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ATTORNEY FOR APPELLANT:

F. HARRISON GREEN
Cincinnati, Ohio

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

STEPHEN G. BENTLE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

No. 15A01-0811-CR-550

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0703-FC-009

October 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Stephen Bentle appeals his convictions, following a jury trial, of two counts of fraud on a financial institution, both Class C felonies, and three counts of fraud, all Class A misdemeanors. For our review, Bentle raises three issues, which we restate as: 1) whether the trial court abused its discretion when it admitted evidence obtained by police during a warrantless search; 2) whether the trial court abused its discretion when it admitted the records of three credit card accounts; and 3) whether the trial court abused its discretion when it denied Bentle's motion to correct error. Concluding Bentle waived review of the admission of the evidence seized during the warrantless search and the trial court did not abuse its discretion when it admitted the credit card account records and denied Bentle's motion to correct error, we affirm.

Facts and Procedural History

Bentle, Barry Nanz, Casey Nanz, and Richard Butler are the sole members of Tri-State Carbonic, LLC (the "LLC"). Bentle and Barry Nanz each own a forty percent interest and Butler and Casey Nanz each own a ten percent interest in the company. The business of the company is to capture and reprocess carbon dioxide emissions from a distillery and package the reprocessed carbon dioxide for sale.

In 2006, the LLC received a credit card bill addressed to Gerald Bentle and Tri-State Carbonic at an unused address for the LLC. Gerald Bentle is Bentle's father and has no membership interest in the LLC. The LLC did not have a business credit card, and none of the members had been authorized to obtain a business credit card. When Barry Nanz

confronted Bentle about the credit card, Bentle assured him it was a personal credit card and he would take care of the balance and cancel the card.

In late 2006, the LLC learned that Bentle had two other credit cards in the name of Gerald or G. Bentle and the LLC. In December of 2006, Bentle sent the LLC partially destroyed credit cards from American Express, Chase, and Bank of America. Each of the credit cards indicated on its face that it was a business credit card. A letter from Bentle stated: "All cards canceled and cut up …. $.00 balances forth coming [sic] on Chase/B.of [sic] America … Back up billing provided for all American Express charges and a need for Tri-State Carbonic to issue the checks so I can send in the final payment …. Then this card will be finished." State's Exhibit 4. However, the LLC began receiving calls from collection companies regarding the credit card accounts. As a result, the LLC contacted the Greendale police department to report Bentle's actions.

On December 28, 2006, Officer Joe Vance met with Barry Nanz and received various documents, including bills from American Express and account statements from Chase and Bank of America, each of which were addressed to Gerald or G. Bentle and the LLC. The following day Officer Vance and Detective Kendall Davis went to the LLC's plant. They were met there by Barry Nanz who unlocked the door to an office used by Bentle and consented to a search of the office. Prior to this, Bentle kept the office locked, and none of the other members of the LLC had a key. However, the night before the police searched the office, Barry Nanz had a locksmith make a key to the door.

While searching through desk drawers in the office, the officers found a photocopy of two health insurance information cards for Gerald Bentle, which showed Gerald's social security number and signature and a handwritten date, which was later established to be Gerald's birth date. The officers also found two American Express credit card bills in the name of G. Bentle and Tri-State Carbonic. On that same day, Butler gave the officers a handwritten letter to Bentle from his wife, which he had found in the trashcan in the office prior to the officers' search.

Following the search, Detective Davis spoke with Gerald Bentle about the credit card accounts. Gerald claimed he did not have any credit cards with American Express, Chase, or Bank of America, and he did not authorize anyone to open accounts in his name. Gerald denied any knowledge of the credit cards in his name. Detective Davis then subpoenaed account records for the three credit cards. On December 31, 2006, Bentle's cousin, Tim Bentle, gave Detective Davis a note purporting to authorize Bentle to use his father's credit. The note was dated February 15, 2006, and contained Gerald's undated signature and Bentle's signature dated February 15, 2006. Gerald told Detective Davis that he had signed the note on December 31, 2006.

On March 30, 2007, the State charged Bentle with: two counts of fraud on a financial institution and one count of forgery, all Class C felonies; one count of identity deception, a Class D felony; and three counts of fraud, all Class A misdemeanors. Bentle filed a motion to suppress the evidence seized during the warrantless search. The trial court held a hearing on and denied the motion. The trial court held a jury trial from September 23 to 26, 2008,

after which the jury found Bentle guilty of two counts of fraud on a financial institution and three counts of fraud but not guilty of forgery and identity deception. Bentle filed a motion to correct error on October 10, 2008, arguing the jury's verdicts were inconsistent. The trial court denied the motion after a hearing. Bentle now appeals.

