

No. 1-09-2714

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 06 CR 19427 |
| |) | |
| JONATHAN MARTIN, |) | Honorable |
| |) | Mary M. Brosnahan, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 **HELD:** Defendant's convictions for official misconduct are affirmed, where: (1) defendant was proven guilty beyond a reasonable doubt; (2) any insufficiency in one count of the indictment was harmless in light of the "one good count rule;" and (3) purported errors in the trial court's evidentiary rulings were not properly preserved for review, and those evidentiary rulings were also either correct or amounted to, at most, harmless error.

¶ 2 After a jury trial, defendant-appellant, Jonathan Martin, was convicted of two counts of official misconduct and sentenced to concurrent three-year terms of imprisonment. On appeal, defendant contends that his convictions should be reversed, in whole or in part, or a new trial should be ordered because: (1) he was not proven guilty beyond a reasonable doubt; (2) his pretrial motion

No. 1-09-2714

to dismiss one count of the indictment was improperly denied; (3) an exhibit purportedly prepared by a deceased individual was improperly admitted as a business record; and (4) the scope of a defense witness's testimony was improperly limited at trial. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Following his February 7, 2006, arrest, defendant was charged by indictment with five counts of official misconduct in violation of article 33-3 of the Criminal Code of 1961 (Criminal Code). 720 ILCS 5/33-3 (West 2004). Each count of the indictment generally alleged that defendant, in his capacity as an employee of the Cook County treasurer's office, improperly and without authority accessed the computer data of the treasurer's office and obtained tax payment information regarding overpayments and duplicate payments of real estate taxes.

¶ 5 Count 1 further alleged that defendant took these actions while knowing that they were forbidden by law, as they amounted to illegal computer tampering pursuant to article 16D-3 of the Criminal Code. 720 ILCS 5/16D-3 (West 2004). Count 2 alleged that defendant took these actions while knowing that they were forbidden by law, as they also amounted to violations of the Cook County treasurer's office employee's manual. Count 3 alleged that defendant's actions were performed in excess of his lawful authority and were performed with the intent to obtain a personal advantage for another person, because defendant provided the tax payment information to Mr. John Hank. Each of the first three counts related to acts defendant allegedly performed on or about September 13, 2005. Counts 4 and 5 of the indictment mirrored the allegations contained in counts 1 and 2, respectively, but related to acts defendant allegedly performed on or about November 16, 2005.

No. 1-09-2714

¶ 6 Defendant filed a motion to dismiss the indictment on December 6, 2006. Defendant's motion argued, *inter alia*, that the indictment was improperly couched solely in the language of the statute and did not provide a sufficiently specific description of defendant's allegedly illegal conduct to allow him to prepare a defense. Defendant also specifically argued that count 3 was "defective because it does not tell the defendant what 'tax payment information' he provided to John Hank. *** Until he knows that, [h]e cannot know the charge he must defend against." The record on appeal reflects that on February 13, 2007, the trial court dismissed counts 2 and 5, which involved alleged violations of the Cook County treasurer's employee's manual. Thus, defendant was left to defend only counts 1, 3, and 4 at trial.

¶ 7 Defendant also filed a pretrial motion *in limine* to bar the State from presenting count 3—or any evidence in support of that count—to the jury at trial. Defendant's motion asserted that, because John Hank was deceased and in light of the evidence tendered by the State to the defense during discovery, "the State cannot prove up count three by either direct or circumstantial evidence without having Mr. Hank as a witness." Defendant further contended that allowing the State to introduce evidence with respect to count 3 would violate his right to confront and cross-examine the witnesses against him. The trial court denied this motion, indicating that defendant would be free to object at trial should the State attempt to introduce any potentially improper hearsay evidence.

¶ 8 The matter then proceeded to a jury trial in November of 2008. At trial, the State's first witness was Mr. William Kouruklis. Mr. Kouruklis started working at the treasurer's office when he was 18 or 19 years old and, at the time of the trial, he had been employed there for almost 19 years. He had worked in many different capacities at the treasurer's office during that time, before

No. 1-09-2714

ultimately becoming a deputy county treasurer and the director of operations.

¶ 9 Mr. Kouruklis explained that the role of the treasurer's office was to collect the \$9.5 billion in annual property taxes assessed on over 1.7 million individual properties in Cook County, and to then properly distribute those collected funds to over 1800 different taxing districts. To aid in the accomplishment of these duties, each piece of property is assigned a property index number, or "PIN."

¶ 10 Occasionally, the treasurer's office would receive a duplicate payment or overpayment (D&O) of the property taxes owed for a particular property. In such cases, the taxpayer would be entitled to a refund upon the filing and acceptance of a refund request application. The fact that a refund might be due with respect to any individual property was information generally available to the public. That information would be provided in property tax bills, and was also available by querying the treasurer's phone system or website about the refund status of a particular PIN. Additionally, employees of the treasurer's office had access to a computer program that would allow them to check whether any individual PIN was owed a refund due to a D&O payment. Employees of the treasurer's office would generally use this information to assist taxpayers making inquiries as to the refund status of individual properties. In addition, employees working in the D&O refund department of the treasurer's office would use this information to process refund applications received either from taxpayers themselves or from third-parties working on commission to obtain refunds for taxpayers. In all such cases, the refund information contained in the treasurer's computer files was only accessible by querying one PIN at a time.

