2011 IL App (2d) 101116-U
No. 2-10-1116
Order filed September 13, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-954
MATTHEW RENO,	)	Honorable Joseph P. Condon,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

Held: No plain error resulted from the omission of a jury instruction; the State established a sufficient foundation to admit computer-generated cell phone records; and the evidence was sufficient to establish defendant's guilt of attempted armed robbery beyond a reasonable doubt.

¶ 1 In this direct appeal of his attempted armed robbery conviction (720 ILCS 5/8-4(a), 18-2(a)(2) (West 2008)), defendant, Matthew Reno, raises three issues. First, defendant argues that the trial court committed reversible error by failing to give the jury the issues instruction for attempt. Second, defendant argues that the State failed to establish a proper foundation for the admission of

computer-generated records that were "critical" to its case. Last, defendant argues that the State failed to prove him guilty of attempted armed robbery beyond a reasonable doubt. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On October 22, 2008, a grand jury indicted defendant on five counts relating to two armed bank robberies (one an attempted armed robbery) in the towns of Huntley and Union. Counts I through IV related to a March 10, 2008, armed robbery of Castle Bank in Huntley. Count V charged defendant with attempted armed robbery of Midwest Bank in Union on March 24, 2008. Following a trial on the March 10 Castle Bank robbery, a jury found defendant not guilty. A trial on the Midwest Bank attempted robbery charge, which led to the instant appeal, commenced on July 28, 2010.

¶ 4 Immediately prior to trial, the State moved *in limine* to admit Verizon cell phone records for defendant and his co-defendant on the date of the offense, March 24. The limited issue was whether the records, State Exhibits 6 and 7, were computer-generated data as opposed to computer-stored data. According to the State, Exhibits 6 and 7 fell into the category of computer-generated records, which were admissible under a lesser foundational standard than computer-stored data. To resolve this issue, the State called Samuel Martinez, a legal analyst for Verizon, who testified that the records were generated electronically through the computer system and stored in a mainframe in New Jersey. According to Martinez, the records did not involve a person interpreting or entering the data. The court agreed with the State that Exhibits 6 and 7 were computer-generated records that required a lesser foundation for admissibility.

¶ 5 The following evidence was adduced at trial. The incident occurred at Midwest Bank on March 24, 2008, around 1:40 p.m. The jury was shown videotaped surveillance of the incident.

Sarah Lechner, a teller at Midwest Bank, was working that day. Around 1:30 p.m., a teenage boy came into the bank wearing a black, hooded sweatshirt, a stocking cap, and a backpack. The boy covered his face such that all Lechner could see were his eyes and part of his nose. The boy approached Lechner's window and pointed a gray or silver gun at her. She believed he said something, but she did not know what; he was holding a handkerchief or glove over his mouth. Realizing what the boy wanted, Lechner turned to her drawer to collect cash. When she turned back to put the cash under the teller window, the boy was no longer there. He was near a side door that led back to the teller area, and Lechner thought that he was trying to come behind the teller window. The door was locked, however. The boy then walked back towards the teller line, where he got into a struggle with a customer, Lane Samuelson. After the struggle, the boy picked something up off the floor and ran out the front door.

¶ 6 Co-defendant Justin Fasel, age 17 at the time of the incident, testified that he and defendant were "very good friends" who had known each other since 7th grade. They lived in the town of Hinckley. On March 24, around 11 a.m. or 12 p.m., he and defendant drove from Hinckley to the town of Union to rob Midwest Bank. They chose Union because it was "a good hour away" and "in the middle of nowhere," where no one knew them. On cross-examination, Fasel admitted that he had been there a couple of days before looking for a bank to rob.

¶ 7 Fasel, who was driving, circled Midwest Bank a couple of times before letting defendant out of the car about "half a block away." Defendant disguised his appearance by covering his face and then exited the car with a small, silver semi-automatic gun. Fasel drove slowly around Midwest Bank to a road in the back of the bank; it was around 1 p.m. He gave conflicting testimony as to how long he waited before driving back in front of the bank. Defendant then ran out of the bank,

"hopped" in the car, and said, " 'it was no good.' " Defendant told Fasel that he got tackled, lost his gun, " 'had to fiddle with his gun to pick his gun up,' " and then ran out of the bank. Taking Route 47, they drove back to Hinckley and saw "like 20 cop cars fly right past" them on the way. As they drove back on Route 47, they passed through the town of Huntley. It was undisputed that Route 47 ran north and south between Woodstock and Huntley.