Discussion and Decision

I. Admission of Evidence

A. Standard of Review

Where, as here, the defendant does not appeal the denial of a motion to suppress and the trial court admits the evidence over the defendant's objection at trial, we review the admission of evidence for an abuse of discretion. Cochran v. State, 843 N.E.2d 980, 982-83 (Ind. Ct. App. 2006), cert. denied, 127 S. Ct. 943 (2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id. at 983. In making this determination, we do not reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). Moreover, we may consider evidence from the trial as well as evidence from the suppression hearing that is not in direct conflict with the trial evidence. Kelley v. State, 825 N.E.2d 420, 427 (Ind. Ct. App. 2005).

B. Evidence Obtained in Warrantless Search

Bentle first argues the trial court erred when it admitted evidence obtained by police in the warrantless search of his office at the LLC. Bentle does not specify what evidence he believes the trial court improperly admitted. His motion to suppress requested the trial court

to suppress "any and all evidence which the State may seek to introduce at trial of the above-captioned case." Appellant's Appendix at 13. At trial, Detective Davis testified that he recovered a photocopy showing two health care cards belonging to Gerald Bentle, exhibit ten, and two American Express credit card bills, exhibits eleven and twelve. In addition, Detective Davis indicated that Butler handed him a letter from Bentle's wife to Bentle, exhibit thirteen, which Butler had found in a trashcan in Bentle's office prior to the search.

We initially point out that although Bentle filed a motion to suppress evidence, he failed to object to the admission of exhibits eleven, twelve, and thirteen at trial. "[A] trial court's denial of a motion to suppress does not preserve error. The proper method of preserving error for appellate review is an objection to the admission of the allegedly illegally obtained evidence at the time it is offered into evidence during trial." Poulton v. State, 666 N.E.2d 390, 393 (Ind. 1996) (citations omitted). Therefore, Bentle has waived review of the admission of these exhibits. See id.

With respect to exhibit ten, the photocopy of Gerald's health care cards, Bentle did not object to its admission on the basis of an illegal search. Rather, Bentle's counsel stated "I would say that he, it's probably, should not be admitted at this time. It should probably be through Officer Davis …. But understand that you can probably get it in through him." Transcript at 235. The trial court then asked, "Is there an objection?" to which Bentle's counsel responded, "I'm not objecting any further of it [sic]." Id. "Where a defendant fails to object to the introduction of evidence, makes only a general objection, or objects only on other grounds, the defendant waives the suppression claim." Moore v. State, 669 N.E.2d

733, 742 (Ind. 1996) (citations and emphasis omitted). Bentle's objection at trial was to the proper foundation for the admission of the evidence because it was not clear whether Officer Vance or Detective Davis actually recovered the evidence. Bentle did not object to the evidence on the basis of a warrantless search. Therefore, Bentle has also waived review of the admission of exhibit ten.[1]

C. Credit Card Account Records

Bentle next argues the trial court abused its discretion when it admitted the records of the three credit card accounts because the records were not properly authenticated. Records of regularly conducted business activity, although hearsay, are admissible if they were:

> made at or near the time [of the acts, events, or conditions to which they pertain] by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the [business record], 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.

Ind. Evidence Rule 803(6). Extrinsic evidence of the business records' authenticity is not necessary prior to their admission so long as the custodian of the records or another qualified person certifies under oath that the records meet the requirements of the hearsay exception. Evid.R. 902(9).

[1] We also point out that even if the evidence was improperly admitted, the error was likely harmless. With respect to exhibit ten, that evidence applies to the forgery and identity deception charges of which Bentle was acquitted. Exhibits eleven and twelve are merely a portion of Bentle's credit card records, the entirety of which were admitted later in the trial. Finally, exhibit thirteen was not a product of the warrantless search because it was discovered by Butler after Bentle had discarded it in the trash and was not discovered by the police during their search.

The Bank of America and Chase account records were accompanied by nearly identical affidavits stating that the affiant "is familiar with the method by which credit records are made, recorded and kept" and the records:

> were made at or near the time of occurrence of the matters set forth in the record[s] and the information was transmitted by a person with knowledge[,] … are kept in the course of regularly conducted business activity[,] and [i]t is the regular practice of [the bank] to make and keep credit card records of the regularly conducted activity.

State's Exhs. 15, 16. Both affidavits were signed and notarized. Although the State initially sought to admit American Express account records accompanied only by a signed certification, it later admitted a second copy of the records accompanied by the affidavit of the assistant to the custodian of records stating she "is familiar and understands the method by which credit records are made, recorded[,] and kept at American Express Cards" and including the same language quoted above. State's Exh. 29. The language in the affidavits mirrors the language required by the Rules of Evidence; however, Bentle argues the affidavits accompanying the Chase and Bank of America records are insufficient because they do not clearly identify the affiant as an employee of the company. Even if this were true, the records themselves contain ample indications of their authenticity.

