2020 IL App (2d) 180849-U
No. 2-18-0849
Order filed August 26, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-CF-1124
	)	
JASON HODGES,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in denying the defendant's pretrial motion to dismiss two burglary counts for improper venue and those convictions are vacated. The evidence was sufficient to support the defendant's other convictions for burglary and identity theft. The defendant's sentence was not excessive, and the imposition of consecutive sentences was not improper.

¶ 2 Following a jury trial, the defendant, Jason Hodges, was found guilty of burglary (720 ILCS 5/19-1 (West 2014)) and identity theft (720 ILCS 5/16-30(a)(4) (West 2014)) and was later sentenced to 14 years' imprisonment. On appeal, the defendant challenges his convictions on the basis of venue and the sufficiency of the evidence. The defendant also argues that his sentence was excessive and that consecutive sentences were improper. We affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 On June 4, 2015, the defendant was charged by indictment with 25 counts for committing, in relevant part, the offenses of theft by deception, retail theft, burglary, and identity theft. The State nol-prossed 14 counts prior to trial. A trial proceeded with respect to the following charges.

¶ 5 Count 3 charged the defendant with theft by deception (720 ILCS 5/16-1(a)(2)(A) (West 2014)), alleging that between May 12 and June 5, 2014, the defendant knowingly obtained by deception control over more than $500 belonging to the retail chain Marshalls, in that he fraudulently purchased merchandise using stolen credit cards and then returned the merchandise for money credited to his personal debit card.

¶ 6 Counts 9 and 11 charged the defendant with retail theft (720 ILCS 5/16-25(a)(1) (West 2014)), alleging that the defendant took possession of merchandise at Marshalls stores intending to permanently deprive Marshalls of that merchandise without paying the full retail value of it. Count 9 alleged that the defendant committed this offense at a Marshalls store in Broadview on June 1, 2014. Count 11 alleged that the defendant committed this offense at a Marshalls store in Berwyn on June 5, 2014.

¶ 7 Counts 10 and 12 charged the defendant with retail theft (720 ILCS 5/16-25(f)(2) (West 2014)), alleging that the defendant represented to Marshalls that he was the lawful owner of the property described in counts 9 and 11, respectively, and returned the merchandise to Marshalls for a credit to his personal debit card. Count 10 and 12 alleged that the defendant committed this offense at a Marshalls store in Lombard on June 1 and 5, 2014, respectively.

¶ 8 Counts 17, 18, 19, and 20, charged the defendant with burglary (720 ILCS 5/19-1 (West 2014)) for the transactions that occurred in counts 9 through 12. Specifically, the counts alleged that the defendant committed burglary by entering Marshalls stores with the intent to commit theft

therein. Count 17 alleged that the defendant committed burglary on June 1, 2014, at the Broadview Marshalls store. Count 18 alleged that the defendant committed burglary at the Lombard Marshalls store on June 1, 2014. Count 19 alleged that the defendant committed burglary on June 5, 2014, at the Berwyn Marshalls store. Count 20 alleged that the defendant committed burglary at the Lombard Marshalls store on June 5, 2014.

¶ 9 Finally, counts 23 and 24 charged the defendant with identity theft (720 ILCS 5/16-30(a)(4) (West 2014)). Count 23 alleged that on June 1, 2014, the defendant committed the offense of identity theft in that he knowingly possessed personal identifying information of another, the Citigroup Visa credit card number of Raul Y., knowing it to have been stolen or produced without lawful authority. Count 24 alleged that on June 5, 2014, the defendant committed the offense of identity theft, in that he knowingly possessed personal identifying information of another, the Citigroup Visa credit card number of Richard G., knowing it to have been stolen or produced without lawful authority

¶ 10 All the counts were alleged to have occurred in Du Page County except the retail thefts and burglaries that occurred at the Broadview and Berwyn Marshalls stores (counts 9, 11, 17 and 19). The record indicates that the defendant filed a motion for bill of particulars, requesting that the State specify the counties in which the burglary offenses were to have occurred. The State filed a response and indicated that the Broadview and Berwyn Marshalls stores were located in Cook County.

