

NOTICE

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2014 IL App (4th) 120773-U

NO. 4-12-0773

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 11, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
JASON S. DOGGETT,)	No. 10CF279
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err by admitting computer-stored images of cancelled checks drawn on the victim's bank account under the business-record exception to the hearsay rule.
- ¶ 2 The trial court did not abuse its discretion by finding all of the cancelled checks were relevant since the checks as a whole showed the victim's spending habits and allowed the jury, as the trier of fact, to compare the handwriting on the checks with defendant's signature.
- ¶ 3 The State's evidence was sufficient to prove beyond a reasonable doubt defendant obtained control of the victim's money through deception.
- ¶ 4 In May 2010, the State charged defendant, Jason S. Doggett, by information with one count of financial exploitation of the elderly (720 ILCS 5/16-1.3(a) (West 2006) (we note subsection (a) was not amended during the entire period of the charged offense)). After a June 2012 trial, a jury found defendant guilty as charged. On August 9, 2012, defendant filed a motion for leave to file a posttrial motion and the proposed posttrial motion. At a joint August 16,

2012, hearing, the Vermilion County circuit court addressed and denied defendant's posttrial motion and sentenced defendant to eight years' imprisonment.

¶ 5 Defendant appeals, asserting (1) the trial court erred by admitting copies of the cancelled checks from the victim's account under the business-record exception to the hearsay doctrine, (2) the court erred when it admitted into evidence numerous irrelevant copies of the victim's checks that were not connected to defendant, and (3) the State failed to prove defendant guilty beyond a reasonable doubt. We affirm.

¶ 6 I. BACKGROUND

¶ 7 Sometime around 1988, Earl Nerman (born in 1931) suffered head trauma in a car accident, resulting in permanent mental-health issues. Eventually, Nerman's family placed him in a home run by defendant's grandmother (Doggett Home) under the Department of Veterans Affairs (VA) residential care program. Under that program, the veteran paid a set monthly fee to the owner of the home, who was referred to as the sponsor. The fee covered the veteran's rent, three meals a day, laundry, and some supervision to ensure the veteran's needs were being met. The VA had a manual of rules governing what sponsors could do and not do with the veterans. Sponsors were not to borrow money from the veterans. Moreover, if a veteran caused property damage to the sponsor's home, the sponsor would have to go through the VA to obtain reimbursement from the veteran. Additionally, the veteran had a social worker at the VA, who would check in on him or her once a month. After defendant's grandmother died, defendant's father ran the Doggett Home. On January 5, 2006, defendant became the sponsor of the Doggett Home after his father's death.

¶ 8 In October 2009, James Hill, Nerman's VA social worker, received a complaint from CRIS Senior Services raising some concerns about Nerman's finances. Hill began investi-

gating the claim, and it took Hill several months to obtain Nerman's bank records. When he eventually reviewed the records, he took Nerman to the bank and had him close his account.

¶ 9 In May 2010, the State filed its information, asserting that, between January 1, 2006, and April 7, 2010, defendant, standing in a position of trust or confidence with Nerman, a person over 70 years of age, knowingly and by deception obtained control over Nerman's property, having a value of more than \$100,000, with the intent to permanently deprive Nerman of his property.

¶ 10 In June 2012, the trial court held a jury trial on defendant's charge. Before trial, defense counsel objected to the State's intent to seek admission of Nerman's cancelled checks under the business-record exception to the hearsay rule. Specifically, he argued the checks were only relevant if they had some type of connection to the case and the checks did not fall under the business-record exception because it was another's business record, of which the bank just kept a copy. In support of defendant's argument, he cited *People v. Young*, 97 Ill. App. 3d 187, 193, 423 N.E.2d 221, 226 (1981), where the reviewing court noted the cancelled checks were not business records. The trial court found the language in *Young* was *dicta* and ruled the cancelled checks were admissible under the business-record exception to the hearsay rule.

¶ 11 The State presented the testimony of Holly Howard, the assistant vice president of the First National Bank in Georgetown (Bank); Hill; David Dixon, another resident in the Doggett Home; April Pundt, former officer manager of Premier Auto; and Candace Limperis, Nerman's daughter. Nerman had passed away before trial. Defendant did not present any evidence. The following is the evidence relevant to the issues on appeal.

