

NOTICE

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2011 IL App (4th) 100496-U

Filed 11/3/11

NO. 4-10-0496

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Livingston County |
| TERESA L. VAUGHAN, |) | No. 09CF189 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Jennifer H. Bauknecht, |
| |) | Judge Presiding. |

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the defendant's conviction and sentence, concluding that (1) the evidence was sufficient to prove the defendant guilty of identity theft, (2) the trial court did not abuse its discretion by denying the defendant's motion for a new trial, and (3) the court did not err by allowing the State to question the defendant on an issue that the defendant initiated.
- ¶ 2 Following a March 2010 trial, a jury convicted defendant, Teresa L. Vaughan, of identity theft (money and goods exceeding \$300 in value but not exceeding \$2,000 in value) (720 ILCS 5/16G-15(a)(1) (West 2008)). In April 2010, the trial court sentenced defendant to five years in prison.
- ¶ 3 Defendant appeals, arguing that (1) the State failed to prove her guilty beyond a reasonable doubt, (2) the trial court erred by denying her motion for a new trial, and (3) the court erred by allowing the jury to consider testimony regarding her bankruptcy. We disagree and

affirm.

¶ 4

I. BACKGROUND

¶ 5

In July 2009, the State charged defendant with identity theft under section 16G-15(a)(1) of the Criminal Code of 1961 (720 ILCS 5/16G-15(a)(1) (West 2008)), alleging that she knowingly used an automated teller machine debit card owned by her mother, Charlotte Hamilton, to fraudulently obtain money and merchandise.

¶ 6

A. The Evidence Presented

¶ 7

1. *The State's Evidence*

¶ 8

At defendant's March 2010 jury trial, the parties stipulated that on June 21, 2009, defendant used Charlotte's debit card to (1) withdraw \$350 from Charlotte's checking account and (2) purchase (a) \$240 in merchandise from two separate stores and (b) a \$100 gift card.

¶ 9

Charlotte, who was 64 years old, testified that in 2005 she received a debit card from her bank, which allowed her to make purchases and withdraw cash from her checking account with the use of a personal identification number (PIN). Because Charlotte would often ask defendant, defendant's older sister, Gwen Hilsabeck, and two other family members to make purchases on her behalf, Charlotte provided them her debit card and PIN.

¶ 10

In July 2009, Gwen, who reconciled Charlotte's bank statements, told Charlotte about the June 21, 2009, transactions, which Charlotte denied making. Shortly thereafter, Charlotte, accompanied by defendant, went into the police station to file a report. Before she spoke to an officer, however, Charlotte complied with defendant's request to speak with her outside the police station. Once outside, defendant admitted to Charlotte that she made the transactions at issue. Charlotte stated that (1) she did not give defendant permission to use her

debit card on June 21, 2009; (2) defendant did not ask to use the debit card that day; and (3) defendant did not tell her that she had returned the debit card to her purse.

¶ 11 After defendant's admission, Charlotte did not file a police report because she wanted to speak with Gwen and defendant to "work it out and see why [defendant] did it" in an effort to "try to help her." Defendant told Charlotte that she needed money to get her car from Gwen, who had "repossessed" it, because Gwen had a financial interest in the car and defendant failed to make her payment. During this period, Charlotte noted that Gwen and defendant "were not getting along." During the week that followed, Charlotte spoke to Gwen about defendant's actions. Gwen advised Charlotte to file a police report. Thereafter, Charlotte returned to the police station, accompanied by Gwen, and filed a report because they could not resolve the issue.

¶ 12 Charlotte acknowledged that defendant had used her debit card in the past to make purchases for defendant's benefit, which defendant would later repay, but that prior to making the June 21, 2009, transactions, defendant had always sought her permission to use the debit card before making purchases. Charlotte stated that, with the exception of June 21, 2009, she always knew when defendant had her debit card because she would give it to her.

