2017 IL App (2d) 141005-U
No. 2-14-1005
Order filed May 12, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-2443
LORIN BROWN,	)	Honorable Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in admitting, over defendant's objection, testimony concerning a witness's opinion that a telephone caller was an African-American man in his mid-twenties. Nor did the trial court err in allowing testimony concerning a text message sent from defendant's phone as evidence of defendant's knowledge of the then-ongoing fraudulent scheme. The state proved the defendant guilty beyond a reasonable doubt of the charged offenses under a theory of accountability. The trial court's restitution order is vacated and remanded for failure to set a payment schedule.

¶ 2 Defendant, Lorin Brown, appeals his conviction of identity theft, two counts of theft, continuing financial crimes enterprise, three counts of mail fraud, and four counts of wire fraud. Defendant contends that the state failed to prove him guilty beyond a reasonable doubt of the

charged offenses under a theory of accountability. Additionally, defendant contends that the trial court abused its discretion in admitting two pieces of evidence: 1) a telephone call with an employee of College of Du Page who identified the caller as an African-American man in his twenties; and 2) a text message allegedly sent by defendant indicating co-defendant, Dasia Blue, was involved in fraud. Defendant also contends that the trial court erred by ordering defendant to pay restitution of $319,600.25 for losses suffered by College of Du Page and University of Phoenix.

¶ 3 I. BACKGROUND

¶ 4 Defendant and three co-defendants (Dasia Blue, Olympia Blue, and Jesse Wright) were charged and prosecuted in an 11 count indictment. Defendant was tried separately from his co-defendants. Following his waiver of a trial by jury, defendant was convicted at a bench trial of the following counts and sentenced to the following terms of years:

Count I – Identity theft of more than $100,000. 9 years.

Count II – Theft by deception with intent to deprive more than $100,000 but less than $500,000. 9 years

Count III – Theft by deception of governmental property more than $10,000. 9 years.

Count IV – Continuing financial crimes enterprise. 9 years.

Count V – Mail Fraud (victim Kyle Copland). 5 years.

Count VI – Mail Fraud (victim David Steinbring). 5 years.

Count VII – Mail Fraud (victim Beverly Williams). 5 years.

Count VIII – Wire Fraud (victim Kyle Copeland). 5 years.

Count IX – Wire Fraud (victim David Steinbring). 5 years.

Count X – Wire Fraud (victim Beverly Williams). 5 years.

Count XI – Wire Fraud (victim Juwanda Harris). 5 years.

¶ 5 Defendant was sentenced to four concurrent nine-year prison terms for Counts I-IV, and seven concurrent five-year prison terms for Counts V-XI. Defendant was also ordered to pay $319,600.25 in restitution. The following is a recitation of the testimony and evidence introduced at defendant's bench trial.

¶ 6 The state called victim David Steinbring. Steinbring testified that he received a bill from the College of Du Page in October 2012. Steinbring had never attended College of Du Page so he contacted the school to find out what the bill was about. The College of Du Page had Steinbring's personal information on an online application for admission. The application contained his name, date of birth, and social security number. The home address was an unknown address in Crystal Lake and the email address provided was one Steinbring did not recognize. The College of Du Page also had a promissory note for student loans in Stenbring's name that used his correct name, date of birth, and social security number but incorrect contact information and references he was not familiar with. College of Du Page had sent mail in Steinbring's name to 543 Peregrine Parkway in Bartlett. Steinbring never lived at that address. Steinbring never filled out any applications regarding attendance at College of Du Page and never authorized any one to do so on his behalf. Steinbring said that after discovering all of this information, he contacted the Joliet Police Department.

¶ 7 Steinbring testified that he had worked in the auto repossession business and was employed by a company called DTM Recovery in 2008. Steinbring recalled that DTM Recovery was operated by two young African-American women. His application to DTM Recovery contained his social security number, date of birth, and a copy of his driver's license.

¶ 8 The state then called victim Jonathan Blackmore. Blackmore testified that he was contacted by the University of Phoenix regarding an outstanding balance. University of Phoenix had an online application in Blackmore's name to receive financial aid from the United States Department of Education. A debit card with Blackmore's name was issued for the loans associated with that application. Blackmore testified that he never filled out any such application and never authorized anyone to do so on his behalf. After learning of the outstanding balance with the University of Phoenix, Blackmore contacted the McHenry County Sheriff's Office to file a report.