¶ 8 Fasel admitted that he had an agreement with the State's Attorney's office to receive a reduced charge in the instant case in exchange for his testimony, which meant a boot camp recommendation of six to eight months. The State had also agreed to dismiss an armed robbery and theft charge against him in relation to the March 10 robbery of Castle Bank in Huntley. In addition, another charge against him for a bank robbery in Elburn was being dismissed. Fasel conceded that he got charged with a misdemeanor in August 2009 for possession of marijuana paraphernalia while he was on bond for the bank robbery charges. Fasel did not receive a violation of his bail bond for the marijuana offense.

¶ 9 Defendant's mother, Philomena Reno, testified that on March 24, defendant lived at home, and the family had three cell phones with Verizon under her name. Most of the time, defendant used the cell phone with the number (630) 947-9899. During the month of March, defendant usually carried the cell phone with that number, unless he forgot it at home. Reno could not testify with "absolute certainty" whether defendant had that cell phone with him on March 24. Reno's husband, who had recently passed away, used that cell phone sometimes, but she did not know whether he used it that day.

¶ 10 Verizon legal analyst Martinez testified regarding his 10-year history at Verizon, which included working in customer service, technical support, and his current position of handling small

claim cases, mediation, arbitration, and providing testimony to authenticate Verizon records. While employed at Verizon, Martinez received training as to how cell phone calls were placed and connected. Based on this training and experience, Martinez explained that when placing a call, the calling cell phone signal was sent to the nearest tower, which then transferred the signal to the switch. The switch was like a "big switchboard operator" that sent calls to different places. The switch then sent the signal to the receiving party's nearest cell tower, which in turn sent the signal to the receiving party's cell phone. The tower closest to the cell phone making or receiving the call received the signal, and the proximity for a tower to send or receive information from a cell phone was three to five miles. Records of calls that were placed or received were made electronically and not by a human. The information in the record was gathered from the cell towers to the switch, and the switch then communicated with one of Verizon's databases, which was a mainframe computer in New Jersey. Calls were recorded at the time they occurred.

¶ 11 Martinez identified State Exhibit 7 as a detailed call log for Fasel's cell phone. The log came from the mainframe in New Jersey where the information was stored. The State asked Martinez if the computer was accurate and operating properly when that data was generated, and he answered yes. Over defense counsel's objection, Exhibit 7 was entered into evidence. Exhibit 7 contained, among other things, the date and time, the number called, the length of the call, the originating cell tower, the serving switch, and the terminating cell tower. The State directed Martinez to calls in the log made or received after 1:40 p.m., the time of the incident, on March 24. At 1:55 p.m., Fasel's phone received a call, and the nearest tower to Fasel's phone was in Woodstock. About 20 minutes later, Fasel received another incoming call at 2:14 p.m., and the nearest cell phone tower at that time was in Huntley (tower 313). Martinez explained that, when these two calls were received, there was

no way for Fasel's cell phone to have been outside of a five-mile radius of Woodstock for the first call, or outside of a five-mile radius of Huntley for the second call.

¶ 12 Next, Martinez identified Exhibit 6 as another call log for the cell phone defendant typically used ((630) 947-9899). Exhibit 6 was generated electronically like Exhibit 7. The calls were recorded at the time they occurred; the data was stored in the server in New Jersey; and the computer that generated the data was accurate and operating properly at the time the calls were made. Over defense counsel's objection, Exhibit 6 was admitted into evidence. As with Exhibit 7, Martinez was directed to March 24 and any calls made or received after 1:40 p.m. At 2:35 p.m., defendant's cell phone record showed an outbound call, and the nearest cell phone tower was tower 313 in Huntley. Within seconds of the 2:35 p.m. call, the record showed three more outbound calls, two of which originated off of the 313 tower in Huntley, and one of which originated off of another tower, tower 79, also in Huntley. Again, Martinez explained that there was no way for defendant's cell phone to have made calls outside of a five-mile radius of the towers in Huntley.