¶ 11 The record also indicates that the defendant filed a motion to dismiss the burglary offenses that occurred in Cook County because of improper venue. The defendant's motion was discussed at a June 8, 2017, hearing. Although the trial court made a reference to a written motion, a copy

of the defendant's written motion does not appear in the record on appeal. However, the State's response and the defendant's reply are included in the record.

¶ 12 In its written response, the State acknowledged that the retail theft charges in counts 9 and 11, and the burglary charges in counts 17 and 19, occurred in Cook County. The State noted that, based on the retail theft statute, multiple thefts committed by the same person as part of a continuing course of conduct may be prosecuted in any jurisdiction in which one or more of the thefts occurred and that a person who commits theft of property may be tried in any county in which he exerted control over such property. The State argued that the defendant exerted control over the stolen property in both Cook and Du Page Counties. The State also argued that, since all the counts in the indictment were part of the same "theft" scheme, they were properly joined and brought in Du Page County.

¶ 13 The defendant argued that venue for the retail theft charges could have been proper in Du Page County if the State had alleged that he exerted control in Du Page County over the property that was stolen in Cook County. The defendant argued, however, that the State did not make any such allegations in the indictment. The defendant also argued that the venue provisions contained in the retail theft statute did not apply to the burglary charges.

¶ 14 On August 17, 2017, a hearing was held on the motion to dismiss the burglary charges. Following arguments, the trial court denied the motion to dismiss. The trial court found that the indictment described an ongoing continuous course of conduct engaged in by the defendant where all the offenses were interrelated and proven by some conduct in Du Page County.

¶ 15 A jury trial commenced on May 8, 2018. Joshua Francis testified that he was employed by TJX, which owned Marshalls and a few other retail chains. In June 2014, he worked as a national task forces investigator, specializing in organized retail crime and large-scale theft and

fraud. He focused on the Chicago area. Francis started an investigation into the defendant because records indicated that the defendant had a negative credit report for a credit card, meaning that the refunds being issued to the defendant's card exceeded the purchases. Francis gathered sale and return information, including copies of the relevant transaction receipts, as well as video of the defendant conducting his transactions at the Broadview, Berwyn, and Lombard Marshalls stores on June 1 and 5, 2014. He also gathered evidence that could be used by law enforcement to identify the owners of the stolen credit cards. He forwarded all this information to Detective Joe Menolascino of the Lombard police department. The video footage of the defendant conducting his transactions inside the various Marshalls stores was shown in court during the trial.

¶ 16 Francis' testimony and the video demonstrated that the defendant went into the Broadview and Berwyn stores, purchased merchandise on stolen credit cards, and then returned the merchandise the same day at the Lombard Marshalls store for credit to the defendant's personal credit card. The purchase on June 1, 2014, in the Lombard Marshalls store totaled $294.26 and was charged to a credit card with the last four digits of 1596. The defendant returned the merchandise at the Lombard Marshalls store within a few hours of the purchase. A credit of $294.26 went on the defendant's personal debit card, ending in 3559. The purchase on June 5, 2014, in the Berwyn Marshalls store totaled $298.63 and was charged to a credit card with the last four digits of 1972. The defendant returned the merchandise at the Lombard Marshalls store about six hours later. A credit of $298.63 went on the defendant's personal debit card, ending in 3559.

¶ 17 Cindy Lycos testified that she was employed by Citibank as a lead investigator. She testified that on June 1, 2014, a purchase was made at the Marshalls store in Broadview with the credit card of Raul Y., with the last four digits of 1596, in the amount of $294.26. The charge was disputed and Citibank credited Raul Y.'s credit card for that purchase. As such, the fraudulent

purchase resulted in a loss to Citibank. On June 5, 2014, a purchase was made at the Marshalls store in Berwyn with the credit card of Richard G., having the last four digits of 1972, in the amount of $298.63. That charge was also disputed, so Citibank credited $298.63 back to Richard G.'s credit card account. Again, Citibank thus took the loss on the fraudulent purchase.

