

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-12-130
 :
 - vs - : OPINION
 : 11/13/2012
 :
 SABRINA N. INGRAM, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 11CR27191

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive,
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RINGLAND, J.

{¶ 1} Defendant-appellant, Sabrina N. Ingram, appeals her conviction for unauthorized use of property.

{¶ 2} Appellant began working for Outback Steakhouse in Mason, Ohio, in February 2006. She worked there intermittently as a bartender, server, and administrative person until October 2010. In lieu of having her paychecks deposited directly to a bank account, appellant was issued a Green Dot card through which she would receive payment from the

restaurant. The Green Dot card is the functional equivalent of a debit card.¹ From that point forward, rather than receive a paycheck, appellant's compensation was deposited directly onto the Green Dot card.

{¶ 3} In September 2010, Sam Bonasso, proprietor of the Outback Steakhouse where appellant worked, received an email from the corporate accounting department detailing ten charge backs. Bonasso explained that a charge back typically occurs when there is a discrepancy with the amount of money that has been charged to a customer's credit card. Bonasso testified that he would generally receive charge back emails one at a time, a maximum of five times a year. Appellant was in Bonasso's office at the time he read the email detailing the ten charge backs. Appellant told Bonasso that she would look into the reason for the charge backs and let him know what she found. Within a few days, appellant informed Bonasso that a computer error had caused the problem. Appellant told Bonasso that they would receive a credit for the charges along with a certified letter regarding the matter. Bonasso testified that he did not receive the credit. However, appellant continued to tell him that it was taking longer than expected, but would be coming.

{¶ 4} In mid-October 2010, Bonasso received another email from the accounting department that again stated that the charge backs were pending and there were no funds to cover them. At that point, Bonasso showed the second email to Brandt Tiffany, a front house manager for Outback. Tiffany was able to identify the single cardholder number associated with the charge backs. Using the cardholder number, they were able to track back the charges and match them to the corresponding guest checks. Upon further investigation, it was discovered that all ten charge backs were related to purchases made for small amounts,

1. The Green Dot company website describes the card as a reloadable prepaid card that may be used "anywhere MasterCard or Visa debit cards are accepted," while allowing cash withdrawal at "any MoneyPass ATM." <http://www.greendot.com/greendot> (accessed November 1, 2012).

but with significant tips. The charge backs in total amounted to \$1480.² Bonasso testified that he confronted appellant on October 22, 2010, and that she admitted that the charges were made to her Green Dot card. Bonasso fired appellant on that same day for misappropriation of funds.

{¶ 5} On May 23, 2001, appellant was indicted on one count of unauthorized use of property, in violation of R.C. 2913.04(A), a felony of the fifth degree, and one count of theft, in violation of R.C. 2913.02(A)(3), a felony of the fifth degree. Following a jury trial on October 3 and 4, 2011, the jury acquitted appellant of theft, but convicted her of unauthorized use of property. Appellant was sentenced to three years of community control, a \$500 fine, restitution of \$1,480 to Bonasso, and no contact with the Mason Outback or any of its employees.

{¶ 6} Appellant now appeals from that conviction, raising the following assignment of error for our review:

{¶ 7} THE APPELLANT'S CONVICTION WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 8} Within this assignment of error, appellant argues that the state failed to prove beyond a reasonable doubt that appellant acted with criminal knowledge. In addition, appellant argues that the state failed to present evidence that appellant acted without the express or implied consent of the owner. Therefore, appellant argues, the evidence was insufficient and her conviction was against the manifest weight of the evidence.

{¶ 9} When reviewing the sufficiency of the evidence underlying a criminal conviction, the function of an appellate court is "to examine the evidence admitted at trial to determine

2. The charges were as follows: (1) \$2.24 bill with a \$97.76 tip; (2) \$0.01 bill with a \$99.99 tip; (3) \$2.24 bill with a \$197.76 tip; (4) \$2.24 bill with a \$197.76 tip; (5) \$0.01 bill with a \$49.99 tip; (6) \$2.24 bill with a \$72.76 tip; (7) \$2.24 bill with a \$152.76 tip; (8) \$1.02 bill with a \$198.98 tip; (9) \$0.01 bill with a \$149.99 tip; and (10) \$1.02 bill with a \$248.98 tip.

whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact would have found the essential elements of the crime proven beyond a reasonable doubt." *Id.*