¶ 12 Howard identified the State's group exhibit No. 1, which consisted of copies of the Bank's monthly statements for Nerman's account and both sides of Nerman's cancelled

checks. We note the monthly statements also included images of the front side of Nerman's checks. Howard testified it was in the regular course of the Bank's business to make the records in the exhibit. She explained checks are now done electronically. By way of example, according to Howard, a check at the grocery store gets sent to the Federal Reserve. The Federal Reserve then sends an image file to the Bank, which posts the transaction to the customer's account as it comes in. The Bank then puts the copy of the check into the Bank's records. The Bank no longer receives physical copies of the checks received from the Federal Reserve. A check presented at the Bank would get posted that day and would be uploaded into the computer system by an operations employee or the teller. The Bank keeps those checks for 90 days before destroying them, leaving only the image file.

¶ 13 On cross-examination, Howard noted the checks come out off the Bank's "optical system." She acknowledged no one at the Bank fills out the check or has any personal knowledge of who signed the check or when it was written. Further, no one at the Bank knows who endorsed the check unless it was done at the counter. Howard could not identify if any of the checks in the State's group exhibit No. 1 had been presented to the Bank. When asked to confirm that checks are not part of the entry by the Bank, Howard answered, "If they are presented over the counter, they would be an entry at the [B]ank, and we would have those."

¶ 14 At the conclusion of Howard's testimony, the trial court admitted the State's group exhibit No. 1 over defendant's objection that was based on the same reasoning defendant gave before trial.

¶ 15 Hill testified that, while the VA will appoint a fiduciary for some of the veterans in the residential care program who cannot manage their own money, Nerman was not one of those veterans. Nerman was competent to handle his own funds the entire time he lived at the

Doggett Home. Nerman was free to do what he wanted with his money, but the VA rules prohibited him from giving it to his sponsor. Defendant was present for most of Hill's monthly visits with Nerman. The VA liked the sponsors to be at the monthly meetings since they see the veterans on a daily basis. Hill noted defendant had reported to him on more than one occasion that Nerman had caused property damage. Hill asked defendant to provide written documentation, but defendant never made "a formal request." During the time defendant ran the Doggett Home, Nerman's monthly rent was between \$600 and \$700 per month.

¶ 16 On October 26, 2009, Hill received the complaint from CRIS Senior Services, and he went to visit Nerman the next day. When Hill first started talking to Nerman, defendant was not present. Later, defendant entered Nerman's bedroom where Hill and Nerman were talking. Defendant stated Nerman had "advanced" him some money. One of the checks being questioned was a \$1,000 check to defendant. Based on the information Hill had obtained, he asked Nerman to obtain his bank statements. Defendant offered to take Nerman to the Bank to get the statements. Hill also reviewed the VA rules with Nerman and defendant. He noted sponsors were not to borrow money from the veterans, and defendant would have to reimburse Nerman for the checks. Defendant indicated he had already reimbursed Nerman around \$1,500 of the \$3,200 called into question. Hill asked defendant whether there were any other checks that were written, and defendant denied there were any other checks.

¶ 17 Hill did not receive the bank statements at his November 2009 meeting with Nerman. At the December 2009 meeting, defendant stated he had not taken Nerman to the Bank because Nerman did not want to get defendant in trouble by producing the records. Hill also did not receive the bank statements at his January and February 2010 meetings with Nerman. On March 26, 2010, Hill met with Nerman at the VA Medical Center. During that meeting, Nerman

signed a release, allowing Hill to get copies of Nerman's bank records. Hill obtained copies of Nerman's bank records and, after looking at them, took Nerman to the bank to close his account.

¶ 18 Moreover, Hill testified recalling new carpet in the Doggett Home but not in Nerman's bedroom. Hill also noticed new furniture in other parts of the home.

¶ 19 Dixon testified he formerly lived at the Doggett Home from January 2008 to February 2010 and knew Nerman. On at least two occasions, he accompanied defendant to a bank in Georgetown. On the first occasion, defendant presented Dixon with a check written to Dixon on Nerman's account. Dixon noted the check was not for him. Dixon later testified he did not receive a check and did not present a check at a bank written out to him.

