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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-17-520

ISABELL KERSARI GERVAIS APPELLANT	**Opinion Delivered** February 28, 2018
V.	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72CR-14-1936]
	HONORABLE MARK LINDSAY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant Isabell Gervais was charged in the Washington County Circuit Court with five counts of theft of property by deception and one count of fraudulent use of a credit card. A Washington County jury convicted her on all six charges and sentenced her to pay $33,600 in fines, which were converted to restitution. On appeal, Gervais contends that the circuit court erred in denying her motion for directed verdict. We disagree and affirm.

I. *Standard of Review*

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Paschal v. State*, 2012 Ark. 127, 388 S.W.3d 429; *Harris v. State*, 2014 Ark. App. 264. This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Armour v. State*, 2016 Ark. App. 612, 509

S.W.3d 668. In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Castrellon v. State*, 2013 Ark. App. 408, 428 S.W.3d 607. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Armour*, *supra*. We do not, however, weigh the evidence presented at trial, as that is a matter for the fact-finder, nor will we weigh the credibility of the witnesses. *Donovan v. State*, 71 Ark. App. 226, 32 S.W.3d 1 (2000).

II. *Theft by Deception*

Gervais was charged with five counts of theft of property by deception. To sustain this charge, the State had to prove that she knowingly obtained the property of another person by deception with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(2) (Repl. 2013). "Deception" means, among other things, "[e]mploying any other scheme to defraud." Ark. Code Ann. § 5-36-101(3)(A)(v). The felony or misdemeanor classification of the offense of theft by deception depends on the value of the property obtained. At trial, Gervais made a two-prong directed-verdict motion on the theft-by-deception charges, arguing that the State failed to prove (1) that she knowingly deceived the victims in order to deprive them of property and (2) the dollar amount of the property obtained.

A. Scheme to Defraud

We first examine the evidence that supports the jury's conclusion that Gervais employed a scheme to defraud. Gervais, who is not licensed to practice medicine in Arkansas,

operated what she purported were naturopathic medical clinics in Fayetteville and Johnson. Gervais offered various treatments and "medicines" to her patients. Law enforcement began an investigation that included sending samples of the "medications" that Gervais had provided to her patients to the Arkansas State Crime Lab for testing; however, none of the liquids or powders that were tested contained any medically useful substances. Based on the complaints of five of her patients, the State filed the charges herein.

At Gervais's trial, the State produced the testimony of the patients who initially contacted the police—Chelsea Krohn-Cully, Barry Langford, Margaret Taylor, and Lia Danks.[1] Each witness offered similar accounts of his or her experience with Gervais. Gervais described her "extensive training" in England to her patients and introduced herself as "Dr. Bell." Gervais presented business cards that indicated that she possessed a number of credentials, including an M.B.B.S., O.M.D., H.M.D., and N.M.D. Gervais explained that these initials stood for, respectively, a bachelor of medicine and bachelor of science, oriental medicine doctor, homeopathic medical doctor, and naturopathic medical doctor. She asserted that the M.B.B.S. was a "medical degree in England" that is "similar to an M.D. in England." Krohn-Cully testified that Gervais told her that she was a doctor in England; Langford testified that Gervais represented herself as a doctor; Danks testified that Gervais told her that

[1]A fifth patient, Carl Watchorn, was named in the criminal information and testified at trial. We do not discuss the sufficiency of the evidence as it pertains to Gervais's offense against him, however, because she did not move for directed verdict on the theft-by-deception charge involving him. Gervais's directed-verdict motion specifically named Krohn-Cully, Taylor, Langford, and Danks. She did not, however, move for directed verdict as to Watchorn. Gervais's failure to move for a directed verdict on this count at the close of the State's case precludes us from reviewing it. *See* Ark. R. Crim. P. 33.1; *Ashley v. State*, 2012 Ark. App. 131, at 8, 388 S.W.3d 914, 920.

she had been credentialed as a doctor in London; and Taylor stated that Gervais told her she was a doctor, and Taylor assumed that she was because her business card said "Dr. Isabell Gervais and all those letters." Despite the impression that she left with her patients, however, Gervais had no medical training or credentials from any school or institution in the United States. She specifically admitted that she is not licensed to practice medicine in Arkansas.

The State also presented evidence that Gervais engaged in other practices as part of her scheme to defraud. For example, Gervais took samples of the blood, saliva, and hair of Langford[2] and Danks with the explanation that she would send the samples to Germany for a "DNA test," charging them between $450 and $600 for each "test." Gervais refused to show the actual results of the alleged tests to the patients. Instead, she read to them what she purported were the results. In both cases, Gervais related to them that the reports contained dire diagnoses and gave them "medicine," which contained no medicinal value, for their conditions.

Krohn-Cully and Taylor presented another example of Gervais's scheme to defraud. Gervais affirmatively represented to both Krohn-Cully and Taylor that their expenses would be reimbursed by insurance or Medicare, which was not true.[3] Taylor additionally testified that at one point, she received a billing statement from Gervais with a handwritten notation that read, "Margaret, I am sending in your claim this week. I am writing you a check back

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[2]Langford testified on behalf of his wife, Lorraine, who was too ill to attend the trial. The tests and "medicines" that Langford testified about were provided to Lorraine.