¶ 11 In addition, certain employees had the authority to access the treasurer's computer files and

No. 1-09-2714

obtain a list—typically in the form of a Microsoft Excel spreadsheet file—of all the properties in Cook County that were owed property tax refunds. Mr. Kouruklis himself would obtain such a list a few times per year, and would in fact obtain separate lists of properties owed refunds for each of the prior five tax years. Mr. Kouruklis explained that he would obtain this list of properties owed refunds in order to analyze the effectiveness of the treasurer's collection efforts, to see how many D&O payments there were, and to see if a D&O payment in one year might be offset by a delinquency in another year. In a five-year period, there might be as many as 120,000 records of D&O payments. He would only retrieve information regarding the prior five tax years, because there was a statute of limitations precluding a taxpayer from receiving a refund for any tax year before that time.

¶ 12 Mr. Kouruklis also testified that this comprehensive D&O computer data was secured by requiring a person to enter a user name and password that would be recognized by the treasurer's computer system as authorizing that person to access this type of data. The authority to obtain such comprehensive information was limited to—other than himself—the treasurer, Ms. Maria Pappas, the treasurer's chief deputies, the chief information officer, and one or two employees of the information technology (IT) department. If any other employee needed such information for any reason, they would have to ask either Mr. Kouruklis or one of the IT employees, with all such requests typically approved by Mr. Kouruklis himself.

¶ 13 Mr. Kouruklis worked in the treasurer's main office, which occupied two floors of the county building in downtown Chicago. That office was equipped with between 44 and 48 ceiling-mounted video cameras. These cameras were installed due to the large amounts of money collected by the department and the need to accurately account for those funds. Mr. Kouruklis described these

No. 1-09-2714

cameras as "casino grade." As such, they had very powerful zoom lenses and were able to be controlled by two sets of monitors and joysticks installed in the offices of the treasurer and Mr. Kouruklis. When zoomed in, the cameras were capable of allowing a viewer to count money or to read "regular font size documents." While the treasurer's office also made a video recording of the live feed from these cameras, the quality of the recorded video was not as high as the live feed. In addition to their general use, Mr. Kouruklis testified that he would personally use these cameras and the joystick in his office to monitor the office on "high collection days" when there were a lot of cash transactions. He would also use the cameras to locate employees in the office if they could not be reached by telephone at their desk.

¶ 14 Mr. Kouruklis testified that he was doing just that sometime around 3 p.m. on November 16, 2005, when he was using the joystick and monitor in his office to locate Ms. Vicky Pappas, the treasurer's chief legal counsel. As he panned one of the video cameras across the legal department, Mr. Kouruklis observed defendant sitting at his desk working on his computer. Mr. Kouruklis had known defendant for 12 to 14 years, as defendant had started at the treasurer's office a few years after Mr. Kouruklis. Defendant had previously worked for Mr. Kouruklis as part of the operations team. In that role, defendant also acted as an informal "IT facilitator" troubleshooting other employees computer problems because defendant "had enough technical savvies to go ahead and fix a problem that somebody may have had with their computer."

¶ 15 By November of 2005, however, defendant was employed in the legal department and was responsible for working on "sales in error," which involved errors with respect to delinquent property tax payments. This responsibility did not have anything to do with D&O payments or refunds.

No. 1-09-2714

Nevertheless, when Mr. Kouruklis scanned across defendant's desk with the video camera, he observed a Microsoft Excel spreadsheet displayed on defendant's computer screen. The spreadsheet looked familiar, and when Mr. Kouruklis zoomed in he realized that defendant was working with a Microsoft Excel spreadsheet containing D&O refund data in the form that Mr. Kouruklis would semi-annually request from the IT department. To confirm this fact, Mr. Kouruklis checked the PIN numbers contained in the spreadsheet displayed on defendant's screen. In each case, he found that refunds—some in amounts of "hundreds of thousands of dollars"—were due on those properties.

¶ 16 Mr. Kouruklis found defendant's actions to be a "red flag" because: (1) nobody in the office needed that data at the time; (2) nobody else knew how to access that data; and (3) at the time, defendant was not working in either the refund or IT departments, or for Mr. Kouruklis. Indeed, at that time, defendant did not have authority to access the comprehensive D&O refund data and create a Microsoft Excel spreadsheet of that data. Mr. Kouruklis did not know how defendant had done so.

¶ 17 With his interest piqued, Mr. Kouruklis continued to observe defendant's activities *via* the video camera. He watched as defendant engaged in "a lot of what is called cutting and pasting," whereby defendant would highlight information about PINs owed refunds from various computer databases available to treasurer's office employees, copy that information, and paste it into a blank Microsoft Word document. This included information about properties owed refunds which were contained in the Microsoft Excel spreadsheet which Mr. Kouruklis observed defendant working with on his computer screen, as well as taxpayer information, specific information about the dates of prior payments, and images of checks presented to the treasurer's office in payment of property taxes for

No. 1-09-2714

a particular PIN obtained from other programs and databases.