¶ 18 Detective Menolascino testified that he was a police sergeant in charge of the patrol division for the Lombard police department and had been in that position for about 22 years. He primarily investigated financial crimes. On June 25, 2014, he was assigned to investigate a report of a series of thefts from Marshalls stores. He met with Francis that same day. He testified that Francis gave him information and video footage showing the defendant making purchases at the Broadview and Berwyn Marshalls stores on stolen credit cards and then making returns at the Lombard Marshalls store and having the credits put on the defendant's debit card. After the defendant was arrested and taken in for questioning, the defendant told Menolascino that he had a gambling problem. When Menolascino showed the defendant some of the video footage of the transactions at Marshalls, the defendant identified himself as the person making the transactions. When the detective asked the defendant how he obtained the stolen credit cards, the defendant stated that he would not tell where he obtained the stolen credit cards until he spoke with his attorney.

¶ 19 Following the denial of the defendant's motion for a directed finding, the defense rested. Following closing arguments, the jury found the defendant guilty on all counts. Specifically, the defendant was found guilty of theft by deception (count 3), four counts of retail theft (counts 9-12), four counts of burglary (counts 17-20), and two counts of identity theft (counts 23 and 24).

¶ 20 On September 10, 2018, a sentencing hearing was held. At the hearing, the trial court stated that the defendant would only be sentenced on the four burglary counts and the two counts

of identity theft because the counts based on retail theft and theft by deception merged into those offenses. Detective Joe Menolascino testified that as part of his investigation he subpoenaed the defendant's bank statements. He discovered that the defendant had received credits not only from Marshalls, but from other stores owned by TJX. From April to August 2014, the defendant had received store credits to his personal debit card, ending in 3559, in the amount of $17,365.82. Many of the withdrawals and debits from the defendant's debit card occurred at casinos. Menolascino discovered that the defendant was also purchasing merchandise at Sports Authority with stolen credit cards and returning the merchandise for credit to his personal debit card. There were over 20 credits to the defendant's account from Sports Authority in October 2015.

¶ 21 The defendant's wife testified that the defendant consistently went to work, was a good provider, and was stable. She knew he had a gambling problem. She testified that the defendant had a 22-year old son and that they had a very close relationship. The defendant and his son talked on the phone every day. She believed that the defendant could turn his life around and should be given a lenient sentence. She testified that the defendant had been on a straight path since his last release from custody in May 2017.

¶ 22 The defendant's presentence investigation report (PSI) was admitted into evidence. The report indicated that the defendant had a total of 59 arrests, 13 prior felony convictions, and 12 prior sentences of imprisonment.

¶ 23 Following arguments and the defendant's statement in allocution, the trial court rendered its ruling. The trial court noted that the case had been pending for many years and that the defendant's bond was revoked because he had been unable to comply with the terms of bail. The trial court noted the defendant's extensive criminal history, his first arrest for theft in 1988 and his most recent arrest in 2016 for theft by deception. The trial court stated that this demonstrated that

the defendant was not amenable to rehabilitation and that he had a propensity to commit crimes habitually. The trial court stated that the defendant had committed his crimes over a long period of time and had defrauded tens of thousands of dollars from various retail chains. The crime also showed that the defendant had developed some means of obtaining stolen credit cards. The trial court found that the defendant's crimes had cost the community many thousands of dollars and that the financial consequences to the victims exceeded the financial amounts charged in each of the offenses.

¶ 24 The trial court also found that the defendant had been arrested and convicted of 16 fraud-related offenses over the years, including theft, credit card fraud, and other types of crimes of larceny. The trial court sentenced the defendant to seven years on each of the four burglary counts and two identity theft counts. The burglary sentences ran concurrently and the identify theft sentences ran concurrently, but the trial court ordered that, as to each other, the sentences were to run consecutively. The defendant was thus sentenced to 14 years' imprisonment. The trial court found that consecutive sentences were warranted by the nature of the offense, the history and character of the defendant, and the need to avoid further criminal conduct by the defendant. Following the denial of his motion to reduce sentence, the defendant filed a timely notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 The defendant's first contention on appeal is that his convictions for burglary in counts 17 and 19 must be vacated or reversed. The defendant argues that because he was not tried in the county where the burglaries occurred, the trial court lacked jurisdiction and his convictions are void. Alternatively, the defendant argues that the trial court erred in denying his pretrial motion to dismiss these counts for lack of proper venue. The State, citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984), argues that we should decline to reach these issues because the defendant failed

to include relevant transcripts in the record on appeal. However, after the State filed its appellee brief, the defendant successfully moved to supplement the record with the necessary transcripts. Accordingly, we will address the merits of this contention.

