cade informed her that if she returned to Horizons Childcare or Family Worship Church that she would be charged with trespassing, she had no ability to bring the files back to the facility. After weighing all factors in aggravation and mitigation, the trial court concluded that a term of imprisonment was inappropriate and sentenced the defendant to 36 months of probation.

¶ 37 The defendant timely appeals from her conviction and sentence. We have jurisdiction over this appeal pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. July 1, 2017).

¶ 38 ANALYSIS

¶ 39 Every accused has due process rights to protect against a conviction not based upon proof beyond a reasonable doubt. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2; *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264, 888 N.E.2d 105, 114 (2008). In reviewing the sufficiency of the evidence in a criminal case, a reviewing court must determine if any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Martin*, 2011 IL 109102, ¶ 15, 955 N.E.2d 1058 (citing *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009)). A reviewing court must draw all reasonable inferences in favor of the prosecution. *Id.* (citing *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)). A reviewing court must also carefully examine the evidence while giving deference to the fact that the trial court and the jury saw and heard the witnesses testify. *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). However, on occasion, a trial court and jury can accept testimony and make certain inferences from the evidence and yet reach an unreasonable decision. *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008). A conviction will not be reversed unless “the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the]

defendant's guilt.” *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 268-69 (2005).

¶ 40 The defendant was convicted of burglary. To prove that the defendant committed burglary, the State was required to prove both that she committed theft and that she intended to permanently deprive Horizons Childcare of the items taken. 720 ILCS 5/16-1(a)(1)(A) (West 2014). The only element of burglary at issue in this appeal is whether the defendant intended to permanently deprive Horizons Childcare of the files she removed from its office.

¶ 41 To permanently deprive a victim of property means:

“(a) Defeat all recovery of the property by the owner; or

(b) Deprive the owner permanently of the beneficial use of the property; or

(c) Retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) Sell, give, pledge, or otherwise transfer any interest in the property or subject it to the claim of a person other than the owner.” *Id.* § 15-3.

The supreme court has found that intent to permanently deprive “may be deduced from acts committed and circumstances in evidence.” *People v. Baker*, 365 Ill. 328, 332-33, 6 N.E.2d 665, 668 (1936) (finding that the State proved the defendant guilty of larceny by taking an article of clothing in a department store to a different floor and then hiding it under her clothing, although later leaving the clothing in a restroom in fear that she had been seen—the intent to permanently deprive the department store was established); see also *People v. Baddeley*, 106 Ill. App. 2d 154, 159, 245 N.E.2d 593, 595 (1969) (where

the defendant's guilt was not proven beyond a reasonable doubt because he did not actually have an intent to permanently deprive the victim of his vehicle where he was owed money for its initial repair, but towed the vehicle to his repair shop in order to ascertain if additional repairs were necessary after another breakdown, and kept the vehicle until he was paid by the owner for the repairs).

¶ 42 Case law provides us with examples of what permanent deprivation entails. In *People v. Bell*, the defendant was found guilty of theft in a case where his codefendants smashed the victim's eyeglasses. *People v. Bell*, 9 Ill. App. 3d 465, 292 N.E.2d 219 (1972) (abstract of opinion). The destruction of the victim's eyeglasses constituted a permanent deprivation. *Id.* Writing a check to a victim while knowing that the funds are not in the bank can also constitute intent to permanently deprive. See *People v. Reans*, 20 Ill. App. 3d 1005, 1008, 313 N.E.2d 184, 187 (1974). In *People v. Block*, the defendant was convicted of theft with evidence that she was unwilling to return the stolen purse until she received a reward. *People v. Block*, 184 Ill. App. 3d 135, 140-41, 540 N.E.2d 512, 516 (1989). The court noted that requiring a reward for return of the purse constituted an intent to permanently deprive. *Id.* at 141 (citing 720 ILCS 5/15-3(c)). The supreme court in *People v. Perry* found that the State proved theft by deception where the defendant obtained control of a hotel room for three months. *People v. Perry*, 224 Ill. 2d 312, 358, 864 N.E.2d 196, 223-24 (2007). Although the defendant did not deprive the hotel owners of a specific physical item, nevertheless, the court concluded that the hotel permanently lost the financial usage of the room during the three months:

“The hotel has a finite number of rooms, which it can rent to members of the public 365 nights a year. One night in one room is a thing of value. When this thing of value is taken by deception, the owner has permanently lost the benefit of one night’s income.” *Id.*

None of these factual scenarios matches up with what transpired in this case. The defendant did not destroy any files. She did not deprive Horizons Childcare of any money. She sought no reward for return of the files. The defendant does not cite to any criminal case directly on point, and our own research has also found no other factually similar cases.

¶ 43 The defendant cites to an automobile insurance policy case for its discussion of theft and the requirement that intent to permanently deprive is required. Temporary deprivation is insufficient. In *Miller v. Phoenix Assurance Co. of London*, 221 Ill. App. 75 (1921), the plaintiff sued his insurance company for nonpayment on a theft claim. *Id.* The plaintiff parked his car at his regular parking garage and did not give anyone permission to remove the car. The next day, police notified him that his car had been found away from the garage and in a damaged condition. One of the attendants at the garage was later arrested. *Id.* at 77-78. Citing to the Cyclopaedia of Law and Procedure, the court noted that if a person borrows goods of another person without permission but also with the intention and power to restore or replace the goods, then the taking, although wrongful, does not constitute larceny. *Id.* at 78 (quoting 25 Cyc. 49). Although this was not a criminal case, we find that the distinction between a temporary and a permanent deprivation is persuasive.

¶ 45 This case requires a logical review of the underlying facts. As stated earlier, at issue is the permanence of the deprivation. As defined, the permanence required must “[d]efeate all recovery of the property.” 720 ILCS 5/15-3(a) (West 2014). There are situations where the defendant’s attempted theft or shoplifting is still deemed a permanent deprivation. Those cases turn on the intention of the person attempting to steal the item. See *Baker*, 365 Ill. at 332-33 (where it did not matter that the defendant left the clothing in the store after she had attempted to hide the items on her person, as her intention was clear—to deprive the store of the articles of clothing); *People v. Heaton*, 415 Ill. 43, 45-46, 112 N.E.2d 131, 132 (1953) (where the defendant was found guilty of larceny of an automobile after having been seen looking into cars for keys in the ignition despite his later claim that he intended to return the vehicle but was apprehended before he could do so). Accordingly, in each case of this type it is important to consider the acts committed by the defendant as well as the circumstances in evidence in order to analyze whether the defendant had the required felonious intent to permanently deprive the victim. *Baker*, 365 Ill. at 332-33.

¶ 46 Viewing the evidence in the light most favorable to the State, we do not find sufficient evidence to demonstrate that the defendant intended to permanently deprive Horizons Childcare of the files she removed. Here, the evidence showed that the defendant removed files from the office at Horizons Childcare, the defendant claimed that the files belonged to her, the defendant returned many files that were not hers that same date, the defendant was told later that night that Pastor Zimmerman wanted her to return all the files that she removed, the defendant unsuccessfully attempted to contact

Pastor Zimmerman, the defendant put all the files in a box with the anticipation that they would be returned to Pastor Zimmerman, and within 48 hours all the files were returned intact to Horizons Childcare.

¶ 47 Here, the State contends that the defendant intended to permanently deprive Horizons Childcare of its files because she did not return all the files until Officer Cade showed up to her house with the warrant for her arrest. The State connects the defendant's divestiture of the files to the issuance and the defendant's knowledge of the warrant for her arrest. In other words, if the warrant had not been issued, she would not have returned the files. This argument is factually inaccurate for a couple of reasons. First, the defendant was not home and was unaware that there was a warrant for her arrest, and in fact the defendant was not arrested for five more days. Not even Pastor Zimmerman knew that a warrant had been issued for her arrest. Second, before she left the home on May 22, 2015, she had placed all the files in a box and told her husband that the files were to be returned to Horizons Childcare. Officer Cade's testimony at trial confirmed this fact, as he only interacted with the defendant's husband and told the jury that the defendant had told her husband that the files were intended to be returned. Unlike the facts in *People v. Heaton*, where the defendant was apprehended while driving the stolen car, here the State did not arrest the defendant until five days after she had returned all outstanding files. Whatever motivation the defendant had to return the files was not connected to being charged with burglary.