¶ 20 Pundt testified she was the office manger of Premier Auto (also known as Bargain Auto) from 2003 to 2010. Her job duties included accounting, reconciling, entering payments, and invoicing. She identified the State's group exhibit No. 3, which were some payment records for defendant and his wife's accounts at the auto dealership. The trial court admitted the exhibit over defendant's objection. The records did not show who actually made the payment or what account the check was written on. However, Pundt testified she would normally make an indication in the "memo" of the account if a payment was made from someone else's checking account. The "memo" portion of the payment entries did not print on the records in State's group exhibit No. 3. However, when she compiled the records, Pundt did observe the "memo" portion of the payments, which noted the checks were from Nerman's account.

¶ 21 Limperis testified that, when Nerman moved into the Doggett Home, he brought all of his own items, except for the bed. Nerman did not have a car because he no longer had a driver's license. In January 2010, Nerman did get a new chair from Limperis. The carpeting in Nerman's bedroom at the Doggett Home was never new.

¶ 22 Limperis further testified she had observed her father's signature her entire life. Growing up, she had watched him sign various things. After he moved to the Doggett Home, she visited him about twice a month and continued to visit him when defendant took over the home. On April 7, 2010, Limperis witnessed Nerman sign a power of attorney form, appointing her as his agent. She identified the form as the State's exhibit No. 4. In her opinion, Nerman's signature did not change very much over the years. After reviewing Nerman's bank statements, Limperis became concerned Nerman's checks beginning in December 2007 did not bear her father's signature. Limperis then proceeded to go through each check one by one and state whether she believed it was her father's signature on the check.

¶ 23 Limperis also testified Nerman was hospitalized for a week in December 2007. He was also in the hospital from the beginning of February 2008 through the beginning of April 2008. Additionally, Limperis believed her father was of sound mind in April 2010.

¶ 24 At the conclusion of the trial, the jury found defendant guilty as charged. On August 9, 2012, defendant sought leave to file a posttrial motion. In his posttrial motion, defendant argued, *inter alia*, the State failed to present any evidence of deception and the cancelled checks were improperly admitted into evidence. At a joint hearing on August 16, 2009, the trial court denied defendant's posttrial motion and sentenced him to eight years' imprisonment. On August 21, 2012, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). Thus, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. Oct. 1, 2010).

¶ 25 II. ANALYSIS

¶ 26 A. Business-Record Exception

¶ 27 Defendant argues the trial court erred by admitting copies of Nerman's cancelled checks under the business-record exception to the hearsay doctrine. Defendant jumbles his two arguments for why the cancelled checks should not have been admitted under the hearsay exception, but he appears to contend the State failed to (1) establish the checks were business records and, (2) if business records, lay a proper evidentiary foundation for computer-stored records. The State asserts the checks fell under the business-record exception and defendant forfeited his argument it failed to lay a proper evidentiary foundation for computer-stored records because he did not raise that specific objection in the trial court.

¶ 28 *1. Standard of Review*

¶ 29 Defendant asserts a *de novo* standard of review applies, and the State argues an abuse-of-discretion standard applies.

¶ 30 In a case addressing the applicable standard of review for whether numerous hearsay statements were admissible under various exceptions to the hearsay rule, our supreme court stated the following:

"Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion. [Citations.] An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. [Citation.] Reviewing courts generally use an abuse-of-discretion standard to review evidentiary rulings rather than review them *de novo*. [Citation.]

Defendant argues that the evidentiary rulings at issue here were uniquely legal rulings, which we may review *de novo*. It is true that reviewing courts sometimes review evidentiary rulings *de novo*. This exception to the general rule of deference applies in cases where 'a trial court's exercise of discretion has been frustrated by an erroneous rule of law.' [Citations.]

We reject defendant's argument and review these evidentiary rulings with deference to the trial court. The decision whether to admit evidence cannot be made in isolation. The trial court must consider a number of circumstances that bear on that issue, including questions of reliability and prejudice. [Citation.] In this case, the trial court exercised discretion in making these evidentiary rulings, *i.e.*, the court based these rulings on the specific circumstances of this case and not on a broadly applicable rule. [Citations.]" *People v. Caffey*, 205 Ill. 2d 52, 89-90, 792 N.E.2d 1163, 1188 (2001).

