

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 17, 2013

v

BLOWDELL ANTOINETTE COOPER,

Defendant-Appellant.

No. 311491
Washtenaw Circuit Court
LC No. 11-001915-FH

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Defendant, Blowdell Antoinette Cooper, appeals as of right her convictions, following a jury trial, of two counts of stealing or retaining a financial transaction device without consent.¹ The trial court sentenced Cooper to serve concurrent terms of two years' probation for each count. Because the evidence at trial supported Cooper's convictions, we affirm.

I. FACTS

On September 24, 2011, Cooper drove herself, Laria Stephens, and Marisol Ortiz to a sports bar in a silver Chrysler Town and Country minivan. Ortiz testified that she kept her debit card in a large wallet with a snapping clasp, which she carried in a medium-sized zippered purse. Ortiz testified that at about midnight, she purchased drinks with her debit card and did not use it or open her purse again that evening.

According to Stephens, while the women were returning home, Ortiz became ill in Cooper's minivan. Cooper stopped the minivan in a parking lot and Ortiz left the van and continued to be ill. Ortiz testified that she left her purse in the minivan. Stephens testified that she left the minivan to assist, but Cooper never left the minivan.

According to Ortiz, Cooper returned her and Stephens to their apartment complex at about 3:00 A.M. She carried her purse into her apartment and did not notice anything wrong with it at that time. When she woke up at 8:00 A.M., her wallet was not in her purse.

¹ MCL 750.157n(1).

Ortiz testified that she cancelled her debit card and reviewed a statement of the transactions on her card. Her bank statement showed a charge of \$74.29 at a Speedway gasoline station subsequent to the charge from the sports bar. Ortiz testified that she did not purchase anything at a Speedway station that evening.

Ortiz reported the theft to the Ann Arbor Police Department. She provided Detective William Stanford with a copy of her bank statement. The Speedway station gave Detective Stanford a transaction log that showed that Ortiz's debit card was used to purchase 20 gallons of gasoline from pump number five at 3:42 A.M.

The Speedway station's surveillance video, which was played for the jury, showed a light-colored minivan arrive at pump five at 3:30 A.M. and leave at 3:31 A.M. Oscar Rodriguez, a manager at the Speedway station, testified that a person could not pump 20 gallons of gasoline in that time. The video also showed a very similar light-colored minivan arrive at pump five at 3:34 A.M. and leave at 3:38 A.M.

Detective Stanford testified that he questioned Cooper about the incident. According to Detective Stanford, he showed Cooper a still photograph of the minivan in the surveillance video at 3:30 A.M. Cooper told him that the van in the photograph was hers and that she purchased gasoline at the Speedway station at that time. Cooper told Detective Stanford that she paid for the gasoline with a credit card that she borrowed from her friend Greg. Cooper did not or could not give Detective Stanford Greg's surname. The telephone number that she gave him reached a default voicemail box and his calls were not returned.

Detective Stanford testified that Cooper also gave him a bank statement that showed a \$74.29 charge to the credit card of a man named Greg, but the surname and account number were blacked out. He testified that he could not verify the account with the bank without a surname or account number. Detective Stanford testified that he believed that the bank account statement was a forgery because portions of it were not consistent with normal business practices.

The jury found Cooper guilty of two counts of stealing or retaining a financial transaction device without consent for taking the debit card and fraudulently using it.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes his or her constitutional right to due process of law.² Thus, this Court reviews *de novo* a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.³ We review the

² *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); see *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

³ *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that it proved the essential elements of the crime beyond a reasonable doubt.⁴

B. LEGAL STANDARDS

MCL 750.157n(1) provides that it is a crime to knowingly take or use a financial transaction device without the owner's consent:

A person who steals, knowingly takes, or knowingly removes a financial transaction device from the person or possession of a deviceholder, or who knowingly retains, knowingly possesses, knowingly secretes, or knowingly uses a financial transaction device without the consent of the deviceholder, is guilty of a felony.

Debit cards are financial transaction devices.⁵ “[I]dentity is an element of every offense.”⁶

C. APPLYING THE STANDARDS

Cooper contends that the evidence did not establish that she was the person who took or used Ortiz's debit card. We disagree.

