

Circuit Court for Prince George's County
Case No. 181390X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 202

September Term, 2019

JAMI MARIE PETERSON

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 8, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Prince George’s County, Jami Marie Peterson, appellant, was convicted of theft scheme, conspiracy to commit theft scheme, identity fraud, and conspiracy to commit identity fraud. On appeal she contends that there was insufficient evidence to sustain her convictions because the State failed to prove that she acted with criminal intent. For the reasons that follow, we shall affirm.

BACKGROUND

The evidence at trial demonstrated that in 2012, Ms. Peterson and Kristi Heffington had agreed to open a bar together.¹ At that time, Ms. Heffington worked as the office manager for a dentist, Dr. Richard Moser. Dr. Moser’s office allowed its patients to apply for CareCredit cards, which were financed by Synchrony Bank. CareCredit cards could be used to pay for medical and veterinary bills but could not be used to purchase other items. When a patient used the card, Synchrony Bank would pay the provider the billed amount, minus a service fee. The patient would then be responsible for paying the billed amount back to Synchrony Bank.

In 2012, Ms. Heffington opened a CareCredit account in Ms. Peterson’s name and in 2013, she opened a joint CareCredit account in both her and Ms. Peterson’s name. To open those accounts, Ms. Heffington would have had to have a valid phone number, address, date of birth, and social security number for Ms. Peterson. After those accounts were opened, Ms. Heffington used them to bill Synchrony for dental services for Ms. Peterson that Dr. Moser had not actually provided. When Synchrony sent the

¹ Ms. Heffington was the sister of Ms. Peterson’s fiancé.

reimbursements for those services to Dr. Moser, Ms. Heffington appropriated the money. Dr. Moser fired Ms. Heffington after he discovered the fraud and Ms. Heffington eventually pleaded guilty to multiple criminal offenses.

Ms. Peterson was charged as an accomplice and co-conspirator of Ms. Heffington. As proof that Ms. Peterson had knowingly participated in the identify fraud and theft scheme, the State presented evidence that she had given conflicting statements regarding her involvement in creating the CareCredit accounts. Specifically, in 2016, Ms. Peterson spoke with Detective Lowell Williams of the Prince George’s County police department and provided a written statement. In that statement, she claimed to have been a victim of fraud and indicated that she had only learned about the existence of the CareCredit cards “within the last year,” after speaking with Ms. Heffington’s mother. She further stated that she had not given Ms. Heffington permission or authorization to obtain those cards. She was also deposed in 2017 as part of a defamation lawsuit that Ms. Heffington had filed against Dr. Moser. And, during that deposition, she again asserted under oath that she had not been aware of the accounts until 2014 and that she “never authorize[d] . . . Kristi Heffington, to take out or . . . apply for a CareCredit card” in her name.

However, approximately one year after the deposition, and several months prior to Ms. Heffington’s sentencing hearing, Ms. Peterson gave the police an “affidavit of correction.” In that affidavit, she averred that she had, in fact, given Ms. Heffington her personal identification “for the purpose of applying for credit cards, credit lines, and/or loans because they had wanted to “start a joint [business] venture.” She further stated that

“[t]he CareCredit accounts obtained by [Ms.] Heffington . . . were obtained legally with [her] knowledge and consent.”

Following the close of the State’s evidence, the court denied Ms. Peterson’s motion for judgment of acquittal. She then testified that she and Ms. Heffington had decided to open a bar together and to apply for credits cards “to acquire enough money to assume the bar.” To facilitate this business venture, she authorized Ms. Heffington to apply for a credit card with CareCredit. However, she testified that she did not understand what CareCredit was and “thought [it] would be a loan that Dr. Moser and [Ms. Heffington] and myself would all be joined together on because they had such a relationship.” She further indicated that she never received a CareCredit card, had never received a bill, and had never made any charges on her CareCredit account. When Ms. Heffington did not communicate with her for over six months, Ms. Peterson assumed that the bar “just wasn’t happening anymore” and did not follow up with her about the CareCredit cards. Ms. Peterson specifically denied knowing that Ms. Heffington was “fraudulently charging things to Dr. Moser’s account” or having the intent to defraud anyone when she gave Ms. Heffington her personal information.

