

IN THE COURT OF APPEALS OF IOWA

No. 3-010 / 11-0353
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SYMONE MUNOZ-SPEARS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

A defendant appeals his conviction for credit card fraud. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David A. Adams and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, John Sarcone, County Attorney, and Olu Salami, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Symone Munoz-Spears appeals from the judgment and conviction following a jury trial and guilty verdict on the charge of credit card fraud in violation of Iowa Code section 715A.6 (2009). She claims her counsel provided her ineffective assistance by failing to object to certain evidence, and there was not sufficient evidence to support a conviction.

We review ineffective-assistance-of-counsel claims de novo and sufficiency-of-the-evidence claims for errors of law. *State v. Begey*, 672 N.W.2d 747, 749 (Iowa 2003). We find even if the statement in question was hearsay, Munoz-Spears is unable to show the prejudice necessary to prove ineffective assistance of counsel. *See id.* (providing for there to be ineffective assistance of counsel there must be both a breach of an essential duty and this breach caused prejudice). The alleged hearsay was that the stolen Electronic Benefit Transfer (EBT) card had been activated and funds had been used. This evidence is duplicative of other testimony properly admitted, including the card's transaction history, and therefore is not prejudicial. *State v. McKettrick*, 480 N.W.2d 52, 60 (Iowa 1992). Moreover, Munoz-Spears admitted to having used the card, but claimed she did not know she lacked authority to use it, so whether the card had been activated and funds used was not contrary to her defense.

Regarding sufficiency of the evidence, Munoz-Spears argues there was insufficient evidence to prove she knew she was not authorized to use the card. She testified she used the card, but claimed she did not know it was issued to the victim. In spite of the fact that the victim's name was on the front of the card, Munoz-Spears claims she had no knowledge her use was unauthorized. The

theories proposed by Munoz-Spears do not overcome the plausible story presented to the jury that resulted in her conviction. She gave conflicting accounts to the investigating detective and to the jury. We leave a jury's determination of the weight and credibility of testimony intact if not unreasonable. *See e.g. State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). We therefore affirm the conviction and sentence pursuant to Iowa Court Rule 21.29(a) and (e) as to both claims, and (b) as to the sufficiency-of-the-evidence claim.

AFFIRMED.