Here, the evidence included that extremely similar or identical light-colored vans arrived at pump five of the Speedway at 3:30 A.M. and at 3:24 A.M. respectively. Detective Stanford testified that Cooper admitted that one of the two vans was hers and that she purchased gasoline at the speedway station in the same amount as was charged to Ortiz's debit card. The Speedway station's transaction log showed that Ortiz's debit card was used at around the same time.

Cooper contends that she could not have used Ortiz's debit card to purchase 20 gallons of gasoline because the van that she admitted was hers was at the pump for less than one minute. Cooper's admission that the first van was hers does not negate the rest of the evidence that the prosecution presented in this case. Specifically, according to Detective Stanford, Cooper admitted that she was present at the Speedway station and purchased \$74.29 of gasoline. If the jury chose to believe Detective Stanford's testimony, it was clearly possible that Cooper purchased 20 gallons of gasoline at the Speedway station.

Cooper also contends that the transaction log, which shows that the gasoline was purchased at 3:42 A.M., contradicts the surveillance video. “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements

⁴ *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁵ MCL 750.157m(f)(iii).

⁶ *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

of a crime.”⁷ It is not this Court’s place to interfere with the jury’s findings of fact.⁸ Jurors may use common sense and everyday experience to evaluate evidence.⁹

Here, it may have been within the everyday experience of the jurors that different electronic devices may reflect different times. Ultimately, this conflict in the evidence was for the jury to resolve, and we decline to interfere with its finding of fact.

Viewing the evidence in the light most favorable to the prosecution, we conclude that it provided sufficient evidence to prove that it was Cooper who used Ortiz’s debit card at the Speedway station.

III. VERDICT AGAINST THE GREAT WEIGHT OF THE EVIDENCE

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

Generally, courts review a defendant’s claim that the jury’s verdict was against the great weight of the evidence to determine whether “the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.”¹⁰ But appellate courts will only review those issues that a defendant properly raised and preserved at trial.¹¹

To preserve a claim that the jury’s verdict was against the great weight of the evidence, the party must move for a new trial in the trial court.¹² If a defendant has not preserved this issue, we will review it for plain error affecting his or her substantial rights.¹³ Under this standard, the defendant must show that (1) an error occurred, (2) the error was plain, and (3) the error prejudiced the defendant’s substantial rights.¹⁴

Here, Cooper did not move for a new trial on the basis that the jury’s verdict was against the great weight of the evidence. Thus, her claim is not preserved, and we will review it for plain error affecting her substantial rights.

⁷ *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

⁸ See *Wolfe*, 440 Mich at 514-515.

⁹ *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991).

¹⁰ *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

¹¹ *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994).

¹² *People v Cameron*, 291 Mich App 599, 617; 806 NW2d 371 (2011).

¹³ *Id.* at 618; *Carines*, 460 Mich at 763.

¹⁴ *Carines*, 460 Mich at 763.

B. LEGAL STANDARDS

Conflicting evidence is generally not a ground for granting a new trial unless it “contradicts indisputable physical facts or law” or “is patently incredible or is so inherently implausible that it could not be believed by a reasonable juror[.]”¹⁵

C. APPLYING THE STANDARDS

Cooper contends that the jury’s verdict was against the great weight of the evidence because it was not possible that her van was at the pump long enough to dispense 20 gallons of gasoline. For the same reasons that we rejected this argument as it pertained to Cooper’s claims concerning the sufficiency of the evidence, we reject it here. Detective Stanford testified that Cooper admitted that she purchased \$74.29 worth of gasoline at the Speedway station. Viewing the record evidence as a whole, it is simply not physically impossible or patently incredible that Cooper used Ortiz’s debit card to purchase it. We conclude that Cooper has not shown plain error in the jury’s verdict.

IV. CONCLUSION

We conclude that the prosecution provided sufficient evidence to from which a reasonable juror could conclude that Cooper was guilty of stealing and using Ortiz’s debit card without her consent, and we conclude that Cooper has not shown plain error in the jury’s verdict.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens

¹⁵ See *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998).