



if convicted, she could be sentenced to a term of between three and seven years in the Department of Corrections. She subsequently waived her right to a trial by jury, and a bench trial followed. At the outset of the bench trial, attorney Eddie Veltman, who served as trial counsel for the defendant, announced to the trial judge: "[The parties have] an agreement with respect to foundation of documents that neither one of us will require a strict rigid foundation for written documents. We have shared all of our documents." The first witness to testify at the trial was Bill Eade, who testified that he served as Harold's power of attorney (POA) for health care from 2003 until December 19, 2005, when he received a letter notifying him that his status as POA had been revoked. He was subsequently appointed co-POA, with the defendant, on December 30, 2005, then notified on January 10, 2006, that his status as co-POA had been revoked.

¶ 5 Dr. Thomas Coy testified that he had examined Harold and had testified at a previous guardianship hearing for Harold. Dr. Coy opined that Harold required a guardian to assist him, *inter alia*, with his finances, because Harold had "some dementia at an early age" that resulted from multiple childhood health issues and that "since his birth, [Harold] has in simple words been fairly slow." He testified that he believed Harold "could be easily influenced" and that Harold was not "always conscious about the decisions he is making as far as the end result." Dr. Coy opined that without assistance, Harold could not handle taking his medication on his own.

¶ 6 Harold testified that he met the defendant at his church and that eventually she began to help him with his finances. He could not recall anyone other than the defendant ever serving as his POA; he also testified that although the defendant was his POA, he did not know what "Power of Attorney" means. In addition, he could not identify how much his monthly income was, where it came from, how much his monthly bills were, or even what they were, testifying instead that he did not "know nothing about them." Harold testified that

at some point the defendant was added to his bank account. Although Harold was able to identify statements from his bank account from July 2005 through April 2009, he had no knowledge about automatic withdrawals and payments made during that time period from the account to Hibbett Sporting Goods, PetSmart, Walmart, Direct TV, Charter Communication, the USDA, Dell Financial, Bank of America, Chase, and Verizon. His testimony regarding his possession of one or more credit cards was confusing and inconsistent, with Harold first testifying that he had no credit cards but that he had a debit card (although he did not know when he got it or how to use it), then testifying that he had an HSBC credit card and a Chase credit card (but again did not know how to use them). Harold testified that he never loaned money to the defendant or authorized her to use his credit cards. In 2003, upon the defendant's request, Harold cosigned a loan for her. When asked if the defendant would have been able to get the loan on her own, Harold volunteered that "[s]he always paid me back all the time," although he could not answer subsequent questions about when or how much money was repaid to him.

¶ 7 In response to leading questions on cross-examination, Harold testified that he did agree to loan the defendant money and that he did not care how much it was or why she borrowed it, as long as she repaid the money to him. He testified that he felt like a father to the defendant and that he did not believe she had taken advantage of him. He was able to describe what some of his monthly bills were and conceded that he would lie for the defendant to keep her out of trouble. On redirect examination, he again denied having loaned money to the defendant, testifying that she never asked for it and he never agreed to loan it to her. He agreed that because the defendant was his POA, he had placed trust and confidence in her.

¶ 8 Craig Markwardt testified that he was a longtime friend of Harold's and that he was Harold's POA from 2003 until 2005, when his authority was revoked. During that time,

Markwardt helped Harold with his finances, making certain that Harold's bills were paid in a timely manner and reviewing Harold's bank statements with him. Markwardt testified that approximately three or four weeks before the POA was revoked, he had an "incident" with the defendant, wherein Markwardt expressed his concerns to the defendant about her allowing her son to use a four-wheeler that Harold had recently—and according to Markwardt, inexplicably—purchased. The defendant downplayed Markwardt's concerns about the potential liability that Harold could incur if the defendant's son had an accident on the four-wheeler, then became angry with his repeated protestations and "sped off." After the POA was revoked, Markwardt spoke with Harold, who told him that he had revoked the POA because Markwardt "made [the defendant] upset" when he asked her why the four-wheeler was missing.