¶ 18 As Mr. Kouruklis summarized, defendant was "creating a Microsoft Word document of all the history of a particular [PIN] and he would do that for every property." However, Mr. Kouruklis further testified that there were "100,000 records in that Excel spreadsheet, so he wasn't doing it for 100,000 records, he was taking, what I saw, certain ones that he wanted." During the time that defendant was doing this, Mr. Kouruklis also observed that "a lot of times when somebody had walked by from behind him, the screen would just, everything would be minimized and the sale in error screen would pop up, which was his regular duties at that time. That would happen for two hours, back and forth."

¶ 19 At some point, Mr. Kouruklis moved to the treasurer's office and continued to watch defendant's activities on the monitor there along with: (1) Mr. Dan Degmend, the chief deputy treasurer; (2) Mr. Michael Shine, the chief deputy of personnel; (3) Mr. Rod Height, the chief information officer; and (4) Ms. Vicky Pappas. After defendant was seen deleting some documents, Mr. Kouruklis "wanted to buy some time" and, therefore, Ms. Vicky Pappas sent defendant on an errand.

¶ 20 After defendant returned, sometime after 4 p.m., Mr. Kouruklis continued to observe him on the video camera as he waited in Ms. Vicky Pappas's office as instructed. However, defendant soon returned to his desk. After turning on the sale in error program on his computer, defendant was observed completing the Microsoft Word document he had previously been filling with information. Defendant then emailed the Microsoft Excel spreadsheet and the Microsoft Word document to his personal email account. Thereafter, defendant was seen deleting the history of the documents he had

No. 1-09-2714

worked with, his internet browser history, certain "sent" emails, the print queue, and the contents of the "recycling bin" on his computer. Defendant was then asked to leave the office, and Mr. Kouruklis called the treasurer.

¶ 21 Defendant's computer was guarded by a sheriff's deputy while an investigation of defendant's activities was coordinated. Mr. Kouruklis testified that this investigation involved the treasurer's IT department, the Chicago police department, and the United States Secret Service. As a result of this investigation, a Microsoft Word file and a Microsoft Excel file were retrieved by the treasurer's IT department. Mr. Kouruklis identified these files as the same Microsoft Word document and Microsoft Excel spreadsheet that he observed defendant working with on November 16, 2005.

¶ 22 The State then played a video for the jury, which Mr. Kouruklis identified as a copy of what he observed on the live video camera feed on November 16, 2005. However, the video displayed at a lower resolution and at a reduced frame rate, compared to what Mr. Kouruklis observed live on the monitor at the treasurer's office, because the video recording system was somewhat outdated and did not record a continuous feed. Additionally, the State fast forwarded through portions of the video at trial. While this video was played for the jury, Mr. Kouruklis again described what he had observed of defendant's actions on November 16, 2005.

¶ 23 On cross-examination, Mr. Kouruklis was challenged as to why the video that was played for the jury did not appear to show defendant minimizing the items on his computer screen when people walked behind him. Mr. Kouruklis responded that "you can't see it now, because it's at the bottom of the screen, and the picture isn't as clear as I saw it." He also noted that during Mr. Kouruklis direct examination at trial, the State had fast forwarded the video through some instances

No. 1-09-2714

of this conduct. Mr. Kouruklis further acknowledged that when the investigation into defendant's conduct began, he did not inform the police that he was looking for Ms. Vicky Pappas when he originally panned across defendant's desk with the video camera.

¶ 24 In addition, defense counsel also had Mr. Kouruklis identify and discuss several "help desk" requests made to the treasurer's IT department. These requests related to a number of instances where defendant's access to various programs and databases at the treasurer's office was either added or deleted. Some of these requests, dated between February and July of 2005, related to defendant's transfer from the IT department to the legal department, and some of these requests came from defendant himself. Mr. Kouruklis ultimately testified that none of these requests gave defendant access or authority to view the comprehensive D&O payment information contained in the Microsoft Excel spreadsheet. While defendant appeared to have obtained access to that data in some way, he had never been given authority to do so from the treasurer's office.

¶ 25 Next, the State presented the testimony of Ms. Georgia Beladakis, who was the supervisor of the "court orders" division of the treasurer's legal department from October of 2005, until she left the treasurer's office in November of 2007. In that role, she supervised a staff of six people, including defendant. The court orders department handled court-ordered refunds of property taxes, which included bankruptcies, condemnations, forfeitures, and sales in error. Ms. Beladakis testified that a sale in error occurs when delinquent property taxes are improperly sold at a tax sale, and a tax buyer is, therefore, entitled to a refund.

¶ 26 Defendant's duties in the legal department, which Ms. Beladakis agreed were "specific and clear," included processing sale in error refund requests and assisting with bankruptcies. Defendant's

No. 1-09-2714

duties had absolutely nothing to do with D&O payment refunds, as those refunds were handled by a completely different department of the treasurer's office. As such, defendant would have no "conceivable reason" to access a spreadsheet containing thousands of PINs owed D&O refunds. Ms. Beladakis herself did not have access or authority to such information, as that access and authority was limited to "Bill Kouruklis and the deputies above him as well as the treasurer herself."

¶ 27 Mr. Jason Chapman testified that he was an agent with the United States Secret Service, and that in November of 2005, he was stationed in the Chicago field office and was responsible for conducting forensic analysis on digital media. Mr. Chapman became involved in this matter when, on November 17, 2005, he was called by another agent to come to the treasurer's office, provide technical assistance, and to possibly remove some computers to examine. Mr. Chapman ultimately removed three computers from the treasurer's office, one of which was reportedly defendant's work station.