¶ 13 Ashley Garcia testified on behalf of the defense. Garcia, who lived in Woodstock, saw either a picture or a video of the individual involved in the incident at Midwest Bank. She told the Woodstock police that she had a pair of pants at her house that matched the description of what the individual was wearing. The pants, which Garcia turned over to Sergeant Robb Tadelman three days after the attempted robbery, belonged to the brother of some kid Garcia knew; Garcia did not know defendant or Fasel. Sergeant Tadelman testified that the pants were never tested.

¶ 14 Patrick Powers, a forensic scientist who was qualified as an expert in latent fingerprint examination, testified as follows. In conjunction with this incident, Powers was given certain items for print analysis. First, he received two print "lifts" taken from the scene by an officer, although

only one of the lifts had a fingerprint on it. Second, he received four door handles from Midwest Bank, a public place, which he tested for prints. In testing the door handles, Powers did not find "anything" on two of them; one of them had a palm print and a fingerprint; and one of them had two fingerprints. The third item he received was an inked fingerprint card, which belonged to Samuelson, the bank customer who had struggled with the perpetrator. Powers was not able to either identify or eliminate Samuelson on any of the prints he analyzed; he needed additional prints for conclusive comparison. Also, Powers received "major case prints" for defendant and Fasel, which are comprehensive prints that record all the ridges present on the hand as opposed to a normal fingerprint card. None of the prints Powers analyzed matched defendant or Fasel.

¶ 15 The parties then agreed on which instructions to give the jury. Following deliberations, the jury found defendant guilty of attempted armed robbery. A few days later, on August 2, 2010, the trial judge handling defendant's case, Judge Condon, received a letter addressed to him from "one of the jurors" at defendant's trial. The alleged juror, who remained unnamed, stated in the letter that in imposing a sentence, the juror hoped that the court would consider the fact that defendant was 17 years old and thus "prone to impulsive irrational decisions." The juror requested the court to give defendant probation with a few years of public service. In addition, the juror stated that "the guilty verdict was based almost completely on the 35 seconds of cell phone use. Had [defendant's attorney] given the Court any logical reason for [defendant's] father to have been near Huntley that day, the verdict would have been Not Guilty."

¶ 16 Defendant moved for a new trial, arguing, among other things, that there was insufficient evidence to prove him guilty of the offense beyond a reasonable doubt, and that the court erred by admitting the telephone records because the State failed to lay a proper foundation. The trial court

denied this motion and eventually sentenced defendant to a term of five years' imprisonment. Defendant moved to reconsider his sentence, and this motion was also denied. Defendant timely appealed.

¶ 17 II. ANALYSIS

¶ 18 A. Jury Instructions

¶ 19 Defendant first argues that the jury was not properly instructed as to the State's burden of proof on each element of the offense of attempted armed robbery. The jury in this case was instructed that the State had to prove defendant guilty beyond a reasonable doubt; it was instructed on the definition of attempt; and it was instructed on the definition of armed robbery. The jury was not given the issues instruction for attempt, however. Because defendant failed to tender this instruction to the trial court, failed to object to the jury instructions as given, and failed to raise this issue in his motion for a new trial, it is forfeited. Defendant concedes as much and asks this court to review the issue under the plain-error doctrine contained in Supreme Court Rule 615(a) (134 Ill. 2d. R. 615(a)), as well as the exception to the forfeiture rule for substantial defects in jury instructions set forth in Supreme Court Rule 451(c) (210 Ill. 2d. R. 451(c)). This court construes Rule 615(a), which enunciates general principles of plain error review, and Rule 451(c), which specifically addresses review of alleged instructional error, identically. *People v. Hudson*, 228 Ill. 2d 181, 190-91 (2008); see also *People v. Hopp*, 209 Ill. 2d 1, 7 (2004) (Rule 451(c)'s exception to the forfeiture rule applies when there is a grave error or when the case is so factually close that fundamental fairness requires that the jury be properly instructed).