¶ 13 Gwen testified that as the only "authorized user" on Charlotte's checking account, she would sign checks to pay Charlotte's bills and reconcile her bank statements, which included using Charlotte's debit card to satisfy Charlotte's financial needs. Gwen recounted that shortly after Charlotte informed her that she did not make any purchases on June 21, 2009, Gwen confronted defendant, who denied making the purchases. Defendant later admitted to Gwen that she had made the purchases at issue.

¶ 14 Sometime later, Charlotte called Gwen and informed her that she was going to

file a police report. Because Charlotte sounded upset, Gwen accompanied her to the police station. Gwen estimated that defendant had reimbursed Charlotte approximately \$200. Gwen acknowledged that during this period of time, she had "some serious disagreements" with defendant, which caused Gwen to have "hard feelings" toward her.

¶ 15

2. Defendant's Evidence

¶ 16

Defendant testified that she had access to and used Charlotte's debit card and PIN for the past seven years. During that time, defendant estimated that she had used the debit card about "once every three to six months" to purchase items for herself and Charlotte. Defendant stated that Charlotte neither (1) restricted her use of the debit card nor (2) rescinded her statement to defendant that she could use the debit card provided that she reimburse Charlotte.

¶ 17

Defendant recounted that on June 21, 2009, she was with Gwen at Charlotte's home when she took the debit card from Charlotte's purse without her permission because she did not want to admit to Charlotte that she needed financial help. Defendant explained that she owed Gwen \$310 for her car payment and did not want to disappoint her. After taking the debit card, defendant withdrew \$350 from Charlotte's account and purchased merchandise for herself.

¶ 18

Because Charlotte was out of town, defendant did not have a chance to tell Charlotte about her use of the debit card until defendant met her at the police station. After doing so, defendant offered to immediately reimburse Charlotte. Charlotte declined defendant's offer, stating that they would talk about the transactions after Charlotte returned from Florida. Defendant claimed that she reimbursed Charlotte for the June 21, 2009, transactions—as she had done in the past—by (1) paying Gwen \$310, which Gwen returned to Charlotte; (2) paying another \$200 in cash; and (3) giving Gwen a cell phone valued at \$185.

¶ 19

B. The Jury's Verdict and the
Trial Court's Sentence

¶ 20 After considering the evidence and counsel's argument, the jury convicted defendant of identity theft. In May 2010, the trial court denied defendant's motion for a new trial. Immediately thereafter, the court sentenced defendant to five years in prison.

¶ 21 This appeal followed.

¶ 22

II. ANALYSIS

¶ 23 Defendant argues that (1) the State failed to prove her guilty beyond a reasonable doubt, (2) the trial court erred by denying her motion for a new trial, and (3) the court erred by allowing the jury to consider testimony regarding her bankruptcy. We address defendant's contentions in turn.

¶ 24

A. Defendant's Conviction for Identity Theft

¶ 25 Defendant argues that the State failed to prove her guilty beyond a reasonable doubt. We disagree.

¶ 26

1. *The Offense of Identity Theft*

¶ 27 Section 16G-15(a)(1) of the Criminal Code of 1961 provides as follows:

"(a) A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property[.]" 720 ILCS 5/16G-15(a)(1) (West 2008).

Debit cards are personal identification documents and personal identifying information under sections 16G-10(a) and 16G-10(b), respectively (720 ILCS 5/16G-10(a), 16G-10(b) (West 2008)).

¶ 28

2. *The Standard of Review*

¶ 29

In *People v. Roberson*, 401 Ill. App. 3d 758, 772, 927 N.E.2d 1277, 1290 (2010), this court noted the following standard for reviewing claims challenging the sufficiency of the evidence:

"When considering a challenge to the sufficiency of the evidence, 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. [Citation.] The appellate's court's function is not to retry the defendant. [Citation.] A conviction will stand unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." (Internal quotations omitted.)