¶ 31 Here, defendant does not assert the trial court considered the wrong law in determining the admissibility of the hearsay statements under the business-record exception. Thus, as in *Caffey*, the issue on appeal here is whether hearsay evidence is admissible under an exception to the hearsay rule based on the circumstances of this case. Accordingly, we will apply the abuse-of-discretion standard of review.

¶ 32 *2. Business-Record Exception*

¶ 33 Section 115-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-5(a) (West 2006)) contains the business-record exception to the hearsay rule in criminal cases and provides, in pertinent part, the following:

"Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility."

We note the aforementioned language is the same as Illinois Supreme Court Rule 236(a) (eff. Aug. 1, 1992), which applies to civil cases. The rationale for the business-record exception is "the recognition that businesses are motivated to keep routinely accurate records and that they are unlikely to falsify records kept in the ordinary course of business and upon which they depend." *People v. Virgin*, 302 Ill. App. 3d 438, 450, 707 N.E.2d 97, 105 (1998). The business record's credibility "depends on the regular, prompt, and systematic nature of the entry and the fact that it is relied on in the operation of the business." *Virgin*, 302 Ill. App. 3d at 450, 707 N.E.2d at 105.

¶ 34 In support of his argument the cancelled checks are not business records, defend-

ant primarily relies on the Third District's *Young*, 97 Ill. App. 3d at 192-193, 423 N.E.2d at 226, which addressed the admissibility of letters from banks to the defendant and several checks written by the defendant. The *Young* court concluded the trial court properly admitted the evidence under exceptions to the hearsay rule. *Young*, 97 Ill. App. 3d at 193, 423 N.E.2d at 226. In doing so, the Third District found the defendant's checks were not business records but constituted an admission against interest. *Young*, 97 Ill. App. 3d at 193, 423 N.E.2d at 226. However, the stamps of the presenting banks on the back of the defendant's checks that indicated the checks were returned due to insufficient funds in the defendant's account were shown to have been made in the regular course of business and thus were admissible as business records. *Young*, 97 Ill. App. 3d at 193, 423 N.E.2d at 226. Thus, in *Young*, the reviewing court's notation the checks *in toto* were not business records was just *dicta*, and at least one other reviewing court has held differently.

¶ 35 In *People v. Hagan*, 199 Ill. App. 3d 267, 287, 556 N.E.2d 1224, 1238 (1990), the Second District found copies of checks and bank statements were admissible under the business-record exception. There, the defendant had argued the bank employee's testimony was insufficient to establish a foundation for the admission of the bank records because on cross-examination the employee had testified she did not know how the record-keeping process worked and she thought the records only looked like they came from her bank. *Hagan*, 199 Ill. App. 3d at 287, 556 N.E.2d at 1238. The bank employee had identified photocopies of the checks and bank statements of a corporation as records the bank kept in the course of its business. *Hagan*, 199 Ill. App. 3d at 287, 556 N.E.2d at 1238. She also testified the bank records were recorded promptly. *Hagan*, 199 Ill. App. 3d at 287, 556 N.E.2d at 1238. In finding a sufficient foundation to establish the business-record exception, the reviewing court noted the only

proof necessary was (1) the records were made in the regular course of business and (2) it was in the regular course of business to prepare such records, and the bank employee's testimony clearly established those elements. *Hagan*, 199 Ill. App. 3d at 287, 556 N.E.2d at 1238.

¶ 36 Specifically, defendant argues the cancelled checks are the business records of another that the Bank simply stores to prepare its bank statements. He notes Howard testified an employee of the Bank would only make an entry of a check when the check was presented there. Howard also had no knowledge of when the checks were written and who authored them.