¶ 28 Mr. Chapman was instructed to examine these computers for any recently created Microsoft Word or text documents related to property tax information, and to look for emails to defendant's personal email address. Items relevant to these instructions were only found on defendant's computer. These items included one Microsoft Word document and two Microsoft Excel spreadsheets.

¶ 29 State exhibit 9 was a printout of the Microsoft Word document and was created, last written, and last accessed on November 16, 2005. The computer file containing that document further indicated it was created under the user name "Martin J." State exhibit 10 was a printout of a portion of the larger Microsoft Excel spreadsheet file which was also created, last written, and last accessed

No. 1-09-2714

on November 16, 2005, under the user name "Martin J." Mr. Chapman described this larger Microsoft Excel file as containing six separate spreadsheets each labeled for a year between 1999 and 2004. State exhibit 10 only included the first page of the 2004 and 1999 spreadsheets, because the entire file would run for thousands of pages.

¶ 30 Finally, Mr. Chapman identified State exhibit 6 as a printout of the first page of a smaller Microsoft Excel spreadsheet file recovered from defendant's computer. That file contained one thousand pages of information, with some of the information contained in that file colored in red, green, and blue. This file was created under the user name "Martin J." on September 7, 2005, was last written on September 13, 2005, and was last accessed on November 9, 2005. A compact disc containing complete copies of each of these electronic files was also entered into evidence.

¶ 31 On cross-examination, Mr. Chapman acknowledged that his participation in this matter was limited to a forensic examination of the computers. Thus, he did not know anything about the defendant's work responsibilities at the treasurer's office, nor could he say who physically created these three documents. He also acknowledged that he was not asked to determine if defendant's computer had been "hacked" in any way, and that defendant's user name appeared to be contained among a group of users identified as "administrators." Finally, Mr. Chapman acknowledged that he had not recovered any documents or evidence showing that defendant was forbidden by law to access the D&O databases.

¶ 32 Mr. James McDermott testified that he had been the IT operations manager for the treasurer's office since July of 2005. On November 21, 2005, he was asked to recover emails from defendant's work email account. Mr. McDermott was able to recover 25 emails sent from defendant's work

No. 1-09-2714

email account to defendant's personal email account on November 16, 2005, most of them very large in size. The last two emails sent that day contained two files, a Microsoft Word file and a Microsoft Excel file. Mr. McDermott also recovered a contact entry for Mr. Hank in the personal folder of defendant's email account, along with prior emails exchanged between defendant and Mr. Hank.

¶ 33 In addition, Mr. McDermott testified that, while as an IT employee, he had the ability to create a spreadsheet containing comprehensive D&O data, he did not have the authority to do so, and had never done so. In fact, the only people who were allowed to do so were those "granted the authority by the senior staff." On cross-examination, Mr. McDermott acknowledged that he did not know what permission or authority defendant had in November of 2005.

¶ 34 Detective Clarence Hill, the State's final witness, testified that he was employed in the financial crimes unit of the Chicago police department. He was assigned to the investigation of this matter on November 17, 2005. As part of that investigation, Detective Hill spoke with a number of employees at the treasurer's office. He also reviewed the computer files retrieved by Mr. Chapman and Mr. McDermott.

¶ 35 With respect to these files, Detective Hill noted that the two Microsoft Word documents, retrieved separately by Mr. Chapman and Mr. McDermott, were identical. Also identical were the two larger Microsoft Excel spreadsheets that were also retrieved separately by Mr. Chapman and Mr. McDermott. Detective Hill further testified that the Microsoft Word document contained information regarding seven PINs, and that each of these PINs were listed as a property owed a refund on the larger Microsoft Excel spreadsheet.

¶ 36 He also reviewed the smaller Microsoft Excel file retrieved by Mr. Chapman. Detective Hill

No. 1-09-2714

found that some of the PINs on that spreadsheet were highlighted in color. After asking the treasurer's office about any possible relationship between the PINs and any refund requests, Detective Hill was provided with State exhibit 7. Over a defense objection that this document constituted inadmissible hearsay for which no proper foundation had been laid to allow its introduction as a business record, Detective Hill testified that State exhibit 7 consisted of a number of applications for D&O refunds with respect to a number of PINs, along with an attached cover letter dated September 28, 2005, and signed under the name of John Hank.

¶ 37 When Detective Hill compared the PINs contained in the refund requests to the PINs highlighted on the smaller Microsoft Excel file, he found that they matched. After he also reviewed the emails and contact information retrieved from defendant's work email account, and realized that defendant had been in contact with Mr. Hank, Detective Hill arranged an appointment to meet with Mr. Hank. When Detective Hill arrived for that meeting at Mr. Hank's address on January 4, 2006, he found that defendant was unexpectedly present. Detective Hill had many other conversations with Mr. Hank but, prior to trial, the detective learned that Mr. Hank had subsequently died.

¶ 38 At the conclusion of the State's case, defendant again objected unsuccessfully to the introduction of State exhibit 7. Defendant's motion for a directed verdict was denied, and defendant proceeded to present his defense.

