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**IN THE
COURT OF APPEALS OF INDIANA**

KELLY MEISSNER,)

Appellant-Defendant,)

vs.)

No. 49A05-0702-CR-70

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tonya Walton Pratt, Judge
Cause No.49G01-0604-FC-75394

December 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Following a bench trial, Kelly Meissner was convicted of nine counts of forgery, Class C felonies, and nine counts of theft, Class D felonies. Meissner appeals her convictions, raising three issues for our review: whether the trial court properly admitted into evidence certain hearsay documents pursuant to the business records exception; whether the trial court properly admitted into evidence statements Meissner made during the investigation; and whether the evidence is sufficient to support her theft convictions. Concluding that the trial court did not err in admitting the documents or Meissner's statements and that the evidence supports her theft convictions, we affirm.

Facts and Procedural History

Meissner was employed by Indiana University Purdue University at Indianapolis ("IUPUI") as an administrative payroll clerk in the payroll department. Her duties involved monitoring and auditing fiscal information coming into the payroll office from various university departments, including a campus daycare center. IUPUI employees who used the daycare center could have the cost automatically deducted from their paychecks. The weekly cost for a child at the daycare center was between \$150 and \$180. Meissner used the daycare center and took advantage of the automatic payroll deduction option.

The daycare center submits to the payroll office a spreadsheet identifying each employee using automatic payroll deduction for payment and the amount to be deducted from each employee's paycheck. The payroll office enters the deductions into the payroll system and then sends a report back to the daycare center verifying the deductions entered.

Meissner, as a payroll clerk, was responsible for entering the deductions and generating the reports. She did not have the authority to alter the amount of any deduction request submitted by the daycare center. The actual payroll deductions were then reflected in the university's Financial Information System and were visible at the end of each pay period in an unalterable detailed deduction report automatically generated by the payroll office. Sheri Eggleton, Fiscal Officer for Administrative Services, oversaw the payroll transactions and received copies of the reports.

In February 2006, Eggleton discovered discrepancies between the payroll reports submitted by the payroll office to the daycare center and the information reflected in the detailed deduction reports and the Financial Information System. For nine consecutive payroll periods between October 2005 and February 2006, the report submitted by the payroll office to the daycare center shows the appropriate deductions for Meissner, but the detailed deduction reports and the Financial Information System show that significantly lower amounts were actually deducted from Meissner's paycheck. Meissner's account was the only one with discrepancies between the daycare center's deduction requests and the corresponding deductions.

Eggleton contacted Brenda Hunter, the director of the payroll office, and Hunter in turn confronted Meissner. Hunter testified that Meissner "said something to the effect that whatever you say I did, I must have done." Transcript at 61. Meissner was subsequently interviewed by Detective Russell Peper of the Indiana University Police. Meissner gave videotaped and written statements in which she admitted incorrectly entering the amount of

her payroll deduction and then changing the report to show the correct amount had been deducted. The difference between what should have been deducted and what was actually deducted totaled \$2,145.00. Meissner was terminated from her employment with IUPUI and paid the amounts she owed the daycare center.

The State charged Meissner with nine counts of forgery, Class C felonies, and nine counts of theft, Class D felonies; one count of forgery and one count of theft for each of the nine payroll periods in which Meissner underreported her payroll deduction. Following a bench trial on October 5, 2006, the trial court found Meissner guilty of all counts. She was sentenced to three years for each forgery conviction and one year for each theft conviction, all to be served concurrently, with one year to be served at the Department of Correction and two years to be served on home detention.¹ Meissner now appeals her convictions.

Discussion and Decision

I. Admission of Evidence

Meissner contends that the trial court erroneously admitted into evidence certain payroll records and statements she gave regarding these events.

A. Standard of Review

We review a trial court's ruling on the admission of evidence only for abuse of discretion. Whiteside v. State, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006). We will find that a trial court has abused its discretion when its "decision is clearly against the logic and

¹ On December 22, 2006, the trial court granted Meissner's petition to modify her sentence. As modified, Meissner's sentence remained an aggregate of three years, but with only eighty-seven days to be served at the Department of Correction with the remainder to be served on home detention.

effect of the facts and circumstances before it.” Id. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court’s ruling and any unrefuted evidence in the defendant’s favor. Combs v. State, 851 N.E.2d 1053, 1057 (Ind. Ct. App. 2006), trans. denied. Even if we find that the trial court abused its discretion in admitting evidence, we will not reverse unless the defendant’s substantial rights have been affected. Ind. Evidence Rule 103(a); Pruitt v. State, 834 N.E.2d 90, 117 (Ind. 2005), cert. denied, --- U.S. ---, 126 S. Ct. 2936, 165 L.Ed.2d 962 (2006). In determining whether or not an evidentiary ruling has affected a party’s substantial rights, we assess the probable impact of the evidence upon the factfinder. Mathis v. State, 859 N.E.2d 1275, 1280 (Ind. Ct. App. 2007).