¶ 9 In 2008, Blackmore was contracted by DTM Recovery to perform vehicle repossessions. Blackmore recalled that DTM Recovery was operated by two African-American women. He gave DTM Recovery a copy of his driver's abstract, as well as his date of birth and social security number when he applied to do the repossession work for them.

¶ 10 Victim Kyle Copeland then testified for the state. He recalled that a credit check performed when trying to rent an apartment revealed outstanding student loan debt. He then learned that his personal information had been used in an online application for admission to the College of Du Page. The address provided with the admission application listed 543 Peregrine Lane in Bartlett as Copeland's home address. A federal financial aid application was also submitted using his personal information to secure student loans. This application had his correct personal information but used references Copeland did not recognize as well as an unknown address in Chicago. Copeland testified that he never sought any student loans or requested payments via check or debit card regarding financial aid.

¶ 11 Victim Beverly Williams was then called to testify. She recalled receiving a notice from the Social Security Administration stating that she had been receiving income from student loans

through the College of Du Page and University of Phoenix. Online applications for admission used her name, date of birth, and social security number. The address given in the application was 5654 Everett in Chicago, an address Williams was not familiar with. A federal financial aid promissory note was also completed in Williams' name that used her personal information. Williams testified that she did not complete any applications for student aid or admission to any college and did not authorize anyone to do so on her behalf.

¶ 12 The state then called victim Juwanda Harris. Harris testified that the Internal Revenue Service had informed her that her tax refund was being withheld. She also learned that the College of Du Page and University of Phoenix were seeking to be reimubursed by her for student aid dispersed in her name. These two pieces of information alerted Harris that her identity had been used improperly. Admissions applications were completed using her name, date of birth, and social security number but incorrect contact information had been given. Promissory notes for federal student loans were also completed in her name that used her personal information but incorrect contact information.

¶ 13 The state then called Jennifer Prusko, a financial aid representative for the College of Du Page. Prusko testified to how the process of obtaining loans at the College of Du Page works. Typically, a student completes the online application for admission to the school. After admission, the student then has a file created by the school that collects all filings and information related to that student, including the federal application for student aid (FAFSA). FAFSA information is sent to federal aid processors by the school. If financial aid is awarded to the student, the school retains the amount necessary to cover the student's tuition. Any remainder is distributed to the student on whose behalf the FAFSA was completed.

¶ 14 Prusko identified admissions applications, FAFSA applications, and other student information retained by College of Du Page related to victims David Steinbring, Kyle Copeland, Juwanda Harris, and Beverly Williams. All applications related to the victims were completed and processed in 2012. Prusko testified that while processing financial aid disbursements, she noticed that four students had the same mailing address of 543 Peregrine Parkway in Bartlett. She also noticed that none of these four students had been attending classes. The students that raised Prusko's suspicions were Frederick Hennings, Salvador Ruiz, David Steinbring, and Kyle Copeland. Prusko informed the court that any time financial aid is wrongly awarded, the College of Du Page must reimburse the federal government. The student who wrongly received the financial aid must reimburse the school. Prusko testified that she informed College of Du Page detective Kent Munsterman of the situation with the four students with same addresses who were not attending classes yet received financial aid.

¶ 15 Jill Mosher was then called to testify. Mosher worked as supervisor of accounts payable at the College of Du Page, in which she disbursed financial aid awards to students. Mosher explained to the court how the process of disbursing student loans works. After being awarded student loans, the student may elect to have the funds remaining after tuition is paid sent to them by paper check or debit card. If a debit card is selected by the student, the student arranges through their online student account to have the funds issued through a debit card with U.S. Bank. U.S. Bank then mails the debit cards to whatever address the student provided. If paper checks are the student's preferred method of disbursement, the student picks up the check at the school's cashier's office. If no one picks up the paper check, the cashier's office mails it to whatever address the student provided.

¶ 16 Mosher then testified that she had noticed some irregularities regarding the account of David Steinbring in the fall of 2012. A debit card issued to Steinbring was returned to the College of Du Page because the post office was unable to deliver it due to a difference between the name and address. Mosher then testified that two weeks after the card was returned to the school, another debit card issued to David Steinbring was returned to the school after being sent to yet another address. All attempts to contact Steinbring by the school were unsuccessful as the calls and emails sent to him were not returned. The school used the phone and email information on file with them. Mosher identified at trial a debit card account in the name of David Steinbring which showed withdrawals on October 20 and 21, 2012.