¶ 39 Mr. James Crawley testified that he was an attorney and had been employed at the treasurer's office on two occasions, once beginning in 1993 and again from 1998 to 2002. He worked in the legal department, and was ultimately promoted to deputy treasurer. In his experience, information about refunds owed on properties was available from the treasurer's office online, by phone, and in

No. 1-09-2714

the treasurer's "warrant books." All of this information was also stored in the treasurer's mainframe, not in a separate database. A D&O report was simply a compilation of data from the mainframe that lists any PIN where there was a payment in excess of the taxes due. Finally, Mr. Crawley testified that he knew defendant to be a very hard worker.

¶ 40 Mr. Luis Crespo testified that he had worked at the treasurer's office from 1990 to 2006. During much of that time, he worked as a systems administrator in the IT department. Defendant had also worked in the IT department, and the two worked on many projects together. Mr. Crespo and defendant were also personal friends.

¶ 41 As employees in the IT department, both Mr. Crespo and defendant had "administrator" access to the treasurer's office computer systems. Indeed, Mr. Crespo testified that defendant had this type of access until 2006, even though defendant was no longer employed in the IT department. Mr. Crespo described this type of access as including "access to everything." While on direct examination Mr. Crespo testified that if someone had access, they also had authority and, on cross-examination, he acknowledged that there was a distinction between the two. He also indicated that he had only used his administrator's access to complete job-related tasks.

¶ 42 While Mr. Crespo worked at the treasurer's office, he would often email documents to himself so he could work on them at home. These would include files including information on "duplicates and overs." It was also not unusual for him to delete files.

¶ 43 In addition to these duties, both Mr. Crespo and defendant would often work on parade floats on behalf of the treasurer, Ms. Maria Pappas. They would occasionally be paid overtime for this work out of a community outreach fund, at the discretion of the treasurer. However, in 2004, they

both stopped working at parade events. Mr. Crespo testified that he noticed a difference in the way defendant was treated after he stopped attending such events.

¶ 44 When Mr. Crespo was further asked if defendant's relationship with the treasurer changed after this time, or if the management treated defendant differently, the State objected. In a sidebar, defense counsel indicated that Mr. Crespo would testify that "attitudes towards" defendant changed after he stopped working at parades. In addition, Mr. Crespo would testify that he had experienced something similar. The State asserted that any such testimony was irrelevant and speculative.

¶ 45 The trial court concluded that any such testimony with respect to Mr. Crespo was irrelevant and would not be allowed. With respect to defendant, the trial court sustained the State's objection and ruled that, while Mr. Crespo could testify to specific changes in defendant's job responsibilities, he could not offer any testimony speculating on the motives for those changes. Mr. Crespo, thereafter, testified that after defendant stopped working at parades, he was transferred from the IT department to the legal department.

¶ 46 Thereafter, the jury heard closing arguments, which included an intimation by defense counsel that defendant's treatment at the treasurer's office resulted from some personal animosity following his decision to stop working at parade events. The jury was then provided instructions and verdict forms. The jury was instructed that defendant was "charged in different ways with the offense of official misconduct." The jury was further instructed that they could find defendant guilty of official misconduct if they found that he, as a public employee and in his official capacity, "performs an act which he knows he is forbidden by law to perform, or performs an act in excess of his lawful authority with intent to obtain a personal advantage for another." Finally, the jury was

No. 1-09-2714

provided with the definition of the offense of computer tampering, and was provided with four, separate general verdict forms allowing them to find defendant guilty or not guilty of committing official misconduct on September 13, 2005, and guilty or not guilty of committing official misconduct on November 16, 2005.

¶ 47 The jury ultimately returned two, separate general verdict forms finding defendant guilty of committing official misconduct on both September 13, 2005, and November 16, 2005. Defendant's trial counsel, thereafter, filed a timely written posttrial motion. However, in open court defendant informed the trial court that he no longer wanted his trial counsel to represent him and wished to proceed *pro se*. The trial court continued the matter to allow defendant to put his contentions in writing, including his allegations of ineffective assistance, and his challenges to the jury's verdicts. After defendant had filed his own posttrial motion, and his trial counsel had filed a motion to withdraw, the trial court allowed defendant to proceed *pro se*, and allowed his trial counsel to withdraw. The matter was then continued for a hearing on defendant's motion.

¶ 48 At the conclusion of that hearing, which included testimony from defendant's trial counsel and argument from defendant, the trial court rejected defendant's *pro se* motion in its entirety, including his allegations of ineffective assistance. After the State reminded the trial court of the posttrial motion filed by defendant's trial counsel, the trial court indicated its understanding that the motion had been withdrawn when he allowed defendant's trial counsel to withdraw from the case. In order to "clear it up" in the event there was any question, the trial court asked defendant to confirm that it was his desire to proceed "strictly" on his own *pro se* posttrial motion, and to strike the motion previously filed by his trial counsel. Defendant confirmed that this was indeed his intention.

¶ 49 At the sentencing hearing, the State introduced certified copies of defendant's two prior felony convictions for delivery of a controlled substance. The trial court merged counts 1 and 3, entering a single conviction for official misconduct under count 1 with respect to defendant's actions on September 13, 2005.¹ The trial court then sentenced defendant to concurrent sentences of three years' imprisonment on counts 1 and 4. Defendant now appeals.

¶ 50

II. ANALYSIS

¶ 51 As noted above, defendant raises four separate arguments on appeal. We address each argument in turn.