B. Payroll Records

Meissner contends that the trial court erroneously admitted into evidence State’s Exhibits 1 through 9. Meissner suggests that the State offered these exhibits as business records. Each exhibit is comprised of three documents: an e-mail from Meissner to Fran Dyer, business manager of the daycare center, showing a spreadsheet as an attachment; the attachment, identifying the employees with automatic payroll deductions for daycare center expenses and the amount of the deduction; and a detailed deduction report showing the amount that was actually deducted from each employee’s paycheck. Exhibit 1 is for the pay period ending October 8, 2005; each successive exhibit is for the next consecutive pay period. Each exhibit shows that on the spreadsheet generated by Meissner, \$296.00 was

supposed to be deducted from her paycheck,² but the detailed deduction report shows that significantly lower amounts were actually deducted from her paycheck each pay period. Meissner objected to the admission of these exhibits, claiming the State had failed to lay a proper foundation.³

Hearsay is a statement, other than one made by the declarant while testifying at trial, offered to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is inadmissible unless admitted pursuant to a recognized exception. Ind. Evid. R. 802. The business records exception to the hearsay rule, Evidence Rule 803(6), permits admission of records of regularly conducted business activity provided that certain requirements are met.

The rule specifically provides:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make to make the memorandum, report, record, or data compilation, all as shown by the testimony or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

² Exhibit 5 shows that for the payroll period ending December 3, 2005, \$148 was to be deducted from Meissner's paycheck, but only \$14 was actually deducted. Exhibits 1 through 4 and 6 through 8 show that for the eight other payroll periods at issue, \$296 was to be deducted from Meissner's check, but amounts from \$26 to \$148 were actually deducted.

³ The State initially responds to Meissner's argument by claiming that she has waived any error by objecting generally to the lack of foundation. Although such a general objection arguably fails to satisfy the specificity requirement for preserving appellate review, Meissner's brief clarifies that the alleged inadequacy concerns the foundation necessary to establish the business records exception to the hearsay rule. Given our preference for deciding issues on their merits, see, e.g., Downs v. State, 827 N.E.2d 646, 651 (Ind. Ct. App. 2005), trans. denied, we consider the issue sufficiently preserved and will consider it on its merits. See Payne v. State, 658 N.E.2d 635, 644 (Ind. Ct. App. 1995) (holding that where defendant's brief makes it clear that objection to improper foundation concerned the foundation for admission of exhibits pursuant to the business records exception to the hearsay rule, defendant's argument was "tendered"), trans. denied.

To admit business records pursuant to this exception, the proponent of the exhibit 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 the document. Rolland v. State, 851 N.E.2d 1042, 1045 (Ind. Ct. App. 2006). 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. Id. Rather, such person need show only 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. Id. Records kept in the ordinary course of business are presumed to have been placed there by those who have a duty to so record and have personal knowledge of the transaction represented by the entry, unless there is a showing to the contrary. Id.

The State introduced Exhibits 1-9 through the testimony of Eggleton, who testified that she provides fiscal oversight for several departments, including the daycare center. She testified that the daycare center is for use by employees and students of IUPUI and that there are several methods of paying the fee, including through a payroll deduction. If an employee wants to use the payroll deduction option, the employee fills out a form at the daycare center authorizing the deduction. The daycare center then generates a spreadsheet in conjunction with the university's payroll schedules listing the names of participating employees and the amount that should be deducted from each employee's paycheck and sends the spreadsheet to the payroll office. Eggleton testified that she was not familiar with the specific process the

payroll office used to enter the data, but she knew that after the data was entered, the payroll office generated a report showing the data that was entered and sent it back to the daycare center. Detailed deduction reports are automatically generated from information input by the payroll office and are “available out in the reporting environment for the . . . individual departments to go out and capture to ensure that the payroll deductions were entered correctly.” Tr. at 26. It was in comparing the reports generated from the payroll office and the detailed deduction reports during a routine and periodic audit of financial information that Eggleton realized there was a discrepancy between the amounts the payroll report showed should have been received and the amounts that were actually received.