{¶ 10} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *State v. Wilson*, 12th Dist. No. CA2006-01-007, 2007-Ohio-2298, ¶ 34. In determining whether the conviction is against the manifest weight of the evidence, an appellate court "must weigh the evidence and all reasonable inferences from it, consider the credibility of the witnesses and determine whether in resolving conflicts, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Coldiron*, 12th Dist. Nos. CA2003-09-078, CA2003-09-079, 2004-Ohio-5651, ¶ 24; *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. "This discretionary power should be exercised only in the exceptional case where the evidence weighs heavily against conviction." *Id.*

{¶ 11} "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *Wilson* at ¶ 35. "Thus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.*

{¶ 12} R.C. 2913.04(A) states that: "No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent." Appellant argues she did not knowingly use the property, that the property did not belong to Bonasso, and that she had the implied and express consent of Bonasso or Outback to use

the property.

{¶ 13} In the present case, appellant on ten separate occasions made small purchases from the restaurant, included large tips, charged the bill to her Green Dot card, then removed cash from the register to cover the tip she had given herself. Appellant makes no claim that the cash in the register belonged to her. Appellant does argue that portions of the cash in the register belonged to various employees working at the time, and that no evidence was taken as to whether they gave consent for her to use that property. The jury heard this evidence, and was free to determine whether the money in the register at any given time belonged to numerous employees, or whether it belonged to the proprietor until such time as those employees "cashed out" for the day.

{¶ 14} Appellant also argues that she believed she had the express and implied consent of Outback to remove the cash from the register because they had provided her the Green Dot card in lieu of paychecks. This argument fails to explain how Outback's providing her with a reloadable debit card impliedly or expressly also consents to allowing her to withdraw cash from the registers upon being paid. Appellant provides no evidence that Outback consented to her withdrawing money from the restaurant's registers as though they were an ATM because she was issued a Green Dot card. Their providing her with a Green Dot card does not appear to provide consent for making this type of withdraw any more than one could assume Outback consents to someone making such withdraws with a debit card simply because their paychecks were deposited directly into a bank account. Bonasso, on the other hand, testified that neither appellant nor any employees were permitted to remove cash from the register in this fashion. When asked about this, Bonasso testified:

[MS. HIETT]: And did she ever have your consent to charge her pay card or credit card like she did in any of those ten transactions?

[BONASSO]: No, she did not.

[MS. HIETT]: Okay. What about any of your managers, would they ever been authorized to provide consent on your behalf to a server or an employee to charge up their credit card like that?

[BONASSO]: Absolutely not.

{¶ 15} Two additional managers from the Mason Outback also testified that this practice was not permitted, and that they had not provided consent to appellant to engage in that activity. The jury therefore heard ample evidence that appellant did not have consent to create checks and open a register for the purpose of removing money as tips.

{¶ 16} Next, appellant argues that while she may have acted recklessly or negligently, she did not *knowingly* use the property of another without consent. However, Bonasso's testimony provided significant evidence to the contrary for the jury to consider. First, appellant attempted to cover up what she had done by telling Bonasso she would look into the problem, then falsely telling Bonasso that a computer error had caused the chargebacks and that it was being taken care of. In addition, Bonasso testified that upon confronting appellant about the charges, he said, "you understand that you're not allowed to do this. She said, yes, I'm sorry, I lied." While appellant claims she believed Outback would be paid from her account, the evidence shows that appellant knew that she was using the property of another, and that she did not have consent to do so.

{¶ 17} Finally, appellant argues that even if she were found to have used the property of another without consent, the total amount of property used was less than \$500, the required amount to convict her of a felony. She argues that because the funds were available on her Green Dot card, the only portion of the property that applies for unauthorized use is the 1.5 percent fee that is charged to the restaurant for the use of a credit card.³ However, whether the funds would eventually be made available to Outback or not does not

3. 1.5 percent of \$1,480 would amount to \$22.20.

alter the determination of whether appellant was unauthorized in her use of the property of another at the time. It is therefore irrelevant whether Outback could at some point be reimbursed the money she withdrew at the time. We also note that Bonasso testified that appellant told him she would get him the money, but as of the trial had failed to do so.

{¶ 18} After reviewing the record, having weighed all of the evidence and found that the jury did not clearly lose its way and create a manifest miscarriage of justice, appellant's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Appellant's sole assignment of error is overruled.

{¶ 19} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.