¶ 37 However, "[f]or a proper foundation for the admission of business records, it is not necessary that the maker of the records testify or that the maker of the records be shown to be unavailable, nor is it necessary that the custodian of the records testify." *Virgin*, 302 Ill. App. 3d at 449-50, 707 N.E.2d at 105. Moreover, a document created by a third party when the third party had the authority to generate the document on the business's behalf in the regular course of business is admissible under the business-record exception to the hearsay rule. *Argueta v. Baltimore & Ohio Chicago Terminal R.R. Co.*, 224 Ill. App. 3d 11, 21, 586 N.E.2d 386, 392 (1991). The reason for allowing third-party documents is that, "[w]here a third party is authorized by a business to generate the record at issue, the record is of no use to the business unless it is accurate and, therefore, the record bears sufficient indicia of reliability to qualify as a business record under the hearsay rule." *Argueta*, 224 Ill. App. 3d at 21, 586 N.E.2d at 392. Additionally, "[w]hile we acknowledge that 'a person receiving a document from a business could not solely by virtue thereof lay a sufficient foundation for admitting the document,' there is an exception where 'the business receiving the information, acting in the regular course of business, integrates the information received *** and relies on it in its day-to-day operations.'" *Solis v. BASF Corp.*, 2012 IL App (1st) 110875, ¶ 86, 979 N.E.2d 419 (quoting Michael H. Graham, *Graham's Hand-*

book of Illinois Evidence § 803.6 (10th ed. 2010) (collecting cases)).

¶ 38 Howard testified checks are done electronically now, and when the Bank receives from the Federal Reserve a file of a check that had been presented for payment elsewhere, the transaction is posted to the customer's account that day. The checks at issue indicate they are from an account at the Bank. The Bank retains a copy of the check in its optical system. The Bank also uploads checks into its system when the check is presented at the Bank. In this case, the amounts debited from Nerman's account on the bank statements matched the amounts listed on the cancelled checks. Clearly, the Bank, and banks in general, rely on the information written on the checks to maintain customer accounts. If the information in checks were generally unreliable, then the entire banking system would fail. Moreover, Howard testified the Bank keeps a copy of every check in its records. As the State notes, section 4-406(b) of the Uniform Commercial Code (810 ILCS 5/4-406(b) (West 2006)) requires banks to maintain legible copies of items paid for seven years if the item has not been returned to the customer. Thus, the Bank, in its regular course of business, promptly and systematically incorporates the checks and information in them into its regular business. Accordingly, we find the cancelled checks were admissible under the business-record exception to the hearsay rule.

¶ 39 *3. Computer-Stored Records*

¶ 40 Defendant also contends the cancelled checks were inadmissible because they did not meet the additional foundational requirements for the admissibility of computer-stored records. The State asserts defendant has forfeited this issue by failing to raise it in the trial court. Since our supreme court has instructed us to begin our review of a case by determining whether any issues have been forfeited (see *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008)), we first address the State's argument defendant has forfeited this issue.

¶ 41 In *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988), our supreme court held a defendant must (1) object to an alleged error at trial *and* (2) raise the alleged error in a posttrial motion to avoid forfeiture of the issue on appeal. "This rule is particularly appropriate when a defendant argues that the State failed to lay the proper technical foundation for the admission of evidence, and a defendant's lack of a *timely* and *specific* objection deprives the State of the opportunity to correct any deficiency in the foundational proof at the trial level." (Emphases added.) *People v. Woods*, 214 Ill. 2d 455, 470, 828 N.E.2d 247, 257 (2005).

¶ 42 The record reveals defense counsel objected to the admission of the digital copies of the cancelled checks before trial and when the State sought to admit them as evidence. However, defendant raised a general relevancy objection and a "foundation and hearsay objection." Defendant's foundation argument was the checks were not the Bank's record because they were written by someone else. In his posttrial motion, defendant argued the State did not present any evidence of the trustworthiness of the hearsay information contained in the checks. In trial court, defendant never argued the digital copies of the cancelled checks failed to meet the additional requirements needed to establish a proper foundation for computerized business records. See *People v. Turner*, 233 Ill. App. 3d 449, 453-54, 599 N.E.2d 104, 108 (1992). In fact, defendant never challenged the admissibility of Nerman's bank statements that are also clearly computer printouts. Accordingly, defendant failed to meet either of the requirements of *Enoch*, 122 Ill. 2d at 186, 522 N.E.2d at 1130, and thus he did not preserve this issue for review.