¶ 27 The defendant's argument that his convictions are void for lack of jurisdiction is without merit. A judgment is void if it was entered by a court lacking jurisdiction. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 12. However, in *People v. Goins*, 119 Ill. 2d 259 (1988), our supreme court explained that the Criminal Code of 1961 (Criminal Code) (Ill. Rev. Stat. 1961, ch. 38, ¶ 1-6(a)) drew a sharp distinction between jurisdiction and venue:

> "Jurisdiction, the authority or power of a court to take cognizance of and adjudicate cases, is conferred by section 9 of article VI of the Constitution of Illinois, which provides that circuit courts have "original jurisdiction of all justiciable matters." (Ill. Const.1970, art. VI, § 9 ***.) Venue, or the place of trial, is fixed by section 1-6 of the Criminal Code, which provides that '[c]riminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law.' (Ill.Rev.Stat.1961, ch. 38, par. 1-6(a).) It will be observed that this statute *** makes no mention of jurisdiction." *Id.* at 264.

The *Goins* court further explained that, following the enactment of the Criminal Code, it had expressly held that the place of trial was not jurisdictional. *Id.* (citing *People v. Ondrey*, 65 Ill. 2d 360, 363 (1976)). Accordingly, even if the defendant was tried in a county where venue was improper, the trial court did not lack jurisdiction and the defendant's convictions are not void. *Id.*

¶ 28 We now turn to whether the trial court erred in denying the defendant's pretrial motion to dismiss counts 17 and 19 for improper venue. The trial court denied the motion, finding that the indictment alleged an ongoing, continuing course of conduct where all the offenses were

interrelated, and all of which had some elements proven by conduct that occurred in Du Page County.

¶ 29 Section 1-6 of the Criminal Code (720 ILCS 5/1-6(a) (West 2014)) provides that "criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law." Further, it has been held that venue is proper in any county where any element of the offense being tried was committed. *People v. Lambert*, 195 Ill. App. 3d 314, 318 (1990). The gist of the offense of burglary is the entering of a building with a felonious intent and the crime is complete whether or not anything is taken. *People v. Clark*, 30 Ill. 2d 216, 219 (1964); see also *People v. Rollins*, 42 Ill. App. 3d 308, 311 (1976) (the crime of burglary is complete upon the entry with the intent to steal, and it is not essential to prove that anything was taken).

¶ 30 In the present case, the burglaries charged in counts 17 and 19 were completed entirely in Cook County when the defendant entered the Marshalls stores in Broadview and Berwyn with the intent to commit a theft. *Id.* Thus, proper venue could only lie in Cook County. *People v. Alexander*, 118 Ill. App. 3d 33, 36 (1983). Accordingly, the trial court erred in denying the defendant's motion to dismiss for improper venue. As to the appropriate remedy for this error, our constitution requires criminal cases to be tried in the county where the offense was committed. Ill. Const. 1970, art. 1 § 8. "[M]ost errors of constitutional dimension are subject to a harmless error analysis. Only those constitutional violations that are 'structural defects in the constitution of the trial mechanism,' such as total deprivation of the right to trial counsel or absence of an impartial trier of fact, are *per se* error that necessitate remandment for a new proceeding." *People v. Shaw*, 186 Ill. 2d 301, 344-45 (1999) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)). Nonetheless, our supreme court has never held that the constitutional right to be tried in the county where the offense was committed is subject to harmless error. Further, the State has not argued

that the trial court's erroneous denial of the motion to dismiss for improper venue was harmless error. Accordingly, we vacate the defendant's convictions, on counts 17 and 19, for burglary.

¶ 31 The defendant's second contention on appeal is that his convictions on counts 18 and 20, for burglary at the Marshalls in Lombard, should be reversed because the State did not prove that he entered with the intent to commit a theft. The defendant argues that the thefts were complete at the Broadview and Berwyn Marshalls' stores when he purchased clothing with stolen credit cards. When he went into the Lombard Marshall's he was merely returning the clothing for cash and he never had an intention to permanently deprive Marshalls of the use or benefit of its merchandise.