¶ 30

3. *Defendant's Sufficiency-of-the-Evidence Claim*

¶ 31

In this case, the trial court instructed the jury that to convict defendant of identity theft, they had to conclude that the State proved beyond a reasonable doubt that (1) defendant knowingly used "a personal identification document of another person to fraudulently obtain money or goods" and (2) the value of the money and goods obtained exceeded \$300. Defendant concedes that the only issue on appeal is whether she fraudulently obtained money and merchan-

dise. In particular, defendant claims that although she testified—as did Charlotte—that she did not have Charlotte's specific permission to use her debit card on June 21, 2009, her testimony as well as the testimony provided by Charlotte and Gwen, showed that she had implicit permission to use Charlotte's debit card. In response, the State contends that defendant exceeded any past authority Charlotte had given her when defendant "surreptitiously removed the debit card from Charlotte's purse." In support of its contention, the State asserts that (1) Charlotte's testimony that defendant had always asked to use her card before making any purchases and (2) Gwen's testimony that defendant initially denied making the transactions militated against defendant's claim that she had implicit approval to use Charlotte's debit card.

¶ 32 Here, as is often the case, the trier of fact was presented two different, opposing versions of events, which in this case, the jury could have accepted or rejected—in whole or in part—in determining whether the State had proved, beyond a reasonable doubt, that defendant committed the offense of identity theft. See *People v. Lee*, 213 Ill. 2d 218, 225, 821 N.E.2d 307, 311 (2004) (the trier of fact must determine witnesses' credibility, the weight to be given to their testimony, resolve conflicting evidence, and draw reasonable inferences from the evidence presented). Having rendered a guilty verdict, the jury obviously found the State's version of events persuasive. As we have previously stated, our review is confined to whether the evidence presented is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt. In this regard, we conclude that the jury's verdict was supported by the evidence presented. Accordingly, we reject defendant's argument that the State failed to prove her guilty beyond a reasonable doubt.

¶ 33 B. Defendant's Motion for a New Trial

¶ 34 Prior to reaching the merits of defendant's argument that the trial court erred by denying her motion for a new trial, we provide the following background.

¶ 35 1. *The Pertinent Testimony at Defendant's Trial*

¶ 36 At defendant's March 2010 trial, the State questioned Charlotte regarding whether defendant had previously reimbursed Charlotte for the June 21, 2009, transactions, as follows:

"[THE STATE:] *** [Defendant] used this card; and it's been agreed that [defendant] had used your [debit] card for the various items in this case. *** Did [defendant] give you money back for these particular matters that we're here for that took place in June [2009]?"

* * *

[CHARLOTTE:] *** [Defendant] left an envelope with money; *** I thought it was all the money; and the police officer opened it up; *** I can't remember if there was [\$]30 or [\$]50 or [\$]60. I don't remember. It was less than [\$]100. And [the police officer] said, [']this is all that's in there,['] because I didn't want to open it up until I showed the police. So he just told me, [']this is all that's here. Just keep it.['] And it wasn't that much, you know, the money that she *stole*." (Emphasis added.)

¶ 37 On cross-examination, defendant provided the following testimony regarding Charlotte's use of the term "stole":

"[THE STATE:] And you heard [Charlotte] say that you

stole this from her, Right?

[DEFENDANT:] No.

[THE STATE:] You did not hear that?

[DEFENDANT:] I heard [Charlotte] use the word
[']stole,['] but I also discussed [that] with [Charlotte]. I honestly
discussed that with her. [Charlotte] has no recollection of saying
that word [n]or did she in any way mean that word.

* * *

[THE STATE:] You talked to [Charlotte] over lunch?

[DEFENDANT:] I saw [Charlotte] at lunch. Yes."