¶ 20 The plain-error doctrine contained in Supreme Court Rule 615(a) provides a narrow exception to the general rule of procedural default. *People v. Lewis*, 234 Ill. 2d 322, 42 (2009). The

doctrine allows a reviewing court to consider an unpreserved error when (1) a clear or obvious error occurs 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 occurs 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. *Id.* at 42-43. The defendant bears the burden of persuasion under both prongs of the plain-error test. *Id.* at 43. Defendant claims that both prongs are satisfied here, and he argues that the "closeness of the case" is "reflected in the letter sent by the juror to the trial court after verdict."[1] Before analyzing the individual prongs, however, our first inquiry under plain-error review is to determine whether any error occurred. *Id.*

¶ 21 In the pattern instructions, each offense has at least two instructions: (1) a definitional instruction; and (2) an issues instruction. *People v. Walker*, 392 Ill. App. 3d 277, 296 (2009). Whereas the definitional instruction explains the offense generally, the issues instruction specifically lists all the elements or propositions for the offense charged that the State must prove, beyond a reasonable doubt, before the jury may render a guilty verdict for the offense. *People v. Lowe*, 152 Ill. App. 3d 508, 510 (1987).

¶ 22 As previously mentioned, the jury in this case was instructed on the definitional instructions for attempt and armed robbery, but it was not instructed on the issues instruction for attempt. In

[1]Defendant concedes that the letter allegedly sent by a juror cannot be used to show the motive, method, or process by which the jury reached its verdict. See *People v. Willmer*, 396 Ill. App. 3d 175, 181 (2009). The letter, according to defendant, is being used only to establish that the evidence in this case was closely balanced.

addition, the jury was instructed on the State's burden of proof. We set forth these instructions. The jury instruction on the State's burden of proof provides:

> "The defendant is presumed to be innocent of the charge against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence." Illinois Pattern Jury Instructions, Criminal, No. 2.03 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 2.03).

The jury instruction on the definition of attempt provides:

> "A person commits the offense of Attempt when he, with the intent to commit the offense of Armed Robbery, does any act which constitutes a substantial step toward the commission of the offense of Armed Robbery.
>
> The offense attempted need not have been committed." Illinois Pattern Jury Instructions, Criminal, No. 6.05 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 6.05).

The jury instruction on the definition of armed robbery provides:

> "A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed with a dangerous weapon, knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use

of force." Illinois Pattern Jury Instructions, Criminal, No. 14.05 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 14.05).

The jury did *not* receive the issues instruction on attempt, which provides:

"To sustain the charge of attempt, the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the commission of the offense of armed robbery; and

Second Proposition: That the defendant did so with the intent to commit the offense of armed robbery.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty." Illinois Pattern Jury Instructions, Criminal, No. 6.07 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 6.07).

¶ 23 Defendant argues that without the issues instruction for attempt, the jury was never told that the State must prove each element of the offense beyond a reasonable doubt. In particular, defendant argues that the jury was not instructed that it must find beyond a reasonable doubt that he performed an act which constituted a substantial step toward the commission of the offense of armed robbery, and that he did so with the intent to commit the offense of armed robbery. Defendant argues that the

issues instruction for attempt was especially important here to avoid the confusion between the charge of attempt and the underlying offense of armed robbery.[2]

¶ 24 The State counters that the only difference between the definitional instruction for attempt and the issues instruction for attempt is the latter's language regarding reasonable doubt. Regardless, the State points out that the definitional instruction for attempt includes both the intent element and the substantial step element. Therefore, according to the State, the issues instruction would not have delineated an additional element that the State was required to prove, but merely would have reiterated already included elements. In addition, the State points out that the jury was told of the State's burden of proof during opening and closing arguments and was also specifically instructed as to the burden of proof in the jury instructions.

¶ 25 As stated, the first step in a plain-error analysis is to determine whether error occurred, and we do not believe error occurred by the omission of the issues instruction for attempt. The function of jury instructions is to convey to the jurors the law that applies to the facts so they can arrive at a correct conclusion. *Hopp*, 209 Ill. 2d at 8. In analyzing plain error, the supreme court has distinguished between cases where the omitted jury instruction *removed* from the jury's consideration a disputed issue essential to the determination of the defendant's guilt and innocence (*People v. Ogunsola*, 87 Ill. 2d 216, 233 (1981)), from a situation where the omitted instruction was

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[2]We clarify that defendant argues only that he should have received the issues instruction for attempt, not the issues instruction for armed robbery. Giving the issues instruction for armed robbery would have been improper according to the committee note to the definitional instruction for attempt because defendant was not charged with the substantive offense of armed robbery. See IPI Criminal 4th No. 6.05, Committee Note.

not so basic to the given instruction that the failure of the trial court to give the instruction *sua sponte* denied the defendant a fair trial (*People v. Underwood*, 72 Ill. 2d 124, 130-31 (1978)).