¶ 32 In evaluating the sufficiency of the evidence, it is not the province of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* The determination of the weight to be given to the witnesses' testimony, their credibility, and the reasonable inferences to be drawn from the evidence are the responsibility of the trier of fact. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991); *Collins*, 106 Ill. 2d at 261. This standard applies whether the evidence is direct or circumstantial and whether the verdict is the result of a jury trial or a bench trial. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 33 According to the law under which the defendant was charged, a person commits burglary when he, without authority, knowingly enters a building "with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2014). Further, a person commits theft when he knowingly "[o]btains by deception control over property of the owner" and "[i]ntends to deprive the owner permanently of the use or benefit of the property." 720 ILCS 5/16-1(a)(2)(A) (West 2014). "A

defendant's intent to permanently deprive the owner of property may be deduced by the trier of fact from the facts and circumstances surrounding the alleged criminal act." *People v. Veasey*, 251 Ill. App. 3d 589, 591 (1993).

¶ 34 In determining whether the evidence was sufficient to support the burglary charges in counts 18 and 20, we find instructive this court's decision in *People v. Haissig*, 2012 IL App (2d) 110726. In *Haissig*, two employees of Abbott Laboratories had an undisclosed interest in an outside vendor that performed elevator maintenance services. Over a period of several months, the employees received approximately $300,000 from Abbott in exchange for elevator services. The employees were convicted of theft by deception based on this conduct. *Id.* ¶ 3. In a postconviction petition, under the guise of a claim for ineffective assistance of appellate counsel, the employees argued that they could not be guilty of theft by deception because Abbott did not suffer any pecuniary loss as it paid for and received the elevator services. *Id.* ¶ 7.

¶ 35 In *Haissig*, we rejected the employees' argument. In interpreting section 16-1(a)(2)(A) of the Criminal Code (720 ILCS 5/16-1(a)(2)(A) (West 2018)), we held that, under subsection (A), "whether the owner has been deprived of the 'use or benefit' of his property depends strictly on the defendant's actions toward that property and not on any separate property, services, or value given to the owner by the defendant." *Id.* ¶ 32. In other words, intent to deprive under subsection (A) is not determined by what separate property the owner receives from the defendant. We held that while subsection (A) requires proof that the defendant intended to permanently deprive the owner of the use or benefit of his property, it does not require proof that the defendant intended to inflict ultimate financial detriment on the owner. *Id.* ¶ 33. In so ruling, this court stated:

> "It is no surprise that our criminal law would not countenance a theory that renders theft sheerly a matter of financial loss and ignores the serious affront to security and autonomy

> that occurs whenever one's property is taken by deception or through some other form of unauthorized control. ***
>
> In the case, as here, of a bargained purchase, where the defendant has materially deceived the owner as to the defendant's identity or the nature or condition of the property or service he is purchasing, and the owner is not the worse financially for the deception, the owner still is deprived of the 'use or benefit' of his funds because he has lost the opportunity to dispose of them with knowledge of the material facts." *Id.* ¶¶ 22-23.

¶ 36 In the present case, the fact that Marshalls ultimately suffered no pecuniary loss does not mean that the defendant did not deprive Marshalls of the benefit or use of its property. When the defendant entered the Lombard Marshalls, he represented that he was lawfully in possession of the merchandise being returned, when in fact he had illegally purchased it with stolen credit cards. Based on this misrepresentation, Marshalls gave the defendant its property, namely the money for the returns. Marshalls was thus permanently deprived of the use or benefit of its property because Marshalls lost the opportunity to transfer the funds with knowledge of the material facts. *Id.* Accordingly, we reject the defendant's assertion that the evidence did not adequately support his convictions.

¶ 37 In arguing that the evidence was insufficient to support his convictions on counts 18 and 20, the defendant relies on *People v. Murphy*, 2015 IL App (4th) 130265. In *Murphy*, the State had charged the defendant, Cortez Murphy, with two counts of burglary. Each count alleged that Murphy committed burglary when he knowingly entered a pawn shop with the intent to commit therein a theft. *Id.* ¶ 5. Following a jury trial, Murphy was found guilty on both counts. *Id.* ¶ 9.