¶ 52

A. Sufficiency of the Evidence

¶ 53 We first address defendant's challenge to the sufficiency of the evidence supporting his convictions for official misconduct under counts 1 and 4 of the indictment, which alleged that defendant's actions in September and November of 2005 were taken while he knew that they were forbidden by law.

¶ 54 When presented with such a challenge, it is not the function of this court to retry defendant; rather, we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). The trier of fact's findings are entitled to great weight,

¹ In the report of proceedings, the trial court is actually quoted as indicating that "Counts 1 and 2 are merged." This appears to be either a typographical error or a misstatement by the trial court, as count 2 had been previously dismissed. In any case, because the trial court further indicated that the two merged counts "were from the September 13th date" and the only counts still pending with respect to that date were counts 1 and 3, it is apparent that the court intended to indicate that those two counts would be merged into a single conviction on count 1.

No. 1-09-2714

given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, a reviewing court will not substitute its judgment for that of a trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so improbable or unsatisfactory, it leaves a reasonable doubt regarding the defendant's guilt. *Evans*, 209 Ill. 2d at 209.

¶ 55 "The official misconduct statute was intended to prevent public officers and employees from using an official position in the commission of an offense." *People v. Williams*, 239 Ill. 2d 119, 127 (2010). Thus, in relevant part and as charged in counts 1 and 4, article 33-3 of the Criminal Code provides that "[a] public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts *** (b) [k]nowingly performs an act which he knows he is forbidden by law to perform ***." 720 ILCS 5/33-3(b) (West 2004). Thus, "the two elements of the offenses of official misconduct as charged in the present case are that (1) defendant knowingly performed an act which he knew was forbidden by law to perform, and (2) that he did so in his official capacity." *People v. Brogan*, 352 Ill. App. 3d 477, 490 (2004).

¶ 56 Nevertheless, "[t]he official misconduct statute itself does not prohibit specific conduct, but exists by reference to the violation of another statute, administrative rule, or legal duty." *Id.* at 485-86. Thus, counts 1 and 4 of the instant indictment specifically alleged that defendant committed the offense of official misconduct when he, in his official capacity and with the knowledge that it was forbidden by law, committed the offense of computer tampering pursuant to article 16D-3(a)(2) of the Criminal Code. 720 ILCS 5/16D-3(a)(2) (West 2004). "A person commits the offense of

No. 1-09-2714

computer tampering when he knowingly and without the authorization of a computer's owner ***, or in excess of the authority granted to him *** [a]ccesses or causes to be accessed a computer or any part thereof, or a program or data, and obtains data or services." *Id.*

¶ 57 On appeal, defendant does not challenge the sufficiency of the evidence with respect to the fact that he was a public employee, that the relevant acts alleged by the State were taken in his official capacity, that he performed those acts knowingly, that he knew that computer tampering was a crime, or that he knew that accessing comprehensive D&O refund data without authority would constitute the offense of computer tampering. Nor does defendant seriously contest the evidence that he did not, in fact, have authority to access comprehensive D&O data, with his argument on that point limited to a single sentence briefly referencing Mr. Crespo's testimony that defendant had universal "administrator" access and authority. Instead, defendant contends that the State failed to prove that he actually *knew* he did not have authority to access comprehensive D&O data, such that the State also failed to prove that defendant knew that he was committing the offense of computer tampering when he accessed that data.

¶ 58 Specifically, defendant asserts that while there was a great deal of evidence with respect to his lack of authority, "there was absolutely no testimony from anyone as to whether or not anyone ever informed [him] that he had no access or authority to access the duplicate and overpayment database." He further argues that there was no evidence that defendant was ever shown the help desk requests removing his access to various programs and databases, nor was there any evidence that he was provided with an employee's manual, policy statement, or written memo informing him of his lack of authority to access comprehensive D&O data. Finally, he complains that there was no

No. 1-09-2714

"pop-up warning" on his computer advising him of his lack of authority to access that data.

¶ 59 We find these arguments to be unpersuasive, as they fail to fully address the fact that "[k]nowledge may be, and ordinarily is, proven circumstantially." *People v. Ortiz*, 196 Ill. 2d 236, 260 (2001). "Accordingly, '[k]nowledge may be inferred from the facts and circumstances of the case.'" *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 118 (quoting *People v. Holt*, 271 Ill. App. 3d 1016, 1025 (1995)).

¶ 60 Here, the State presented evidence that defendant's duties in the treasurer's legal department, which Ms. Beladakis described as "specific and clear," had absolutely nothing to do with D&O payment refunds. Furthermore, the State presented evidence that, on November 16, 2005, defendant made efforts to conceal his use of the comprehensive D&O data by "minimizing" the Microsoft Word document and the larger Microsoft Excel spreadsheet on his computer screen when people would pass behind him, and by deleting files and emails containing this data. Defendant was also observed deleting the history of the documents he had worked with that day, as well as his internet browser history, the print queue, and the contents of the "recycling bin" on his computer. This evidence supports an inference that defendant knew he did not have authority to access comprehensive D&O data on that date.