¶ 26 In this case, the failure to give the issues instruction for attempt did not have the effect of removing any essential issue or element of the offense. Rather, the definitional instruction for attempt set out the two elements that defendant argues were at risk: 1) intent and 2) performing any act which constituted a substantial step toward the commission of the offense. The definitional instruction given here stated that a person commits the offense of attempt when he, with the *intent* to commit the offense of armed robbery, *does any act which constitutes a substantial step toward the commission of the offense* of armed robbery. IPI Criminal 4th No. 6.05. While defendant argues that the issues instruction made clear that these two elements needed to be proven beyond a reasonable doubt, the jury received the general instruction as to defendant's presumption of innocence and the State's burden to prove defendant guilty beyond a reasonable doubt. Thus, defendant cannot show that error occurred.

¶ 27 Our conclusion is supported by *People v. Foster*, 103 Ill. App. 3d 372 (1982), in which the defendant argued that his jury instruction claim was not forfeited under Rule 451(c). In *Foster*, the defendant argued that the trial court erred by failing to instruct the jury as to the issues of attempted rape, even though the jury was given separate definitional instructions for the offenses of attempt and rape. *Id.* at 378. Like defendant here, the defendant in *Foster* argued that because the issues instruction for attempt was not given, the jury was unsure as to which elements of the offense it had to find beyond a reasonable doubt. *Id.* The reviewing court rejected that argument, reasoning that: (1) the trial court gave the general instruction as to defendant's presumption of innocence and the State's burden to prove the defendant guilty beyond a reasonable doubt throughout the case; (2) it

defined both the offenses of attempt and rape for the jury; (3) and those instructions together adequately apprised the jury of the elements of the offense charged, as well as the presumptions and burdens of the respective parties. *Id.* As in *Foster*, the instructions in this case sufficiently informed the jury as to the elements of attempted armed robbery and the parties' burden of proof. Accordingly, defendant has not established that error occurred.

¶ 28 Because no error occurred, our plain-error analysis ends here. But even if we were to find that the failure to tender an issues instruction for attempt was in error, defendant would not be able to satisfy either of the two prongs necessary to establish plain error. First, the evidence was not so closely balanced, which we discuss later in response to defendant's sufficiency-of-the-evidence claim. Second, for the reasons set forth above, omitting the issues instruction for attempt was not so serious as to affect the fairness of defendant's trial or challenge the integrity of the judicial process.

¶ 29 B. Foundation for Cell Phone Records

¶ 30 Defendant next challenges the admission of State Exhibits 6 and 7, which were Fasel's and defendant's cell phone records of calls made within an hour of the incident, on the basis that the State failed to establish a proper foundation. Like other evidentiary rulings, the determination of whether business records are admissible is within the sound discretion of the trial court. *People v. Morrow*, 256 Ill. App. 3d 392, 396 (1993).

¶ 31 Defendant begins by arguing that there was no evidence that the computer equipment used by Verizon was "standard." In addition, defendant challenges State witness Martinez's opinion, arguing that it was nothing more than a conclusion or an opinion without the required basis. The State responds that defendant is imposing the higher standard for computer-stored records, as

opposed to computer-generated records, which does not apply here. Based on the premise that the cell phone records here were computer-generated records, the State posits that it provided a sufficient foundation by eliciting testimony that the recording device was accurate and working properly when the evidence was generated. The State also argues that Martinez's testimony was not the equivalent of an opinion because he was never tendered as an expert. For the following reasons, we agree with the State.

¶ 32 First, the State is correct that there is a distinction between computer-generated records and computer-stored records in terms of foundational requirements. See *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 114 (2000). Case law is clear that records directly generated by the computer itself are generally admissible as representing the tangible result of the computer's internal operations. *Id.* at 114. As a result, all that need be shown is that the recording device was accurate and operating properly when the evidence was generated. *Id.* On the other hand, computer-stored data constitute statements placed into the computer by out-of-court declarants and cannot be tested by cross-examination. *Id.* For this reason, the foundational burden for computer-stored data is higher. Print-outs of information *stored* in a computer are admissible under the business records exception to the hearsay rule when it is shown that: (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. Bynum*, 257 Ill. App. 3d 502, 512-13 (1994).