¶ 38 2. *The Pertinent Evidence Presented at Defendant's Posttrial Hearing*

¶ 39 Shortly after her conviction for identity theft, defendant filed a motion for new
trial. At an April 2010 hearing on that motion, the trial court considered, in part, a letter
Charlotte had written to the court, which contained, in pertinent part, the following:

"I understand that [defendant] was found guilty but I ask
that [the trial court] take into account that over the past 20 years I
have let [my] children use my checking account / [d]ebit card
freely and I feel this may have had an impact on why [defendant]
used the card and did not feel it was an issue. There were a lot of
family issues going on and I should have talked more with her
before just assuming that she intentionally 'Stole' from me. I do
NOT feel that she stole from me because there have been numer-

ous time[s] over the years that [defendant] has used money from my accounts and I had no problem with it. I do believe, that since I had always allowed my children free access to my accounts, that I overreacted due to the fact that there were other family issues that I was upset over with her and I didn't want to listen to what she had to say."

¶ 40 At that same hearing, Charlotte testified, in part, that (1) the information in her letter to the court was true to the best of her knowledge and (2) she testified truthfully at defendant's March 2010 jury trial. The trial court then questioned Charlotte as followed:

"THE COURT: *** [Charlotte], clearly there's a difference between what you are saying; and I mean, you just told [the State] that you testified truthfully at trial.

* * *

[CHARLOTTE:] But I didn't mean for that word to come out.

THE COURT: Why don't you tell [the court] what it is that you want to say ***?

[CHARLOTTE:] What I said in the letter. I just want you to take into consideration everything that happened that year with me."

The court then took the matter under advisement.

¶ 41 At a May 2010 hearing, the trial court stated the following:

"It is not [the court's] job to second-guess the jury on questions of fact. [Charlotte] testified during the trial pretty consistent with her testimony in court, and actually there were no inconsistencies with what she testified to at the last hearing. I think that [Charlotte] was nervous on the stand; but being nervous *** did not lead [the court does not] think to [Charlotte] flat out lying; and, in fact, [Charlotte] did testify that she told the truth at trial when asked by [the State].

* * *

[The court] does not believe that there is anything that has been argued *** or the additional comments by [Charlotte] that would cause the Court to grant a new trial. [The court does not] think there has been anything to suggest what happened during the trial was not proper, was blatant lies to the jury. There's nothing to suggest that anything like that happened.

[Charlotte] may disagree with where the case ultimately ended up; but the jury made a decision based upon all the evidence before it; and there was ample opportunity to cross-examine her. [The court] think[s] [Charlotte] was pretty clear in her testimony, and the jury chose to weigh it accordingly so the motion for a new trial is denied."

¶ 43 Defendant argues that the trial court erred by denying her motion for a new trial. We disagree.

¶ 44 A trial court's ruling on a motion for a new trial will not be disturbed on appeal absent an abuse of discretion. *People v. Wilmer*, 396 Ill. App. 3d 175, 181, 919 N.E.2d 1035, 1040 (2010). " 'An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful[,] or where no reasonable person would take the view adopted by the trial court.' " *People v. Rivera*, 409 Ill. App. 3d 122, 142, 947 N.E.2d 819, 838 (2011) (quoting *People v. Childress*, 338 Ill. App. 3d 540, 545, 789 N.E.2d 330, 334 (2003)).

¶ 45 We note that in support of her argument, defendant contends that Charlotte's letter to the trial court and her corresponding testimony at the April 2010 hearing on her motion for a new trial constituted both new evidence and a recantation of her trial testimony that defendant "stole" from her. We disagree with both characterizations.

¶ 46 New evidence must be of such conclusive character that it will "probably change the result upon retrial; be material and not merely cumulative; discovered since the trial; and of such character that it could not have been discovered prior to trial by the exercise of due diligence." *People v. Gillespie*, 407 Ill. App. 3d 113, 129, 941 N.E.2d 441, 455-56 (2010).

Here, defendant was well aware of Charlotte's views during her trial. Indeed, defendant testified to that effect at her trial—namely, that Charlotte regretted using the word "stole" to characterize defendant's actions on June 21, 2009. Thus, we reject defendant's claim that Charlotte's correspondence with the trial court and her corresponding posttrial testimony constituted new evidence.