¶ 61 The State also presented evidence that defendant accessed comprehensive D&O data on September 13, 2005. Prior to that date, there were a number of help desk requests to the treasurer's IT department altering defendant's access to various programs and databases in light of his transition into the legal department. Notably, defendant himself had previously submitted a help desk request seeking permission to access the D&O refund data, but only with respect to querying a single PIN

No. 1-09-2714

at a time. As the State correctly notes, the fact that defendant had previously sought limited access to information regarding refunds one PIN at a time, supports an inference that defendant knew he did not have the authority to access comprehensive D&O data about over 100,000 separate PINs, when he later did so on both September 13, 2005, and November 16, 2005.

¶ 62 We reiterate that we review the evidence in the light most favorable to the State, and will reverse a conviction only if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt regarding defendant's guilt. *Evans*, 209 Ill. 2d at 209. In light of this standard, we do not find that the evidence establishing defendant's knowledge—that he lacked authority to access comprehensive D&O data—was so improbable or unsatisfactory, that his convictions for official misconduct under counts 1 and 4 of the indictment must be reversed.

¶ 63 Lastly, we briefly note that none of the exhibits entered into evidence below—including the video, the Microsoft Word and Excel files, the emails, and the help desk requests—have been included in the record on appeal. As the appellant in this matter, defendant had the burden to present a sufficiently complete record of the proceedings at trial, and any doubts which may arise from the incompleteness of the record will be resolved against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also *People v. Fair*, 193 Ill. 2d 256, 264 (2000) (applying *Foutch* in the context of a criminal appeal). Because a review of *all* the evidence produced at trial is impossible in light of the incomplete record on appeal, we must resolve against defendant any possible doubt with respect to the sufficiency of the evidence establishing defendant's knowledge that he lacked authority to access comprehensive D&O data.

¶ 64

B. Motion to Dismiss Count 3

No. 1-09-2714

¶ 65 Defendant's next contention is that the trial court improperly denied his pretrial motion to dismiss count 3 of the indictment, because that count did not comply with the requirements of section 111-3(a)(3) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure). 725 ILCS 5/111-3(a)(3) (West 2004).

¶ 66 Specifically, defendant notes that the United States Constitution and the Illinois Constitution afford criminal defendants the right to be informed of the nature and cause of the accusations against them. See *People v. Grever*, 222 Ill. 2d 321, 327 (2006) (quoting U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8). In Illinois, this general right is given substance by section 111-3 of the Code of Criminal Procedure, which is " 'designed to inform the accused of the nature of the offense with which he is charged so that he may prepare a defense and to assure that the charged offense may serve as a bar to subsequent prosecution arising out of the same conduct.' " *People v. Meyers*, 158 Ill. 2d 46, 51 (1994) (quoting *People v. Simmons*, 93 Ill. 2d 94, 99-100 (1982)). Thus, section 111-3(a)(3) of the Code of Criminal Procedure specifically requires that an indictment allege the commission of an offense by "[s]etting forth the nature and elements of the offense charged." 725 ILCS 5/111-3(a)(3) (West 2004).

¶ 67 Defendant contends that the allegations contained in count 3 were insufficiently specific as to the "tax payment information" he purportedly provided to Mr. Hank, such that he could not properly prepare a defense to this count of the indictment. He, therefore, contends that his conviction must be reversed.²

²Defendant does not specify which conviction, but he presumably refers to his conviction for committing official misconduct on September 13, 2005, the date to which the allegations of count 3 are directed.

No. 1-09-2714

¶ 68 We need not further consider the merits of this argument. Our supreme court has recently reiterated that "the 'one good count rule' is a legal construct that has been recognized in this state for well over a century ***." *People v. Smith*, 233 Ill. 2d 1, 18-19 (2009). Pursuant to the one-good-count rule, "if one count in an indictment be good, although all the others are defective, it will be sufficient to support a general verdict of guilty." *Id.* at 19 (quoting *Curtis v. People*, 1 Ill. 256, 260 (1828)). Indeed, "it is well settled that where an indictment contains several counts arising out of a single transaction, and a general verdict is returned[,] the effect is that the defendant is guilty as charged in each count." (Internal quotation marks omitted.) *People v. Davis*, 233 Ill. 2d 244, 265 (2009) (quoting *People v. Morgan*, 197 Ill. 2d 404, 448 (2001)). Thus, under the one-good-count rule, "a general finding of guilt may be affirmed where proof is sufficient on one good count in an indictment." *People v. Perry*, 2011 IL App (1st) 081228, ¶ 56.

¶ 69 As noted above, defendant was charged in both counts 1 and 3 with committing official misconduct on or about September 13, 2005. Moreover, the record reflects that the jury was instructed that they could find defendant guilty of committing official misconduct on that date under the legal theory presented in either count. Finally, the jury returned a general verdict form finding defendant guilty of committing official misconduct on September 13, 2005. The trial court then merged the two counts related to September 13, 2005, into a single conviction on count 1 prior to sentencing.

¶ 70 We have already determined that the jury properly found defendant guilty of committing official misconduct on September 13, 2005, pursuant to the allegations contained in count 1. Defendant's conviction for official misconduct on that date may, therefore, be affirmed pursuant to

No. 1-09-2714

the one-good-count rule. Thus, any possible insufficiency with respect to count 3 of the indictment does not warrant reversal of defendant's conviction, and we need not further consider this issue.

