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ATTORNEY FOR APPELLANT:

MARK S. LENYO
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LEZLEA E. LEEPER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0901-CR-21
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D08-0702-FD-168

June 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a jury trial, Lezlea Leeper appeals her conviction for theft, a Class D felony. On appeal, Leeper raises two issues, which we restate as 1) whether the trial court properly admitted into evidence sales receipts documenting Leeper's alleged fraudulent transactions and 2) whether sufficient evidence supports Leeper's conviction. Concluding the trial court did not improperly admit the receipts into evidence and that sufficient evidence supports Leeper's conviction, we affirm.

Facts and Procedural History

Leeper was a store manager at a St. Joseph County jewelry store owned by Zale Corporation. From November 2004 to May 2006, Leeper made a series of legitimate, below-retail jewelry purchases by using her employee discount and, in some instances, a seasonal discount. Leeper then returned the discounted jewelry at the retail price and either received a credit on her debit card or used the credit to purchase additional jewelry. To illustrate one transaction, on January 27, 2005, Leeper purchased a ring that retailed for $6,995.00 at the legitimately discounted price of $1,958.60 and a pair of earrings that retailed for $1,995.00 at the legitimately discounted price of $1,396.50. Several months later, Leeper returned the ring and earrings at their retail prices, $6,995.00 and $1,958.60, respectively, realizing a credit of $5,639.90. Leeper then used the credit to purchase additional jewelry.

At some point in 2006, Zale discovered Leeper's transactions and sent two of its managers, John Waugh and Michael Eakright, to investigate. After Waugh confronted Leeper with sales receipts of the transactions, she admitted she was not authorized to

return discounted jewelry at the retail price and executed a written statement to that effect. Leeper also admitted to Waugh that as a result of these transactions, she had obtained eleven pieces of jewelry with a retail value slightly in excess of $41,000.

On February 12, 2007, the State charged Leeper with theft, a Class D felony. From June 23 to 27, 2008, the trial court presided over a consolidated jury trial,[1] at which Waugh, Eakright, and Leeper, among others, testified, and the trial court admitted into evidence sales receipts of Leeper's alleged unauthorized transactions. The jury found Leeper guilty, and the trial court entered a judgment of conviction and sentenced her to one hundred eighty days suspended. Leeper now appeals.

Discussion and Decision

I. Admission of Evidence

Leeper argues the trial court improperly admitted sales receipts of her allegedly unauthorized transactions into evidence. This court reviews the trial court's decision to admit evidence for an abuse of discretion. Speybroeck v. State, 875 N.E.2d 813, 818 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id.

Leeper's challenge to the trial court's admission of the sales receipts concerns whether they were admissible as duplicates.[2] Indiana Evidence Rule 1002 provides the

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[1] Two other Zale employees were tried with Leeper.

[2] It is not entirely clear from her brief, but to the extent Leeper argues the duplicates were inadmissible because they were not properly authenticated, we fail to see an abuse of discretion by the trial court. Indiana Evidence Rule 901(a) states, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Within the context of the business records exception to the hearsay rule, Indiana Evidence Rule 803(6), which is the applicable exception here, this court has observed that the proponent of the business record

> may authenticate it by calling a witness who has a functional understanding of the record keeping process of the business with respect to the specific entry, transaction, or declaration contained in

general rule that "[t]o prove the content of a writing, . . . the original writing . . . is required . . . ." Indiana Evidence Rule 1003, however, provides an exception: "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Leeper challenges the admissibility of the sales receipts as duplicates under both clauses of Rule 1003, but before addressing them, it is worth explaining why the sales receipts are duplicates.

Trial testimony indicated that when a customer purchased a piece of jewelry, the employee would enter the customer's name in the computer and scan the item. The computer would then generate two time-of-sale receipts – one for the customer, and one for the store's physical file. Among other information, these sales receipts would list the customer's name, the item purchased, the retail price less any applicable discounts, and the amount due. If a purchase coincided with a return, the sales receipts would list the customer's name, the item returned, and the refund amount if the price paid for the return item was greater than the price paid for the purchase item.

The sales receipts that were introduced into evidence were produced by accessing Leeper's husband's account, see state's exhibits 3-5, 7-8, and 12, and an account named "EZLEA ELEEPER," see state's exs. 6 and 9-11, on the store's computer. Once accessed, the computer then generated printouts of the sales receipts. Waugh testified

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> the document. The witness need not have personally made or filed the record or have firsthand knowledge of the transaction represented by it in order to sponsor the exhibit. Rather, such person need only show that the exhibit was part of certain records kept in the routine course of business and placed in the records by one who was authorized to do so and who had personal knowledge of the transaction represented at the time of entry.

Rolland v. State, 851 N.E.2d 1042, 1045 (Ind. Ct. App. 2006) (citations omitted). Waugh's foundational testimony met the standards set forth in Rule 901 and Rolland. See, e.g., Transcript at 49-51.

that the printout sales receipts were identical to the time-of-sale receipts except for a "RE-PRINT" heading across the top. See, e.g., State's Ex. 3.

Indiana Evidence Rule 1001(3) defines an "original" of a writing to include any printout of data stored in a computer if the printout is "shown to reflect the data accurately." Indiana Evidence Rule 1001(4) defines a "duplicate" as "a counterpart produced by the same impression as the original, or from the same matrix, . . . or by other equivalent techniques which accurately reproduces the original." The sales receipts that were introduced into evidence are copies of the printouts that Waugh generated from the computer account data. The computer data is the information that was obtained when the sales occurred (customer name, items purchased or returned, amount due or refunded, etc.). Consistent with Rule 1001, then, if the printouts accurately reflect the computer data, the printouts are by definition originals of the data, and the sales receipts are by definition duplicates of the printouts. With these points in mind, we turn to Leeper's arguments.