¶ 43 Defendant argues that, if he has forfeited this issue for review, we should address that matter under the plain-error doctrine or as ineffective assistance of counsel. The plain-error doctrine permits a reviewing court to consider unpreserved error under the following two scenarios:

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 44 Printouts of computer-stored records are admissible under the business-record exception to the hearsay rule if the following three elements are met: "(1) the electronic computing equipment is recognized as standard, (2) the input is entered in the regular course of business reasonably close in time to the happening of the event recorded, and (3) the foundation testimony establishes that the sources of information, method and time of preparation indicate its trustworthiness and justify its admission." *People v. Houston*, 288 Ill. App. 3d 90, 98, 679 N.E.2d 1244, 1249 (1997).

¶ 45 We begin our analysis by noting Howard testified the printouts of the checks came from the same optical system the Bank used for its bank statements that defendant agreed were admissible. The Bank's optical system received the checks not presented at its bank from

the Federal Reserve and then stored the files from the Federal Reserve. Those facts are sufficient to establish the Bank's electronic computing equipment was standard as it was compatible with the Federal Reserve. Howard further testified the checks were debited from a customer's account the day the file from the Federal Reserve was received and the checks were retained in the Bank's optical system. Howard also explained the teller or an operations employee would upload checks received at the Bank into the optical system. Thus, the checks were retained in the optical system in the regular course of the Bank's business and close to the time the check was received at the Bank, which is generally close to the time the checks were written. Last, the Bank relies on the information on the check to debit a customer's accounts and includes the electronic checks on its bank statements. Here, the debits from Nerman's account matched the amounts written on the cancelled checks. The aforementioned evidence was sufficient to show the trustworthiness of the electronic version of the checks.

¶ 46 This case is distinguishable from the cases cited by defendant, *People v. Bovio*, 118 Ill. App. 3d 836, 455 N.E.2d 829 (1983), and *People v. Johnson*, 376 Ill. App. 3d 175, 875 N.E.2d 1256 (2007). In *Bovio*, 118 Ill. App. 3d at 841, 455 N.E.2d at 833, defendant challenged the foundation for a computer-generated bank statement. In finding the foundation insufficient, the reviewing court noted computer systems "which perform calculations must be scrutinized more thoroughly than those systems which merely retrieve information." *Bovio*, 118 Ill. App. 3d at 842, 455 N.E.2d at 833. Here, the cancelled checks were merely retrieved from the Bank's computer system, and thus the stricter scrutiny utilized in *Bovio* does not apply to the admission of the cancelled checks. In *Johnson*, 376 Ill. App. 3d at 177-78, 875 N.E.2d at 1258, the defendant challenged the foundation of transcripts of a computer chat between an undercover cop posing as a minor girl and the defendant. The reviewing court noted the State did not do anything to

establish a foundation for the transcripts' admissibility as it never addressed their accuracy.

Johnson, 376 Ill. App. 3d at 180, 875 N.E.2d at 1260. Here, as set forth above, the State did present evidence showing the cancelled checks' accuracy.

¶ 47 Accordingly, we find the foundational requirements for computer-stored records were met, and the cancelled checks were properly admitted on that basis. Since no error occurred, defendant cannot establish plain error or ineffective assistance of counsel.

¶ 48 B. Relevancy of All of the Checks

¶ 49 Defendant next asserts 164 of the copies of the cancelled checks admitted into evidence in the State's group exhibit No. 1 were not linked to him, and thus were inadmissible due to a lack of relevancy. The State asserts defendant has also forfeited this issue because he failed to provide a citation to the record where he made a contemporaneous objection to the relevancy of the cancelled checks. In reply, defendant notes that, before the trial began, he raised both relevancy and lack of foundation objections to the cancelled checks. During the trial, he objected to the admission of the cancelled checks on the same basis he had previously discussed with the court. Accordingly, we find defendant has not forfeited this issue.

¶ 50 "Relevant evidence is defined as evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Gonzalez*, 142 Ill. 2d 481, 487-88, 568 N.E.2d 864, 867 (1991). The determination of whether evidence is relevant and admissible rests within the trial court's sound discretion, and this court will not reverse the trial court's ruling absent an abuse of that discretion. *People v. Pelo*, 404 Ill. App. 3d 839, 864, 942 N.E.2d 463, 485 (2010).

"A trial court abuses its discretion only when its decision is arbitrary, unreasonable, or fanciful or where no reasonable person would take the trial court's view." *Pelo*, 404 Ill. App. 3d at 864, 942 N.E.2d at 485.