¶ 47 We also reject defendant's contention that Charlotte's letter to the trial court and

her corresponding testimony at the April 2010 hearing on her motion for a new trial was a partial recantation of her trial testimony because Charlotte did not renounce any portion of that testimony. See Black's Law Dictionary 1295 (8th ed. 2004) (to recant is to "withdraw or renounce (prior statements or testimony) formally or publically"). Instead, Charlotte confirmed through her posttrial testimony that her trial testimony was truthful, a claim defendant acknowledges in her brief to this court.

¶ 48 Our review of evidence presented at the April 2010 hearing on defendant's motion for a new trial shows that Charlotte did not intend to use the word "stole" because, as she explained, she did not believe that defendant stole from her. Relying on this statement, defendant posits that she could not have fraudulently obtained money and merchandise. However, as defendant concedes in her reply brief, stealing is not an element of the offense of identity theft; thus, the State was not required to prove that defendant stole to convict her of that charge. See *People v. Montoya*, 373 Ill. App. 3d 78, 85, 868 N.E.2d 389, 395 (2007) (although the defendant did not steal money from her employer, she obtained employment, compensation, and benefits by misrepresenting herself as someone else). Regardless, defendant contends that "[i]n the manner in which Charlotte was using the word, [Charlotte] was referring to whether [defendant] had permission to use the card." Such a determination, however, would be inconsistent with Charlotte's (1) trial testimony that she did not give defendant specific permission to use her debit card to withdraw money or make purchases on June 21, 2009, and (2) testimony at the April 2010 hearing that she testified truthfully at defendant's trial.

¶ 49 Here, as we have previously stated, the State was required to prove that (1)

defendant knowingly used "a personal identification document of another person to fraudulently obtain money or goods" and (2) the value of the money and goods obtained exceeded \$300. At trial, defendant conceded that she had used Charlotte's debit card and PIN to obtain \$690 in money and merchandise. Thus, the sole element the State was required to prove was whether defendant acquire the cash and goods "fraudulently."

¶ 50 If the jury had believed defendant's version of events that Charlotte implicitly gave her permission to use her debit card to make the transactions at issue, then defendant could not have obtained the money and merchandise fraudulently—that is, in a deceitful manner. However, the jury obviously believed that the State had proved beyond a reasonable doubt that on June 21, 2009, Charlotte had not given defendant either explicit or implicit permission to use her debit card. Thus, by returning a guilty verdict, the jury believed that but for defendant's deceitful acquisition of Charlotte's debit card—that is, without Charlotte's permission—defendant was able to fraudulently obtain \$690 worth of money and merchandise she would not otherwise have been entitled to withdraw or purchase. Thus, contrary to defendant's assertion, a strong probability did not exist that the jury would have reached a different verdict had Charlotte omitted her testimony that defendant stole from her.

¶ 51 Accordingly, having reviewed the evidence presented at defendant's (1) March 2010 jury trial and (2) April 2010 hearing on her motion for a new trial, we conclude that the trial court's denial of defendant's motion for a new trial was not an abuse of discretion.

¶ 52 C. Defendant's Claim That the Jury Considered Prejudicial Evidence

¶ 53 Defendant also argues that the trial court erred by allowing the jury to consider testimony regarding her bankruptcy. We disagree.

¶ 54 At defendant's March 2010 jury trial, defendant testified that she and Gwen had been fighting over some "financial difficulties." Defendant elaborated that the problem originated from her reliance on Charlotte and Gwen for financial assistance. Defendant then provided the following testimony:

"[DEFENSE COUNSEL:] The problems with [Gwen] didn't start until a few months prior to June?

[DEFENDANT:] We're a year apart, I guess we've always had our sibling rivalries.

[DEFENSE COUNSEL:] The serious disagreement though?