Leeper's first challenge concerns the authenticity of the original. Citing Eakright's testimony that it was possible for the customer names on the time-of-sale receipt and the printout receipt to differ if an employee changed the customer's account name on the computer (i.e., changed the computer data), Leeper argues the sales receipts bearing the customer name "ELZEA ELEEPER" did not reflect the computer data accurately and in turn cannot be considered originals under Rule 1001(3). Implicit in this argument is that the time-of-sale receipt bore a different customer name – Leeper claims it was "LEZLEA LEEPER" – and that it was subsequently changed by another employee.

Leeper, however, fails to cite any evidence indicating the time-of-sale receipt bore a different customer name than "ELZEA ELEEPER." More to the point, Leeper overlooks that she never disputed she was the employee (and customer) who executed the transactions in question. Indeed, Leeper's entire defense was that although she was responsible for the transactions, she conducted them in a manner that was consistent with the way she had been trained. Thus, we conclude the trial court did not abuse its discretion on the ground that the authenticity of the original sales receipts was dubious.[3]

In her second challenge, Leeper argues the trial court abused its discretion when it admitted the duplicate sales receipts into evidence in lieu of the originals because some of the duplicates contain missing information. This court has recognized that a duplicate may not be an adequate substitute for an original where the duplicate "is not fully legible or where only a portion of the total original document is offered and the remainder would be useful for cross examination, or might qualify the portion offered, or otherwise be useful to the opposing party." Wilson v. State, 169 Ind. App. 297, 305, 348 N.E.2d 90, 95 (1976). We acknowledge that some of the sales receipts admitted into evidence appear to have the top, bottom, and side parts cut off, but aside from listing these deficiencies, see appellant's br. at 15-16, Leeper makes no attempt to explain why their

[3] In a related argument, Leeper contends that admission of the "EZLEA ELEEPER" sales receipts "left the distinct impression that all of [Leeper's] transactions were suspicious and designed to cover up fraudulent activity." Appellant's Brief at 13. Leeper goes on to contend that this impression was unfairly prejudicial because "[t]estimony from regional manager, Michael Eakright, established that the spelling of the names of Leeper and other employees were changed in 2006 when another employee had taken receipts bearing personal information of other co-employees, including Lezlea Leeper." Id. Although Leeper testified to this effect, see tr. at 534-35, our review of the record indicates Eakright said no such thing. If anything, Eakright's testimony was to the contrary. See id. at 294 ("Q. Mr. Eakright, were you ever made aware that Ms. Leeper had changed her name in the computer? A. No."). Given Eakright's testimony, we fail to see how the sales receipts bearing the customer name "EZLEA ELEEPER" were unfairly prejudicial to Leeper.

admission in lieu of the original was unfair.[4] Thus, we conclude the trial court did not abuse its discretion on the ground that it was unfair to admit the duplicate sales receipts in lieu of the originals.

Because Leeper cannot establish that the sales receipts were improperly admitted as duplicates pursuant to Rule 1003, it follows that the trial court did not abuse its discretion when it admitted them into evidence.

II. Sufficiency of Evidence

Leeper argues insufficient evidence supports her theft conviction.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, footnote, and citations omitted) (emphasis in original).

To convict Leeper of theft as a Class D felony, the State had to prove beyond a reasonable doubt that she knowingly or intentionally exerted unauthorized control over Zale's property, with intent to deprive the company of any part of its value or use. Ind. Code § 35-43-4-2(a); Markland v. State, 865 N.E.2d 639, 642 (Ind. Ct. App. 2007), trans.

[4] We note as an aside that Leeper testified she had several of the original, time-of-sale receipts in her possession at the time Waugh confronted her, see tr. at 548-49, though it is unclear whether they were still in her possession at the time of trial.

denied. Leeper's sole challenge to the sufficiency of the evidence is that she did not intend to deprive Zale of any part of the value or use of the jewelry she took. To support this challenge, Leeper primarily cites her own testimony that she executed the sales and exchanges of the jewelry consistent with her training.

"The intent necessary to support a conviction for theft can be inferred from surrounding circumstances." Smith v. State, 664 N.E.2d 758, 761 (Ind. Ct. App. 1996), trans. denied. Contrary to Leeper's testimony, Waugh and Eakright testified that the transactions in question were not authorized by Zale, specifically to the extent those transactions involved returning an item purchased at a discount for the retail price. Eakright also testified that an employee would have to manually override the computer to return an item purchased at a discount for the retail price. Stated differently, if an item purchased at a discount was returned, the default was that the computer refunded the discounted price, not the retail. Moreover, direct evidence of Leeper's intent was presented through Waugh, who testified that Leeper admitted she was not authorized to return discounted jewelry at the retail price and that she executed a written statement to that effect. Given this evidence, a reasonable juror could conclude Leeper intended to deprive Zale of the jewelry's value or use. Thus, it follows that sufficient evidence supports Leeper's conviction.

Conclusion

The trial court did not abuse its discretion when it admitted the duplicate sales receipts into evidence, and sufficient evidence supports Leeper's theft conviction.

Affirmed.

DARDEN, J., and BAILEY, J., concur.