¶ 9 David Froneyberger, a former vice president and trust officer at Community Trust Bank in Nashville, Illinois, testified that he previously managed a trust that Harold's mother had set up for Harold. Bill Eade was named as the "trust protector." At some point, Eade contacted Froneyberger with concerns that Harold "was spending a great deal of money" and that "Harold's money wasn't just being spent for Harold." On "a couple" of occasions, the defendant called Froneyberger "wanting some information about the trust," but Froneyberger explained to her that he could not speak to her about the trust. Eventually, a meeting was set up between Harold, Froneyberger, and the defendant. When asked what he explained to Harold at the meeting, Froneyberger testified: "[I]t was not explaining to Harold, it was explaining to [the defendant]. Harold wasn't doing any of the talking. [The defendant] was asking all the questions \*\*\*." When asked if Harold appeared to understand what was happening at the meeting, Froneyberger testified that "Harold only knew that he needed money."

¶ 10 Subsequently, Froneyberger became Harold's guardian, at which time he delved more

deeply into Harold's finances and discovered that Harold "didn't have a clue" about additional assets Harold owned, such as insurance policies and annuities. He testified that Harold did not know what his own expenses and bills were and that when Froneyberger began looking more closely at where some of Harold's money was going, he "discovered checks that were written to places Harold knew nothing about, for things that Harold claimed he had never seen." When Froneyberger asked Harold why he had cashed in certain certificates of deposits (CDs), Harold did not know why the CDs had been redeemed or where the money had gone. Froneyberger also found credit card charges, although Harold denied having credit cards or even knowing how to use a credit card. With regard to Harold's banking practices in general, Froneyberger testified that Harold would occasionally come into the bank and ask for cash and that when he did so, bank employees "would help him fill out a ticket and withdraw [cash] from his checking account." With regard to what he described as "odd" credit card charges, Froneyberger testified that there were charges to "four or five different Walmarts in different cities" and to "women's stores instead of men's stores" and that when asked, Harold denied ever visiting any of them. Checks written and signed by the defendant were to stores such as Kmart, Bath and Body Works, Lowe's, PetSmart, Sears, and Deals.

¶ 11 Gary Zmudzinski, a loan officer at Farmers and Merchants Bank in Nashville, testified that in 2003, the defendant attempted to obtain a loan from the bank but that he was not able to approve it "[b]ased on her merits." Harold then came to the bank and offered to cosign for the loan and to pledge four CDs as collateral for it, at which point the loan was approved. The loan eventually went into bankruptcy, at which point Harold cashed in a CD to pay it off. On cross-examination, Zmudzinski characterized Harold as "very knowledgeable" and stated that Harold "felt very strongly in helping [the defendant] to get the loan." On redirect examination, Zmudzinski admitted that he would have "difficulty" loaning money to someone who did not appear to know what he or she was doing.

¶ 12 Keith Heiman, an insurance salesman with Country Financial in Nashville, testified that he had known Harold for 25 years and had sold Harold various forms of insurance and other financial products. He testified that in 2007, Harold came to him "needing money, wanting to get some money," and that at that time, Heiman tried to help Harold find a way to liquidate some of his assets without incurring a penalty for doing so. Ultimately, Harold did a "partial surrender" of \$6,000 from an annuity and incurred no penalty. On a subsequent occasion in 2008, Harold and the defendant came to Heiman's office, and against Heiman's advice, Harold insisted on doing a "full surrender" of approximately \$17,000, which would incur a penalty. Heiman refused to do the surrender, because he "just didn't think it was the right thing for [Harold] to do," but he provided the forms to Harold, who subsequently obtained the surrender without Heiman's assistance. Heiman nevertheless testified that he did not have any concerns about the defendant's role in the annuity surrender.

¶ 13 Robert Buesking, a case manager with the Elder Abuse Program of the Southwestern Illinois Visiting Nurse Association, testified that he interviewed Harold after receiving a call of concern regarding Harold and "allegations of the financial exploitation of the elderly." He visited Harold at Harold's home on January 19, 2009. Buesking testified that Harold was "very guarded" at the meeting, denied that anyone had taken anything from him, and declined to allow Buesking into his home. The next day, January 20, 2009, Buesking returned to Harold's home, and although Harold still would not allow him inside, the two had a "lengthy conversation" and Harold gave Buesking permission to speak with the defendant about Buesking's concerns. When Buesking returned to his office the following day, January 21, 2009, he found a note on his desk that the defendant had called the office the previous day and asked to speak to him. On January 26, 2009, the defendant and Buesking met in person to discuss the allegations regarding Harold's finances. Buesking described the defendant as "fairly forthcoming" at the outset of the meeting, providing him with a social history of her