¶ 33 Second, the State is also correct that the cell phone records at issue here were computer-generated records. Because these records required no human input of data or human involvement

whatsoever, the trial court determined, in ruling on the State's motion *in limine*, that the records were computer-generated. See *People v. Holowko*, 109 Ill. 2d 187, 191 (1985) (computer-generated data is generated instantaneously as the call is placed, without the assistance, observations, or reports from or by a human declarant). Defendant does not challenge this finding on appeal. Therefore, the lesser standard for establishing foundation, which is that the recording device was accurate and operating properly when the evidence was generated, applies here. See *id.* at 192 (there can be no question that computer science has created many devices, the reliability of which can scarcely be questioned; therefore, we should apply the rule that its accuracy and reliability is judicially noticeable, requiring only proof of the accuracy and proper operation of the particular device under consideration).

¶ 34 Third, the State satisfied this foundational requirement in regard to the two cell phone records. Martinez, an employee at Verizon for 10 years, testified how the recording system worked. Records of calls that were placed or received were made electronically and not by a human; information in the record was gathered from the cell towers to the switch; the switch then communicated with Verizon's database, a mainframe computer in New Jersey, where the information was stored; and calls were recorded at they time they occurred. For both Fasel and defendant's cell phone records, the State specifically asked Martinez if the computer that generated the data was accurate and operating properly at the time the data was generated, and he answered yes. Having demonstrated by Martinez's testimony the accuracy and proper operation of the recording device, the State met its foundational burden for computer-generated records and did not need to show more.

¶ 35 Last, we reject defendant's argument that Martinez was improperly called as an expert to render an opinion as to the "distance a cell phone needs to be from a cell tower to allow the tower to send or receive information," and to render an opinion that the computer that generated the data was accurate and operating properly when the data was generated. The State points out that it did not call Martinez as an expert in this case. Rather than offering the "equivalent" of an expert opinion, the State argues that Martinez was simply a person familiar with Verizon phone records. See *Matter of Estate of Savage*, 259 Ill. App. 3d 328, 333 (1994) (it is not necessary that the maker of the records testify or that the custodian of the records testify; anyone familiar with the business and its mode of operation may establish a sufficient foundation for admitting records). We agree with the State that Martinez's 10-year work history at Verizon, his specific training on the operation of cell phones, and his current position as legal analyst made him qualified to testify regarding the accuracy and proper operation of the computer that generated the cell phone records. Likewise, Martinez was qualified to testify regarding the information in the records that established the proximity of the two cell phones to the cell phone tower in Huntley. Accordingly, defendant's attack on the foundation of the cell phone records fails, and the trial court did not abuse its discretion in admitting the records.

¶ 36 C. Sufficiency of the Evidence

¶ 37 Defendant's final argument on appeal is that he was not proven guilty of the offense beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, we consider whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard of review applies regardless of whether the evidence is direct

or circumstantial. *Id.* We will not retry a defendant when considering a sufficiency of the evidence challenge; the trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses. *Id.* at 114-15. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id.* at 115.

¶ 38 Defendant argues that identity was the central issue in this case, and that there was insufficient evidence that he was the perpetrator. Specifically, defendant argues that: (1) Lechner, the teller, was not able to describe the individual; (2) none of the prints obtained from the scene matched his prints; and (3) the pants submitted by Garcia were never tested by police. He further argues that Fasel, whose testimony must be viewed with suspicion, provided the only direct evidence linking him to the attempted armed robbery. On this point, defendant argues that Fasel alone checked out Midwest Bank a few days earlier. Regarding the cell phone records, defendant argues that they did not link Fasel's and defendant's cell phones as calling one another; there was no testimony that he possessed that cell phone on March 24; defendant's mother testified that his dad used the same cell phone on occasion; and defendant's alleged use of that cell phone in Huntley 55 minutes after the incident was irrelevant.

¶ 39 The State concedes that its case centered on the testimony of co-defendant Fasel. We note that although the testimony of an accomplice may be viewed with suspicion, it may nevertheless be enough to sustain a conviction, even in the absence of corroboration. *People v. Steidl*, 142 Ill. 2d 204, 227 (1991). Here, there was evidence corroborating Fasel's testimony. As we discuss, Fasel's testimony, when combined with Lechner's version of events and the cell phone records, provided sufficient evidence of defendant's guilt.