In Fry v. State, 885 N.E.2d 742 (Ind. Ct. App. 2008), trans. denied, this court considered a similar challenge to the admission of cell phone records. The court looked at Evidence Rule 901(b) as an alternate process for authenticating the cell phone records. Id. at 749. Evidence Rule 901(b)(4) provides that sufficient evidence to authenticate a document may be found in the "[a]ppearance, contents, substance, internal patterns, or other distinctive

characteristics" of the records. The court noted that the cell phone records contained "hundreds of reference points from which it could be determined that they are the purported records for the requested cell phone numbers, and are sufficiently distinctive to qualify as self-authenticating." Fry, 885 N.E.2d at 749. The court specifically pointed to the inclusion of the cell phone number, the precise minute each call was made or received, multiple references to the account holder's name, and identifying labels of the cell phone companies. Id. This court concluded the contents of the cell phone records, the fact that the State had subpoenaed the records directly from the cell phone companies, and the certifications attached to the records, created a reasonable probability the records were what they purported to be, and, therefore, the trial court did not abuse its discretion when it admitted the records. Id.

Similarly here, the credit card account records contain the names Gerald or G. Bentle and Tri-State Carbonic, a mailing address associated with the LLC, labels of the credit card companies, the account numbers of the cards, and detailed records of the spending and payment activity associated with the accounts. This information is sufficiently distinctive to qualify as self-authenticating under Evidence Rule 901(b)(4). In addition, the State subpoenaed the records directly from the credit card companies and the records are each accompanied by an authenticating affidavit. Therefore, we conclude the evidence supports a reasonable finding that the records are what they purport to be, and the trial court did not abuse its discretion when it admitted them.

II. Motion to Correct Error

A. Standard of Review

We review a trial court's denial of a motion to correct error following a criminal conviction for an abuse of discretion. Gregor v. State, 646 N.E.2d 52, 53 (Ind. Ct. App. 1994). An abuse of discretion occurs "when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom[, or its] decision … is without reason or is based upon impermissible reasons or considerations." Id. (citations omitted).

B. Inconsistent Verdicts

Bentle argues the jury's verdicts are inconsistent because his acquittals of forgery and identity deception preclude a finding of guilt on the remaining charges. Initially, we point out that although Bentle couches his argument in terms of double jeopardy, where, as here, there is a single trial upon a single information consisting of separate counts in which separate offenses are alleged, apparently illogical verdicts "are regarded as 'disparate' verdicts which do not impinge interest[s] protected by the double jeopardy clauses." Hammers v. State, 502 N.E.2d 1339, 1343 (Ind. 1987).

Perfect logical consistency in jury verdicts is not required. Parks v. State, 734 N.E.2d 694, 700 (Ind. Ct. App. 2000), trans. denied. "[I]t is not within our province to attempt to interpret the thought process of the jury in arriving at their verdict …. The jurors are the triers of fact, and in performing this function, they may attach whatever weight and credibility to the evidence as they believe is warranted." Id. (quoting Hicks v. State, 426 N.E.2d 411, 414 (Ind. 1981)). "A jury verdict may be inconsistent or even illogical but nevertheless

permissible if it is supported by sufficient evidence." Baber v. State, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007), trans. denied. Thus, acquittal on one count will not automatically result in the reversal of a conviction on a similar or related count, because the former will generally have at least one element not required for the latter. Id.

In order to convict Bentle of fraud, the State had to prove beyond a reasonable doubt that Bentle, with intent to defraud, obtained property by using credit cards issued by Chase, Bank of America, and American Express, knowing the credit cards were unlawfully obtained. See Ind. Code § 35-43-5-4. In order to convict Bentle of fraud on a financial institution, the State had to prove beyond a reasonable doubt that Bentle knowingly executed a scheme to defraud Chase or Bank of America or to obtain money owned by or under the custody or control of Chase or Bank of America by means of false or fraudulent pretenses, representations, or promises. See Ind. Code § 35-43-5-8. These five counts relate to the evidence that Bentle illegally obtained and used credit cards in the name of Gerald or G. Bentle and Tri-State Carbonic. There is sufficient evidence in the record of the existence of the credit cards, that Bentle obtained the credit cards without the authorization of the LLC and continued to use the credit cards after being explicitly instructed by the LLC to cancel the accounts, and that Bentle used the credit cards for personal purchases.

Bentle was acquitted of the charge that he forged the document dated February 15, 2006, purporting to authorize him to use his father's credit. Bentle was also acquitted of the charge that he used his father's identity without his father's consent. Even if we assume the jury concluded Bentle had permission to obtain and use credit cards in his father's name,

there is still sufficient evidence that Bentle was not authorized to obtain credit cards in the name of the LLC. As a result, the jury could have concluded the evidence was insufficient to convict Bentle of crimes related solely to his use of his father's identity but sufficient to convict Bentle of crimes related to his unauthorized use of the LLC's identity. Therefore, the jury's verdicts are not inconsistent, and the trial court did not abuse its discretion when it denied Bentle's motion to correct error.

Conclusion

Bentle waived review of the admission of evidence seized during the warrantless search. In addition, the trial court did not abuse its discretion when it admitted the credit card account records and denied Bentle's motion to correct error.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.