relationship with Harold and describing her own past financial problems and bankruptcy. When asked if she had ever used any of Harold's money to pay her own bills, the defendant told Buesking "she had used some of his money for a Verizon Wireless bill, possibly some other credit cards, but other than that she felt like everything was okay." When Buesking produced bank records that showed payments to the USDA for what appeared to be a house payment, the defendant "refused to answer" and "just became mute." Buesking described the defendant's demeanor at that point as "very surprised" and stated that the details she provided "became very unclear." She did say, for the first time, that she had been "given some money" and that she had "borrowed some money," although she was uncertain about the amounts of money involved. In a subsequent phone call, the defendant told Buesking that "she would get some records together and whatever money that she had borrowed she intended to fully repay." Additional phone calls followed, in which the defendant assured Buesking she wanted to meet with him, but, according to Buesking, "that never happened."

¶ 14 Following Buesking's testimony, the State rested. The defendant moved for a directed verdict, which was denied, and the defendant then testified. She testified that she and Harold became friends in 1997 or 1998 and that she began to help him with his financial affairs in 2003. She acknowledged that Harold cosigned the Farmers and Merchants Bank loan for her in 2003, and she testified that in 2005, she and Harold discussed that she "wanted to borrow some money from him." She began by borrowing money for her house payments, about which Harold "didn't seem to care," but also borrowed for other things until January 2009. The defendant testified that she and Harold agreed that she would pay him back once her house sold, which it did in January 2009. The defendant then began to repay Harold. She also testified that she became Harold's POA in 2005 and became a signatory to his bank account. She testified that in 2006, Harold received an application for a Bank of America credit card and that after they discussed it, Harold agreed to apply for it and that the

defendant could become an authorized user. She subsequently used the card for her own personal items, including for a \$6,000 "body-shaping" health procedure, and continued to use it until January 2009. She maintained, however, that many of the purchases that raised the eyebrows of bank officials were in fact made by Harold.

¶ 15 On cross-examination, the defendant conceded that she had discussed Harold's POA with him, but she denied that she convinced Harold to revoke Craig Markwardt's POA, testifying instead that "Harold wanted to change it." When confronted with Harold's bank statements, the defendant repeatedly conceded that they were accurate, but she again claimed only to have borrowed Harold's money with his consent, never without his knowledge. She agreed with the State that the amount of Harold's money she had used for personal purposes was approximately \$46,000, but she noted that she had repaid approximately \$26,100 by the time of the trial. Although she originally denied that she only began repaying the money after Buesking's investigation began, she later conceded that her first payment was made on January 20, 2009, the same date she first called Buesking; however, she maintained that she sold her house on January 9, 2009, and always intended to begin repayment once that was accomplished.

¶ 16 Attorney Bradley Small attempted to testify as part of the defendant's case. However, his testimony was stricken for reasons that are not challenged on appeal. The defendant then rested. Following final arguments, the trial judge found the defendant guilty, stating, *inter alia*, that he did not believe that at the time the defendant took Harold's money she ever intended to pay it back. The defendant was subsequently sentenced to 36 months' probation, with the judge stating, when delivering his sentence, "If this was a total misunderstanding like you are telling me it was, then this should never happen again." She was also ordered to pay restitution, with credit for monies she had already repaid, and to pay a \$200 DNA fee. She filed a posttrial motion, which was denied, and this timely direct appeal followed.

¶ 18 On appeal, the defendant first contends she was not proven guilty beyond a reasonable doubt. In support of this proposition, the defendant posits that the evidence failed to establish that she knowingly obtained control, by deception, over the property assets in question. We begin by noting our standard of review. Where, as here, a defendant challenges the sufficiency of the evidence used to convict that defendant, it is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Evans*, 209 Ill. 2d at 209. After so doing, we will not reverse a conviction unless we conclude that the evidence against the defendant "is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *Evans*, 209 Ill. 2d at 209. For evidence to be sufficient to sustain a criminal conviction, the trier of fact need not find, beyond a reasonable doubt, as to each link on the chain of circumstances surrounding an offense; to the contrary, "the trier of fact must find only that the evidence taken together supports a finding of the defendant's guilt beyond a reasonable doubt." *Evans*, 209 Ill. 2d at 209.