¶ 40 In summarizing Fasel's testimony, he indicated that he and defendant lived in Hinckley and had been friends for a long time. On March 24, they drove to Union around 11 a.m. or 12 p.m. because it was one hour away, in the middle of nowhere, and thus a place where no one knew them. Fasel testified that he circled Midwest Bank a couple of times before letting defendant out of the car about a half block away. Defendant disguised his appearance by covering his face and then exited the car carrying a small, silver semi-automatic gun. It is undisputed that the incident occurred around 1:40 p.m. Fasel testified that when he drove back in front of the bank to pick up defendant, defendant ran out of the bank, got in Fasel's car, and said, " 'it was no good.' " According to Fasel, defendant told him that he got tackled, lost his gun in the process, and then had to fiddle around to retrieve it. Fasel's account is consistent with Lechner's testimony that the perpetrator had covered his face, brandished a gray or silver gun, got into a struggle with one of the customers, and later picked up something off of the floor before running out the door.

¶ 41 Defendant is correct that Fasel testified that he had scouted out Midwest Bank prior to the robbery. However, he did not, as defendant asserts, testify that he did so alone. At best, it is unclear from the brief questioning on this issue whether or not defendant was with him at that time. And regardless of whether defendant accompanied Fasel, it was reasonable for the jury to infer that Fasel was scouting out the bank in preparation for the instant offense.

¶ 42 Fasel further testified that after the attempted robbery, they drove back to Hinckley on Route 47, which goes through Huntley. In fact, Fasel testified that they drove through Huntley on the way back. To corroborate Fasel's testimony as to defendant's whereabouts on March 24, the State introduced Fasel's and defendant's cell phone records after 1:40 p.m. The cell phone records demonstrated that Fasel's cell phone was between three and fives miles of Huntley (tower 313) at

2:14 p.m., approximately 35 minutes after the incident. This cell phone record is consistent with Fasel's testimony that they drove through Huntley on their way home to Hinckley. Likewise, the records showed that at 2:35 p.m., defendant's cell phone was also between three and five miles of the same tower (tower 313) in Huntley. The proximity of their cell phones to the same tower in Huntley is consistent with Fasel's testimony that they drove away in the car together. In response to defendant's argument that the cell phone records did not connect defendant and Fasel's cell phones as calling each other, this was not the State's theory of the case. According to the State, the two were in Fasel's car together at the time the calls were made, fleeing the scene and driving home after the attempted robbery. Therefore, there was no reason for them to be calling each other. Also, we disagree with defendant's claim that the 2:35 p.m. calls on his phone are irrelevant to the instant offense. Fasel testified that Union was one hour from Hinckley, and that they drove through Huntley on their home. Thus, a call within one hour of the incident is relevant here.

¶ 43 Regarding the cell phone itself, it was up to the jury to determine whether defendant was in possession of that particular cell phone on March 24. Defendant's mother testified that, most of the time, defendant used that cell phone, unless he left it at home. She also testified that defendant's father used that cell phone occasionally. Based on Fasel's testimony that he and defendant were driving home through Huntley after the attempted robbery, it was reasonable for the jury to infer that defendant was using that cell phone on the day in question.

¶ 44 With respect to defendant's argument that his prints were not found on the door handles of Midwest Bank, forensic expert Powers testified that touching a surface does not necessarily result in a print. Powers illustrated this principle by testifying that he did not find any prints on two of the door handles. Another complication was the fact that the door handles were to a bank, a public

place. As a result, it was reasonable for the jury to not place much weight on the lack of fingerprint evidence. Similarly, Ashley's testimony that she found a pair of pants in her house matching the description of the perpetrator was purely speculation. Our supreme court has stated that "the mandate to consider all the evidence on review does not necessitate a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom. To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent." *Wheeler*, 226 Ill. 2d at 117. Considering the evidence in the light most favorable to the State, there was sufficient evidence to find defendant guilty of the offense of attempted robbery beyond a reasonable doubt.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the judgment of the McHenry County circuit court.

¶ 47 Affirmed.