[DEFENDANT:] The serious disagreement did not start until a few months before?

[DEFENSE COUNSEL:] Thank you ***. Nothing further.

THE COURT: [The State].

[THE STATE:] What was the disagreement?

[DEFENSE COUNSEL:] Object as to relevance as to what they were arguing and fighting about.

THE COURT: Overruled.

[DEFENDANT:] *** [Gwen] had helped me pay some of my bills; and in an effort to pay her back financially I had to file bankruptcy as a single mom. [Gwen] had to be listed on there

because she was a creditor. It involved [Gwen] thinking I was being irresponsible.

* * *

[THE STATE:] *** [Y]ou were in *** financial trouble [on] June 21, 2009?

[DEFENDANT:] I don't know that I would say ["]financial trouble.["] I didn't want to disappoint [Gwen]."

¶ 55 We note that in her brief to this court, defendant contends, as follows:

"A subtext to (and impetus for) this case was a dispute between [defendant] and *** Gwen. Specifically, [defendant] owed Gwen money for a car payment. After Gwen learned that [defendant] was the one who had used [Charlotte's] debit card (but had not paid her for the car payment), she urged Charlotte to report the matter to the police."

Consistent with defendant's theory that Charlotte pressed charges against her only because of Gwen's influence, (1) defendant testified on direct examination that she and Gwen had a "serious disagreement" over some "financial difficulties" and (2) the State's cross-examination of defendant concerned, in part, this disagreement. In response to the State's inquiry regarding that dispute, defendant could have merely answered—as she did—that the financial difficulties originated from Gwen's belief that defendant was irresponsible for not fulfilling her financial obligations to Gwen. Defendant did not need to volunteer that she also had a debtor-creditor relationship with Gwen during a previous bankruptcy proceeding. Having done so, defendant

cannot now complain that the trial court erred by allowing such testimony. See *People v. Johnson*, 206 Ill. App. 3d 318, 322, 564 N.E.2d 232, 235 (1990) ("[T]he general rule is that a defendant cannot complain if, on cross-examination, the State pursues a line of questioning which the defendant initiated"); see also *People v. Chrisos*, 151 Ill. App. 3d 142, 153, 502 N.E.2d 1158, 1166 (1986) (a defendant cannot complain that the State pursued a line of questioning to dispel the impression created by the defendant on direct examination).

¶ 56 We also reject defendant's assertions that her bankruptcy testimony (1) was "extensively" referred to by the State in its closing and rebuttal arguments and (2) "likely convinced the jury in this close case that [defendant] was indeed bad with money, and therefore stole money from [Charlotte]." Contrary to defendant's assertion, the record shows that the State never used the term "bankruptcy" during defendant's trial. In addition, our review of the pertinent portions of the State's closing and rebuttal arguments—as quoted by defendant in her brief to this court—shows that the State argued that (1) defendant changed her story from denying that she had made the transactions to claiming that financial difficulties prompted her to use Charlotte's debit card and (2) that the dispute between Gwen and defendant concerned Gwen's belief that defendant was "not good with money," which were consistent with the evidence presented. Further, we reject any notion that the State's closing and rebuttal arguments constituted substantive evidence as the record clearly shows that the trial court correctly admonished the jury that "[n]either opening statements or arguments are evidence, and any statement or arguments made *** which is not based on the evidence should be disregarded."

¶ 57 With regard to defendant's final assertion that her bankruptcy testimony "likely convinced the jury in this close case that [she] was indeed bad with money, and therefore stole

money from [Charlotte]," we are not persuaded. As we have previously concluded, the evidence presented was sufficient to find—as the jury did here—that the State had met its burden of proof that defendant was guilty of identity theft. Accordingly, we reject defendant's argument that the trial court erred by allowing the jury to consider testimony regarding her bankruptcy.

¶ 58

III. CONCLUSION

¶ 59

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 60

Affirmed.