[3]Krohn-Cully's father, Albert Cully, contacted Medicare to find out why he was not being reimbursed and was told that Medicare "had no idea who [Gervais] was, said the paperwork was not correct, and rejected it totally. She wasn't registered with Medicare."

from escrow until you receive payment from Medicare." The check was for $9,100. Taylor explained that she had written Gervais a check for $9,100, and Gervais wrote her the check "to take care of what I was giving to her until my insurance money came." Although Taylor attempted to cash Gervais's check at "every Arvest bank in town," it was rejected at each bank for insufficient funds.

Viewing this evidence in the light most favorable to the verdict, we conclude that there was sufficient evidence to allow the jury to decide whether Gervais employed a scheme to defraud the victims in this case. Gervais's arguments on appeal essentially request that we reweigh the evidence. We do not weigh the evidence presented at trial because that is a matter for the fact-finder, nor do we assess the credibility of the witnesses. *Fronterhouse v. State*, 2015 Ark. App. 211, 463 S.W.3d 312.

B. Dollar Value Supporting the Felony and Misdemeanor Convictions

Gervais next contends that the State failed to present sufficient evidence of the dollar value to support the felony convictions with respect to Krohn-Cully and Taylor and the misdemeanor conviction with respect to Langford.[4] We therefore examine the evidence on the dollar amount obtained from each victim.

With respect to Krohn-Cully, Gervais was convicted of a Class B felony. Theft of property is a Class B felony if the value of the property is $25,000 or more. Ark. Code Ann. § 5-36-103(b)(1)(A). Krohn-Cully paid for her "treatments" from Gervais with a credit card belonging to her father, Albert Cully. Although Cully initially authorized his daughter to

[4]Gervais makes no argument in her brief regarding the dollar value supporting her misdemeanor conviction with respect to Danks.

spend up to $3,000 a month and approved a one-time "special treatment" that cost $12,000, in the end, he testified that he was "out" $44,000. Through Cully, the State introduced credit-card statements showing the amounts that Gervais had charged. The evidence thus supported Gervais's Class B felony conviction as to Krohn-Cully.

As to Taylor, Gervais was convicted of a Class C felony. Theft of property is a Class C felony if the value of the property is less than $25,000 but more than $5,000. Ark. Code Ann. § 5-46-103(b)(2)(A). As mentioned above, Taylor testified that she wrote Gervais a check for $9,100, and Gervais gave her a check in return for $9,100 "until [the] insurance money came." Taylor was never able to cash Gervais's check and was thus clearly deprived of $9,100, an amount that satisfies the Class C felony classification.

Finally, as to Langford, Gervais was convicted of a Class A misdemeanor. Theft of property is a Class A misdemeanor if the value of the property is less than $1,000. Ark. Code Ann. § 5-36-103(b)(4)(A). Langford specifically testified at least three times that he "knew he paid [Gervais] upward of $1,500," an amount that included the $600 "report" from Germany. We therefore find no merit in Gervais's argument that the State failed to offer evidence of the dollar amount necessary to support the Class A misdemeanor conviction.

III. *Fraudulent Use of a Credit Card*

Gervais next challenges the sufficiency of the evidence to support her conviction for fraudulent use of a credit card. A person commits the offense of fraudulent use of a credit card if, with purpose to defraud, he or she uses a credit card or credit card account number to obtain property or a service with knowledge that his or her use of the credit card or credit

card number is unauthorized by the card issuer or the person to whom the card was issued. Ark. Code Ann. § 5-37-207(a)(4). This offense is a Class D felony when the value obtained during any six-month period is $5,000 or less but more than $1,000. Ark. Code Ann. § 5-37-207(b)(3). A person's fraudulent use of a credit card to obtain property is not limited only to situations in which a card is stolen, but as is provided in subsection (a)(4), it includes a person's acts when his or her use of the card is unauthorized by either the issuer or the person to whom the credit card is issued. *Patterson v. State*, 326 Ark. 1004, 1005, 935 S.W.2d 266, 267 (1996); *see also Williams v. State*, 2015 Ark. App. 553, at 2, 472 S.W.3d 509, 510 ("In general, under this statute, it is the use of a stolen, revoked or cancelled, forged, or unauthorized credit card or account number that results in a criminal violation.").

Gervais argues that the State failed to prove the dates on which the alleged fraudulent activity occurred, the dollar amount that was supposed to have been taken, or that it was she who made the alleged unauthorized charges. She notes that Albert Cully testified that he agreed that his daughter could charge up to $3,000 a month and that he consented to a $12,000 charge for a special treatment.

Her argument, however, ignores Krohn-Cully's testimony that she stopped seeing Gervais in November 2013 and Cully's testimony that he found a charge for $6,856.88 on his Visa bill that was dated December 23, 2013. Because Krohn-Cully was no longer seeing Gervais for treatment in December 2013, the jury could reasonably conclude that Gervais's charges to Cully's credit card—at a time when no services had been provided—were unauthorized. *See Patterson*, *supra* (affirming conviction for fraudulent use of a credit card based

on circumstantial evidence). We therefore affirm Gervais's conviction for fraudulent use of a credit card.

Affirmed.

GRUBER, C.J., and HIXSON, J., agree.

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Leslie Rutledge, Att'y Gen., by: *David L. Eanes, Jr.*, Ass't Att'y Gen., for appellee.