Although Eggleton’s testimony is not a textbook example of how to lay a proper foundation for admission of business records, it was sufficient. There was evidence that the payroll reports and the detailed deduction reports were made in the regular course of business, that Eggleton had a functional understanding of the records and the system in which they were generated and kept, and that they were created at or near the time of the transactions involved. Therefore, the State laid a proper foundation for these records and the trial court did not err in admitting them. See Rolland, 851 N.E.2d at 1045 (holding, in prosecution for theft and fraud on a financial institution, that State had laid proper foundation for admission of bank’s customer information screen through testimony of bank’s fraud investigator demonstrating functional understanding of the record keeping process); see also State v. Frierson, 569 S.E.2d 687, 690-91 (N.C. Ct. App. 2002) (holding, in prosecution for embezzlement by employee of business, that State had laid proper foundation for admission

of counterfeit deposit slips, valid deposit slips, and deposit validation reports through testimony of owner of business familiar with the records and the system of making deposits).

C. Meissner's Statements

Meissner also contends that the trial court erred by admitting her various statements into evidence. Meissner argues that the State did not produce sufficient evidence of corpus delicti to justify admission of her statements to Hunter and Detective Peper.

“A defendant’s extrajudicial confession may be introduced into evidence only if the State establishes the corpus delicti of the crime by independent evidence.” Johnson v. State, 653 N.E.2d 478, 479 (Ind. 1995). To establish the corpus delicti, the State must produce evidence aside from the confession that demonstrates: 1) the occurrence of the specific kind of injury; and 2) someone’s criminal act as the cause of the injury. Oberst v. State, 748 N.E.2d 870, 874 (Ind. Ct. App. 2001), trans. denied. This evidence need not prove that a crime was committed beyond a reasonable doubt; instead, it must merely provide an inference that a crime was committed. Workman v. State, 716 N.E.2d 445, 447-48 (Ind. 1999). This inference of a crime may be established by circumstantial evidence. Id. at 448. The primary purpose of this rule is to reduce the risk of convicting a defendant based on his confession to a crime that did not occur. Willoughby v. State, 552 N.E.2d 462, 466 (Ind. 1990).

Meissner’s argument is based primarily on her assertion that Exhibits 1 through 9 were erroneously admitted and that without those exhibits and the testimony regarding them, Meissner’s statements are the only evidence tending to prove a crime or linking her to it. As

we have already determined that the exhibits were properly admitted, we must disagree. Aside from Meissner's statements, there was evidence that the daycare center did not receive the amount of payment from payroll deductions it should have, that Meissner was responsible for inputting the payroll deductions for daycare center expenses, and that the only discrepancy was in Meissner's account. This independent evidence supports an inference that a crime was committed and is sufficient to satisfy the corpus delicti rule and allow admission of Meissner's statements.

II. Sufficiency of the Evidence

Meissner also contends that the State did not provide sufficient evidence to support her convictions of theft.

A. Standard of Review

Our supreme court recently reiterated our standard for reviewing sufficiency of the evidence claims:

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 and citations omitted)

(emphasis in original).

B. Proof of Theft

Meissner contends that the State's evidence proves theft of services, rather than theft of currency as charged. We disagree.

To convict Meissner of theft, the State was required to prove that she knowingly or intentionally exerted unauthorized control over the daycare center's property, in this case United States currency, with the intent to deprive the daycare center of any part of its value or use. Ind. Code § 35-43-4-2(a). The evidence shows that when employees signed up for payroll deductions, they authorized the automatic withdrawal of funds from their paychecks for payment to the daycare center. Each pay period, the daycare center sent a list of payroll deductions to Meissner at the payroll office. Meissner was to input those deductions as submitted and had no authority to alter the amounts. When the daycare center sent the list of deductions to the payroll office, the amounts listed therein basically became the property of the daycare center. In her voluntary statement, Meissner admitted that her actions resulted in the daycare center not "receiving their full money." Exhibit 12. When Meissner did not input the correct information for her own account, resulting in the daycare center receiving less than the full amount to which it was entitled, and then altered the report she sent back to the daycare center so that it showed, incorrectly, that the proper amount had been deducted from her paycheck, Meissner was exerting unauthorized control over the daycare center's funds with the intent to deprive it of the money.

Conclusion

The trial court properly admitted State's exhibits 1 through 9 and Meissner's statements. Further, the evidence was sufficient to support Meissner's convictions of theft, and Meissner's convictions are therefore affirmed.

Affirmed.

KIRSCH, J., and BARNES, J., concur.