¶ 38 On appeal, Murphy argued that his convictions should be reversed because the State failed to prove that he entered the pawn shop with the intent to commit a theft. *Id.* ¶ 11. The evidence

indicated that Murphy had purchased the items on the street and that, at the time of purchase, it was reasonable for him to know or strongly suspect that the merchandise he was purchasing was stolen. *Id.* ¶ 14. The State's theory was that Murphy committed theft by obtaining control over stolen property and then pawning the property at the pawn shop. The State claimed Murphy entered the pawn shop with the intent to pawn the property and, at that point, committed the permanent-deprivation element of theft. In other words, the State's theory was that the theft was not complete until after Murphy entered the pawn shop. *Id.* ¶ 15.

¶ 39 The reviewing court reversed Murphy's convictions, holding that Murphy committed theft when he gained control over the stolen property on the street. *Id.* The reviewing court found that, at the moment Murphy purchased the items on the street, he acted with the intent to permanently deprive the owners of the use or benefit of their property. As such, it opined that the permanent-deprivation element, and all the other elements of the offense, had already been completed prior to Murphy entering the pawn shop. Because all the elements of theft were complete on the street, the reviewing court held that Murphy could not have entered the pawn shop with the intent to commit a theft therein. *Id.* ¶ 23.

¶ 40 The defendant's reliance on *Murphy* is unpersuasive. In making its ruling, the *Murphy* court specifically stated: "We do not analyze whether the exchange of stolen property at the pawnshop for cash was a theft against the pawnshop because this was not the State's theory for the theft that supported the burglary charge." *Id.* ¶ 17. Unlike *Murphy*, the State's theory in the present case was not that the theft from the purchases was complete once the defendant went to the Lombard Marshalls stores to return the merchandise. The State's theory was that the defendant committed a theft when he exchanged the stolen merchandise at the Lombard Marshalls for a cash credit to his debit card. The *Murphy* court specifically stated that it did not consider whether a

theft occurred at the pawn shop when Murphy sold the stolen items for cash. Accordingly, *Murphy* is inapplicable.

¶ 41 The defendant's third contention on appeal is that the evidence was not sufficient to convict him of identity theft because, when he entered the Marshalls store in Lombard, he presented his own debit card for the returns. He argues that he did not use personal identifying information of anyone else in the Lombard Marshalls store. He also argues that he did not possess the personal identifying information of someone else because the receipts he used for the returns only had the last four digits of the victim's credit card numbers but not their names.

¶ 42 The defendant was charged with identity theft under section 16-30(a)(4) of the Criminal Code (720 ILCS 5/16-30(a)(4) (West 2014)). The indictment alleged that, in Du Page County, the defendant knowingly possessed personal identifying information of others, the Citigroup Visa credit card numbers of Raul Y. and Richard G., knowing the numbers to have been stolen or produced without lawful authority. The State's theory at trial was that the defendant made purchases at the Broadview and Berwyn Marshalls stores with stolen credit cards. The defendant knew the cards were stolen because he not only admitted it to Menolascino, he was allowed to make the purchases, showing that the credit card numbers were real and belonged to real people. Further, the defendant made returns at the Lombard Marshalls store and had the credits put on his own debit card. When the defendant made the returns, he used the receipts that contained the stolen credit card numbers. The defendant was thus guilty of identity theft for using the stolen credit card information of others in the foregoing Marshalls stores.

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

another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority." 720 ILCS 5/16-30(a)(4) (West 2014). The gravamen of the crime of identity theft is misrepresenting oneself as someone else. *People v. Montoya*, 373 Ill. App. 3d 78, 84 (2007). To sustain a conviction, the State must prove every element of an offense beyond a reasonable doubt. *People v. Steele*, 2014 IL App (1st) 121452, ¶ 20. "Personal identifying information" includes the number assigned to a person's credit card. 720 ILCS 5/16-0.1 (West 2014).

¶ 44 The evidence was sufficient to convict the defendant of identity theft. The stolen credit cards and credit card numbers were the personal identifying information of Raul Y. and Richard G. *Id.* The evidence showed that the defendant used the stolen credit cards to purchase merchandise in the Broadview and Berwyn Marshalls stores. The defendant admitted that he knew the credit cards were stolen. Further, when the defendant entered the Marshalls store in Lombard, he possessed the receipts with the personal identifying information of Raul Y. and Richard G. He presented those receipts along with merchandise to the store clerk to return the merchandise for cash. The defendant needed the receipts to make the returns. This evidence was sufficient to prove that the defendant knowingly possessed personal identifying information of Raul Y. and Richard G. at the Lombard Marshalls store without lawful authority.