¶ 19 In the case at bar, the defendant contends the State failed to prove the element of deception beyond a reasonable doubt because "all accounts indicate that [Harold] loaned the money" to the defendant, "with the mutual understanding that [she] would repay him." The defendant posits that there is no evidence that she "created or failed to correct a false impression regarding the manner in which she used [Harold's] property," as required by statute to prove the element of deception. Implicit, and at times explicit, in the defendant's argument is the supposition that Harold, as the defendant puts it, "understood the financial and legal consequences of his actions" and allowed the defendant to borrow money "because

of his affection and appreciation" for the defendant and because of a "desire and willingness to provide her financial assistance." However, as the State points out, the dementia that Dr. Coy testified that Harold suffered from would have made it highly questionable that he would have been able to reach a "mutual understanding" regarding repayment, and in any event, Harold testified outright, on both direct and redirect examination, that aside from the 2003 loan that both parties agree Harold consented to, the defendant never asked to borrow money from him, and that he never agreed to loan it to her. The defendant was also unable to articulate what the terms and conditions of the alleged agreement might have been. Moreover, the additional testimony described above, including the fact that the beginning of the defendant's repayment to Harold coincided, to the day, with her awareness of an investigation into her actions, provided ample evidence from which a trier of fact could have found that the defendant created, or failed to correct, multiple false impressions regarding the manner in which she used Harold's property. We also agree with the State that the evidence, described above, supports a finding of deception under statutory language that defines deception as "[p]revent[ing] another from acquiring information pertinent to the disposition of the property involved" (720 ILCS 5/15-4(c) (West 2010)), because it is clear from the defendant's testimony that she made online expenditures and automatic withdrawals using Harold's funds and that she well understood that Harold had no knowledge about, or understanding of, online transfers and automatic withdrawals, and in fact did not own, and could not operate, a computer.

¶ 20 Our review, in the light most favorable to the prosecution, of the evidence adduced at the defendant's bench trial leads us to conclude that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, including the element of deception. See, e.g., *People v. Evans*, 209 Ill. 2d 194, 209 (2004). We cannot conclude that the evidence "is so unreasonable, improbable or unsatisfactory that it raises a reasonable

doubt of [the] defendant's guilt" (*Evans*, 209 Ill. 2d at 209).

¶ 21 The defendant next contends she was denied a fair trial because the State failed to lay a proper foundation for the introduction of Harold's bank records under the business records exception to the rule against the admission of hearsay. Although the defendant concedes that her trial counsel did not object to the admission of the documents, she overlooks the fact that in actuality, her counsel stipulated to the admission of the documents. As described above, in the opening minutes of the trial, counsel for the defendant announced to the trial judge: "[The parties have] an agreement with respect to foundation of documents that neither one of us will require a strict rigid foundation for written documents. We have shared all of our documents." Moreover, the defendant now ignores the fact that multiple times throughout the trial—indeed, each time the State moved to admit a written document into evidence—her counsel again agreed to the admission, on one occasion stating, "I don't object to the documents—I acknowledge these are his bank statements and I don't object to the entry into evidence of the statements—all of them." When asked, several moments later, if he was stipulating to their admission, counsel replied, "Yes."

¶ 22 Although appellate counsel for the defendant does not argue that trial counsel was ineffective for so stipulating, and has therefore forfeited consideration of that argument (see Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing)), even if the argument were properly preserved, we would find it to be without merit. Clearly, trial counsel recognized that the records would be quite easy to authenticate, by one or more witnesses the State intended to call anyway, and clearly the decision to take a cooperative, rather than combative, posture with regard to records that could have been easily authenticated was part of counsel's overall strategy to present the

defendant as someone with nothing to hide: someone who had been given permission to borrow money from the defendant, and who was now unfairly and inappropriately being charged with criminal behavior. Indeed, at trial the defendant never denied taking money from the defendant; she only denied taking it without his permission, and she repeatedly testified that the bank statements accurately reflected her borrowing. Moreover, we cannot conclude such a strategy was unsound, especially in light of the fact that even though the defendant faced between three and seven years in prison upon her conviction, she was given only 36 months' probation, with the judge stating, when delivering his sentence, "If this was a total misunderstanding like you are telling me it was, then this should never happen again." Trial counsel's strategy of cooperating with regard to documents that he no doubt realized would have been admitted regardless of his stance on them was sound, reasonable, and ultimately beneficial to the defendant. There was no error.

¶ 23

#### CONCLUSION

¶ 24 For the foregoing reasons, we affirm the defendant's conviction.

¶ 25 Affirmed.