¶ 71 C. Admissibility of State Exhibit 7

¶ 72 Defendant next contends that the trial court erred in admitting into evidence State exhibit 7, the letter and refund applications purportedly submitted to the treasurer's office by Mr. Hank. Defendant asserts that the State did not lay a proper foundation for the admission of such hearsay evidence under the business record exception. Defendant further contends that, as a result, "the jury was free to consider this evidence in its deliberations, which led the jury to convict Mr. Martin of Count 3 of the indictment."

¶ 73 However, while defendant's trial counsel objected to the admission of State exhibit 7 on this basis, both prior to and at trial and in a written posttrial motion, defendant specifically asked the trial court to strike his trial counsel's posttrial motion and consider only his *pro se* posttrial motion. The *pro se* motion did not raise any objection to the admission of State exhibit 7. Because this issue was not raised in the operative posttrial motion, defendant has not preserved this issue for appeal. *People v. Enoch*, 122 Ill.2d 176, 186 (1988) (to preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion).

¶ 74 Defendant's forfeiture aside, we find that his challenge to the admissibility of State exhibit 7 cannot support a reversal of his conviction for committing official misconduct on September 13, 2005. Any possible error in the admission of this exhibit was harmless.

¶ 75 "An error is harmless if 'the result would have been the same absent the error.'" *People v. Melchor*, 376 Ill. App. 3d 444, 457 (2007) (quoting *People v. Nitz*, 219 Ill. 2d 400, 410 (2006)). "To

No. 1-09-2714

determine whether an ordinary trial error, such as the improper admission of hearsay evidence, was harmless, we must ask whether the verdict would have been different if the evidence had not been admitted." *People v. McWhite*, 399 Ill. App. 3d 637, 643 (2010).

¶ 76 Here, we note again that defendant was tried for committing official misconduct on September 13, 2005, pursuant to both counts 1 and 3. We have already concluded that defendant was properly found guilty of committing official misconduct on that date under count 1, and that the jury's general finding of guilt and defendant's resulting conviction with respect to that date may be affirmed solely on the basis of the proof presented as to count 1. Moreover, and as defendant himself acknowledges on appeal, any error in the admission of the letter and refund applications submitted by Mr. Hank could only have resulted in prejudice with respect to count 3. Specifically, count 3 was the sole count submitted to the jury alleging that defendant's actions were performed with the intent to obtain a personal advantage for another person, because defendant provided tax payment information to Mr. Hank.

¶ 77 Thus, because defendant's conviction for committing official misconduct on September 13, 2005, can be affirmed solely on the basis of count 1, and because the admission of State exhibit 7 could not have prejudiced defendant with respect to that count, any possible error in the admission of that exhibit was harmless. The ultimate result would have been the same even absent any such error.

¶ 78 D. Testimony of Luis Crespo

¶ 79 Finally, defendant asserts that the trial court incorrectly granted the State's objection at trial and improperly limited the testimony of Mr. Crespo on the basis that it was irrelevant and

No. 1-09-2714

speculative. As an initial matter, we note that defendant has forfeited review of this issue because it was not raised in the operative *pro se* posttrial motion. *Enoch*, 122 Ill. 2d at 186.

¶ 80 Additionally, it is well recognized:

"It is within the trial court's discretion to decide whether evidence is relevant and admissible. [Citation.] A trial court's decision concerning whether evidence is relevant and admissible will not be reversed absent a clear abuse of discretion. [Citation.] An abuse of discretion will be found only where the trial court's decision is 'arbitrary, fanciful or unreasonable' or where no reasonable man would take the trial court's view. [Citations.] Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence. [Citation.] However, a trial court may reject evidence on the grounds of relevancy if the evidence is remote, uncertain or speculative. [Citation.]" *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001).

¶ 81 According to the offer of proof made at trial, defendant sought to introduce testimony from Mr. Crespo about: (1) the fact that before defendant stopped working at parade events for the treasurer in May of 2004, he had "carte blanche and [was] able to do whatever he wanted," but that afterward "the attitude towards him changed;" (2) anything "specific"³ that happened to Mr. Crespo after he too stopped working at parade events; and (3) changes in defendant's work assignments after defendant stopped working at parade events. The trial court found that, with the exception of

³Defendant's trial counsel did not actually specify what Mr. Crespo's testimony would be on this point, but merely indicated that he would be asked questions about this topic.

No. 1-09-2714

testimony about specific changes in defendant's work assignments, any such testimony would be too remote and speculative to be relevant. Defendant contends that this ruling was incorrect, and prejudiced his ability to present his theory of the case; *i.e.*, that the treasurer "unleashed a personal vendetta" against him after he stopped working at parade events.

¶ 82 We disagree. Defendant sought to support his theory of the case by eliciting testimony that Mr. Crespo's and defendant's decisions to stop working at parade events in May of 2004 somehow led to changes in how the two were treated at the treasurer's office and, ultimately, to allegations of official misconduct against defendant in late 2005. Other than vague references to changed attitudes, the offer of proof offered nothing to substantiate or connect all these events other than speculation. As such, the trial court's conclusion that such testimony would be too remote and speculative to be relevant and admissible was not so arbitrary, fanciful or unreasonable that it amounted to an abuse of discretion. *Id.*

¶ 83

III. CONCLUSION

¶ 84 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 85 Affirmed.