Following closing arguments, the trial court indicated that it had the opportunity to observe Ms. Peterson and judge her credibility and that “quite honestly I don’t believe a word [she] said.” Specifically, the court noted that:

She lied when it was good for her. And then she came back and, oh, wait I lied, so here is the correction. And then she gets on the stand today and says that she had no idea what it was about, that they were just going to start a business, that she said here is my information, go ahead and apply for these

credit cards. I didn't even know what CareCredit was but I just said here you go. Take my information. And I didn't believe a word of it.

I believe that the Defendant and [Ms. Heffington] came up with this agreement, that here is my information, you have the ability to do this. We can get all of this cash that we need to start our bar. And it seems quite convenient that now it's not just a joint venture it's not, this was a bar we were going and we located a building that we wanted and that we needed to get the cash and this was an easy way of getting that cash.

The court then found “beyond a reasonable doubt that [Ms. Peterson] did, in fact conspire with Kristi Heffington to both the theft scheme and the fraudulent identification” and that she “as an accomplice did, in fact commit the crimes of theft scheme and fraud.”

DISCUSSION

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant's convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgement . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

On appeal, Ms. Peterson acknowledges that there was “circumstantial evidence of an agreement between [herself] and Ms. Heffington” for her to give Ms. Heffington her personal information so that Ms. Heffington could open a CareCredit account in her name. However, she contends that the State failed to prove that she entered into that agreement with the intent to commit theft or identity fraud. The State asserts that the court “could

properly conclude from [Ms.] Peterson’s incredible denials of lack of criminal intent that she in fact had the intent necessary to support her convictions.” We agree with the State.

“Generally, disbelieving evidence provides no basis for finding evidence to the contrary; however, there is an exception involving scienter or guilty knowledge, i.e., reasons for disbelieving a denial of scienter may provide a basis for finding scienter.”

Marini v. State, 30 Md. App. 19, 30-31 (1976). For this exception to apply there must be:

“(1) a party witness, i.e., usually a defendant or a co-defendant, (2) the denial of scienter by a party witness, and (3) other additional evidence from which a fact-finder may rationally deduce that a party witness had scienter.” *Grimm v. State*, 447 Md. 482

(2016)(footnotes omitted). In the instant case, the first two conditions are clearly met as

Ms. Peterson testified at trial and denied having the intent to commit theft or fraud when she gave Ms. Heffington her personal information. Thus, the only remaining issue is

whether there was any additional evidence from which the court could have found that Ms.

Peterson’s denial of scienter was inherently improbable.

In *Carter v. State*, 10 Md. App. 50 (1970), we discussed several circumstances from which a fact-finder might reasonably find scienter following a denial of scienter by a party witness. Relevant to this case, we recognized that “changes in [a] defendant’s explanation

or conflicting admissions may support a finding of scienter, since while either of the defendant’s stories may be true, both cannot be and the changes indicate an attempt to hide

the guilty knowledge.” *See also Marini*, 30 Md. App. at 31 (noting that the appellant’s

conflicting statements, first denying ownership of the stolen vehicle, and later stating that

he had innocently purchased it without knowing that it had been stolen, could support a finding of scienter if the jury disbelieved his testimony).

The evidence, viewed in a light most favorable to the State, demonstrated that Ms. Peterson provided two conflicting explanations about her role in creating the CareCredit accounts. In 2016, she told Detective Williams that she was not aware the CareCredit cards had been opened in her name and that she had only found out about them “within the last year.” Moreover, in her 2017 deposition, she specifically denied that she had authorized Ms. Heffington to apply for the CareCredit cards. However, in her 2018 “Affidavit of Correction,” she indicated that the CareCredit accounts had, in fact, been opened “with [her] knowledge and consent” for the purpose of “start[ing] a joint venture.” She also provided similar testimony at trial. In light of these contradictory statements, both of which could not be true, the court could, and did, reasonably conclude that Ms. Peterson’s testimony denying scienter was inherently improbable. Consequently, the court did not clearly err in finding beyond a reasonable a doubt that she had acted with the requisite criminal intent.

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**