¶ 51 Defendant complains the State did not conduct a handwriting comparison for the irrelevant checks to tie the checks to him. In support of his argument, he notes "the genuineness of a signature is a proper question for a handwriting expert." *People v. Hoover*, 87 Ill. App. 3d 743, 748, 410 N.E.2d 195, 198 (1980). Defendant also cites section 8-1501 of the Code of Civil Procedure (735 ILCS 5/8-1501 (West 2006)), which provides as follows: "In all courts of this State it shall be lawful to prove handwriting by comparison made by the witness or jury with writings properly in the files of records of the case, admitted in evidence or treated as genuine or admitted to be genuine, by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the court." However, expert testimony is not required to prove the authenticity of the defendant's signature as the trier of fact may compare the questionable signature to a genuine signature of the defendant. *1601 South Michigan Partners v. Measuron*, 271 Ill. App. 3d 415, 418, 648 N.E.2d 1008, 1010 (1995). Here, the evidence showed defendant was entitled to a monthly rent payment from Nerman, and defendant's signature was on the back of those checks. Accordingly, in admitting those checks, the trial court could have found the signatures on the back of those checks were defendant's genuine signature, which would have allowed the jury, as the trier of fact, to compare defendant's signature on the back of the legitimate checks with the signatures on the allegedly irrelevant checks to see if defendant wrote those as well. Moreover, the State presented ample evidence Nerman had no bills beyond his monthly rent and medical bills and had not received any new furniture or carpeting, while improvements had been made to the Doggett Home, including new carpet and furniture. Additionally, the early cancelled

checks show Nerman's spending habits before large amounts of money were withdrawn from his account. Thus, a finding all of the cancelled checks were evidence showing it more likely defendant was the person writing checks from Nerman's account was not unreasonable or arbitrary.

¶ 52 Accordingly, the trial court did not abuse its discretion by finding all of the cancelled checks were relevant.

¶ 53 C. Sufficiency of the Evidence

¶ 54 Last, defendant challenges the sufficiency of the evidence. Specifically, he contends the State failed to prove he engaged in any deception.

¶ 55 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " '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.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553. Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 56 As charged in the information, "[a] person commits the offense of financial exploitation of an elderly person *** when he or she stands in a position of trust or confidence with the elderly person *** and he or she knowingly and by deception *** obtains control over the property of an elderly person ***." 720 ILCS 5/16-1.3(a) (West 2006). The financial-

exploitation-of-an-elderly-person statute incorporates the definition of "deception" from section 15-4 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/15-4 (West 2006)), and further provides another definition of "deception" (720 ILCS 5/16-1.3(b)(4) (West 2006)). In this case, the instruction given to the jury on the definition of "deception" set forth only the definition contained in section 15-4(a) in the Criminal Code (720 ILCS 5/15-4(a) (West 2006)), which provides "deception" means to knowingly "[c]reate or confirm another's impression which is false and which the offender does not believe to be true."

¶ 57 Here, Hill testified that, after receiving a complaint about financial issues with Nerman in October 2009, Hill went to the Doggett Home to talk to Nerman. While he and Nerman were talking, defendant entered Nerman's bedroom. Defendant stated Nerman had "advanced" him some money. Hill addressed the VA rules with Nerman and defendant that sponsors were not to borrow money from veterans and veterans were not to loan sponsors money. He also informed defendant Nerman would have to be reimbursed by credit or cash. Defendant stated he had already reimbursed defendant about \$1,500 of the \$3,200 in question. When questioned by Hill, defendant denied that any other checks had been written. However, the cancelled checks showed evidence of defendant receiving multiple rent checks from Nerman for the same month as far back as October and November 2007, as well as many of Nerman's checks made out to Menard's with defendant's name written at the top of the check. Thus, Hill's testimony is evidence of defendant creating a false impression for Nerman that only a few improper checks had been written and then partially reimbursed, which defendant knew to be false as evidenced by the cancelled checks.

¶ 58 Moreover, the circumstantial evidence showed Nerman did not feel defendant was a threat to Nerman's finances. The VA had numerous rules governing their relationship, Nerman