¶ 45 The defendant argues that the evidence was insufficient because he did not "use" the personal identifying information of anyone else in the Lombard Marshalls store. However, the conviction was based on the "possession" of personal identifying information of others, not on its "use." The defendant also argues that he did not possess the personal identifying information of someone else because the receipts he used for the returns only had the last four digits of the victim's credit card numbers but not their names. However, as noted above, personal identifying

information includes the number assigned to someone's credit card. 720 ILCS 5/16-0.1 (West 2012). Despite the defendant's contention, the evidence showed that the receipts contained the credit card numbers of Raul Y. and Richard G., even if it only displayed the last four digits. The defendant thus possessed the personal identifying information of others.

¶ 46 The defendant's fourth contention on appeal is that his sentence was excessive, and that the imposition of consecutive sentences was improper. The defendant argues that he was essentially found guilty of stealing $550 and that a sentence of 14 years is manifestly disproportionate to the seriousness of his offenses. The defendant also argues that the imposition of consecutive sentences was improper because his offenses were committed as part of a single course of conduct during which there was no substantial change in the overarching criminal objective.

¶ 47 A trial court has wide latitude in sentencing a defendant as long as it does not ignore relevant mitigating factors or consider improper aggravating factors. *People v. Peltz*, 2019 IL App (2d) 170465, ¶ 29. The weight to be given to these factors depends on the circumstances of each case. *People v. Chirchirillo*, 393 Ill. App. 3d 916, 927 (2009). A reviewing court gives substantial deference to the trial court's sentencing decision because the trial court has observed the defendant and the proceedings and is therefore in a much better position to consider the sentencing factors. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 9. We therefore accord great deference to a sentence within the appropriate sentencing range. *People v. Colon*, 2018 IL App (1st) 160120, ¶ 66. We will not disturb the trial court's sentencing decision absent an abuse of discretion, which occurs only where the sentence is greatly at variance with the law's spirit and purpose, or manifestly disproportionate to the nature of the offense. *Brown*, 2018 IL App (1st) 160924, ¶ 9.

¶ 48 The defendant was sentenced to seven years' imprisonment on each of the four burglary convictions, to run concurrently. The defendant was also sentenced to seven years' imprisonment on each of the identity theft convictions, to run concurrently to each other but consecutive to the sentences for the burglary convictions. The burglary and identity theft convictions, as charged, were Class 2 felonies with a sentencing range of three to seven years' imprisonment. 730 ILCS 5/5-4.5-35 (West 2018). The trial court sentenced the defendant to 14 years' imprisonment.

¶ 49 We cannot say that the trial court abused its discretion in imposing the defendant's sentence. The seven-year sentences for each individual offense were within the sentencing range. Further, at the sentencing hearing, the trial court discussed defendant's significant criminal history. It required eight pages of the PSI to list all of the defendant's offenses and arrests, which included 13 prior felony convictions, 12 prior sentences of imprisonment, and 59 arrests. The most recent conviction was in January of 2017, for theft by deception, while this case was pending. Further, while this case only involved $550, there was evidence presented at the sentencing hearing indicating that between April and August 2014, the total number of credits issued to the defendant's debit card, by Marshalls and other stores, totaled $17,365.82.

¶ 50 In arguing that his sentence was excessive, the defendant relies on *People v. Allen*, 2017 IL App (1st) 151540. There, the defendant, Frank Allen, was sentenced to 10.5 years' imprisonment for smashing a car window with a rock and stealing a hat containing two packs of cigarettes. *Id.* ¶ 4. Allen had 11 previous convictions and suffered from bipolar disorder and schizophrenia. *Id.* ¶ 5. The reviewing court held that Allen's sentence was an abuse of discretion and reduced it to the required minimum sentence of six years. *Id.* ¶¶ 12, 23. The reviewing court emphasized the low level of seriousness of the crime (*id.* ¶ 15), that Allen did not harm or threaten anyone (*id.* ¶ 14), that his criminal history showed he could not be rehabilitated (*id.* ¶ 17), and that

restitution would better serve the victim than having Allen spend an extra four years in prison (*id.* ¶ 22).