¶ 48 We also take note of the fact that the defendant's own actions reflect her concern that the files be returned directly to Pastor Zimmerman, and that as a result of the

investigation, her ability to do that was diminished. Upon termination, Pastor Zimmerman informed the defendant that if she needed anything from her office to contact him. The defendant's contact person at Horizons Children was established as being Pastor Zimmerman. Admittedly, the defendant did not contact Pastor Zimmerman on May 20, 2015, before coming up to the office and removing the files she wanted. However, after she left with the files, she came back the same date with the intent of speaking with Pastor Zimmerman and returning some of the files to him—the files that were not hers. As the defendant could not locate him, she left, only to return before evening services. Pastor Zimmerman approached her vehicle on the parking lot and she gave him back those files. At that time, Pastor Zimmerman was unaware of what files had been taken, and so he did not realize that the defendant had not returned all of the files she had removed. That night, Amber was able to determine that some files were still outstanding, and the decision was made to contact the police. In speaking with Officer Cade later that same night, the defendant advised that she had only kept files that belonged to her, and that the files that did not belong to her had already been returned. Officer Cade informed her that if she was seen on the Horizons Childcare or Family Worship Center property, she would be arrested for trespass. Between that night and the evening of May 22, 2015, when the defendant's husband allowed Officer Cade to remove the box of files and return them to Horizons Childcare, the defendant made multiple calls to speak with Pastor Zimmerman, but he did not answer the calls and he did not call her back. The defendant's ability to return the files was diminished by the fact that her contact at Horizons Childcare, Pastor Zimmerman, would not respond to her and the fact

that she was prohibited from taking the items back to Horizons Childcare for fear of arrest.

¶ 49 Although we typically defer to a trial court and jury who saw and heard the witnesses testify at trial, in this case we find that no rational trier of fact could have found that the defendant had the intent to permanently deprive Horizons Childcare of its files beyond a reasonable doubt. *Martin*, 2011 IL 109102, ¶ 15 (citing *Davison*, 233 Ill. 2d at 43). The defendant had not destroyed or threatened to destroy the files. The defendant contended that the files returned on May 22, 2015, were her files, and there was no testimony that directly contradicted this claim. From the testimony of Pastor Zimmerman and Amber, it was clear that no one seemed to know precisely what was in the DCFS and the Great START files, although somehow Amber had determined that the files were missing. The DCFS file apparently contained just the renewal paperwork that was available online. Nevertheless, with the defendant unable to speak with Pastor Zimmerman, the defendant boxed up all outstanding files with the intent to have the files returned. At best, the State established that the defendant temporarily deprived Horizons Childcare of the files at issue. We find that the evidence in this case was unsatisfactory and inconclusive on the issue of the defendant's intent to permanently deprive, and accordingly we reverse the conviction of burglary and vacate the sentence as to that offense.

¶ 50 Because we find that the State failed to prove the charge of burglary beyond a reasonable doubt, we do not address the second issue the defendant raised on appeal—whether her attorney was ineffective because he failed to cross-examine Officer Cade that

if she had attempted to bring the files back to Horizons Childcare after May 20, 2015, she could be charged with trespassing.

¶ 51 The defendant filed a motion on July 12, 2018, in this court asking for a correction of the spelling of her first name in the mittimus. On August 24, 2018, we took this motion with the case. The motion is now moot because of our order reversing the conviction and vacating the sentence.

¶ 52

CONCLUSION

¶ 53 For the foregoing reasons, we reverse the judgment of the circuit court of Fayette County and vacate the sentence.

¶ 54 Reversed; sentence vacated.