¶ 51 We find the defendant's reliance on *Allen* unpersuasive. In *Allen*, the crime at issue was not serious and the victim's pecuniary damages were minor. Further, the sentence was based on one offense that occurred on one date. In contrast, in the present case, there were multiple victims: Marshalls, Raul Y., Richard G., and Citibank, and there were multiple offenses committed on multiple dates. Further, the record indicates that the defendant, at about the time when the present offenses occurred, had fraudulently obtained cash proceeds exceeding $17,000. In addition, our supreme court has recognized the seriousness of identity theft. In addressing the crime of identity theft, the legislature declared that it is the " 'public policy of this State that the substantial burden placed upon the economy *** as a result of the rising incidence of identity theft and the negative effect of this crime on the People of this State and its victims is a matter of grave concern *** and therefore identity theft shall be identified and dealt with swiftly and appropriately.' " See *People v. Madrigal*, 241 Ill. 2d 463, 467 (2011) (quoting 720 ILCS 5/16G-5(a) (West 2008)).

¶ 52 The defendant also argues that the trial court erred in imposing consecutive sentences. Consecutive sentences may be imposed where, "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(c)(1) (West 2016). Here, the trial court relied on the defendant's extensive criminal history, which included additional convictions for bank fraud, theft by deception, and identity theft while this case was pending, and the defendant's repeated failure at rehabilitation, to conclude that the

imposition of consecutive sentences was necessary to protect the public from the defendant's conduct. There was no abuse of discretion in such a conclusion.

¶ 53 In arguing that the imposition of consecutive sentences was improper, the defendant cites *People v. Kagan*, 283 Ill. App. 3d 212 (1996). However, at issue in that case was a previous version of section of section 5-8-4 of the Unified Code of Corrections. The version that applied in that case provided that "[t]he court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective." *Id.* at 219 (citing 730 ILCS 5/5-8-4 (West 1992)). However, that provision is not included in the amended version of the statute that is applicable to the defendant's sentence. The defendant's reliance on *Kagan* is thus inapposite.

¶ 54 The defendant's final contention on appeal is that there was insufficient evidence to convict him of burglary because the State failed to prove beyond a reasonable doubt that he entered Marshalls "without authority," since he entered the store during normal business hours and at all times stayed in areas open to the public. In so arguing, the defendant relies on the decision of the Third District Appellate Court in *People v. Johnson (Johnson I)*, 2018 IL App (3d) 150352. At issue in that case was the application of the limited authority doctrine, which essentially holds that a person enters a building without authority if he enters with a purpose that is inconsistent with the reason the building is open, such as to commit a theft. See *People v. Weaver*, 41 Ill. 2d 434, 439 (1968) ("authority to enter a business building ... extends only to those who enter with a purpose consistent with the reason the building is open"). In *Johnson I*, the court concluded, based on caselaw subsequent to *Weaver* (*People v. Bradford*, 2016 IL 118674), and the passage of the retail theft statute (720 ILCS 5/16-25 (West 2018)), that a showing that a defendant entered a store with

the intent to commit a theft was no longer sufficient to prove the "without authority" element of burglary. *Johnson I*, 2018 IL App (3d) 150352, ¶¶ 25-33.

¶ 55 After the defendant filed his appellant's brief, our supreme court reversed the Third District's decision in *Johnson I*. See *People v. Johnson (Johnson II)*, 2019 IL 123318. In *Johnson II*, our supreme court reaffirmed that an individual enters without authority and commits burglary when he enters a retail establishment with the intent to commit a theft. *Id.* ¶ 19. In so ruling, our supreme court agreed with this court's ruling in *People v. Moore*, 2018 IL App (2d) 160277, ¶ 22, which had reached the same conclusion. *Johnson*, 2019 IL 123318, ¶ 29. Accordingly, the defendant's final contention on appeal is without merit.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed in part and vacated in part. We vacate the defendant's convictions on counts 17 and 19 for burglary, but affirm his convictions and sentence on all other counts.

¶ 58 Affirmed in part and vacated in part.