¶ 17 Following an objection by defendant, Jane Yasak, supervisor of the College of Du Page cashier's office, testified for the state. Yasak testified in regard to two telephone conversations she had with a person that identified himself as David Steinbring. Yasak handled all calls that came in to the cashier's office in relation to students who had been issued both debit cards and paper checks for financial aid disbursements. David Steinbring was classified as one of these type of students. Yasak recalled that on November 7, 2012, a person claiming to be David Steinbring called the cashier's office. This person was able to provide Steinbring's student identification information and said he was expecting a student loan refund on his debit card account. Yasak told the caller that the refund was to be issued to him by paper check which would require him to appear in person at the cashier's office with a photo ID. The man claiming to be Steinbring asked that the check instead be sent to 543 Peregrine Parkway in Bartlett. Yasak told the caller that she would call him back after checking with her supervisor.

¶ 18 After notifying College of Du Page police of the call, Yasak returned the call to the person claiming to be David Steinbring and told him that the paper check must be retrieved in

person with a photo ID. Yasak testified that she believed the caller to be an African-American man in his mid 20's. The call placed to the cashier's office came from 312-361-7515. That same number was used by Yakak to return the call. That number was also used to call the cashier's office inquiring about financial aid disbursements for Beverly Williams. The caller also used 543 Peregrine Parkway in Bartlett as the address associated with the account. Yasak testified that co-defendant Olympia Blue was a name associated with students on the watch list for calls about disbursement checks.

¶ 19 The state then called Joe Agins, a director for Apollo Education Group, to testify. Apollo Education group operates the University of Phoenix. Agins testified in the same manner as Jennifer Prusko and Jill Mosher as to how applications for admission and disbursement of students loans works as to University of Phoenix. Agins testified that University of Phoenix records showed financial aid awards distributed to Jonathan Blackmore via direct deposit to a bank account. Agins was also able to identify records related to Juwanda Harris, which also showed financial aid distributions directly deposited to an account in that name.

¶ 20 Agins also testified to phone records associated with the number 312-361-7515. The phone numbers for University of Phoenix use area code 602 and exchange number 713. The phone records associated with 312-361-7515 show multiple calls made to and from University of Phoenix phone numbers.

¶ 21 Detective Kent Munsterman of the College of Du Page police then testified for the state. Munsterman began investigating financial aid discrepancies related to David Steinbring in October 2012. He received a report from the Joliet Police Department regarding alleged identity theft of David Steinbring. Munsterman noticed that several College of Du Page students, including Steinbring, used the address of 543 Peregrine Parkway in Bartlett. He also noted that

the post office had returned various school mailings to that address in the names of Frederick Hennings, Salvador Ruiz, David Steinbring, and Kyle Copeland. Each student using 543 Peregrine Parkway as an address had received student loans and enrolled in the same classes.

¶ 22 Munsterman testified that watch list co-defendant, Olympia Blue, was also a College of Du Page student. Olympia Blue's registered address with the school was 541 Peregrine Parkway in Bartlett. Munsterman said that trash collected from the 541 Peregrine Parkway address revealed letters addressed to Olympia Blue informing her of her withdrawal from the school due to lack of academic progress.

¶ 23 Detective Munsterman further testified that a debit card issued in the name of David Steinbring was mailed to 543 Peregrine Parkway in Bartlett. That debit card was used to make ATM withdrawals at a Fifth Third Bank in Matteson on October 20 and 21, 2012. The two withdrawals totaled $1,480. Surveillance videos from the ATM on October 20 showed who Munsterman believed to be Dasia Blue (based on video review and a driver's license photo). The ATM videos from October 21 showed two withdrawal made by who Munsterman believed to be defendant.

¶ 24 Munsterman told the court that students applying for financial aid must sign up for a prepayment plan through Nelnet using a bank account, debit card, or credit card. 543 Peregrine Parkway in Bartlett was used to enroll sixteen different students through Nelnet.

¶ 25 Munsterman testified that police searched the trash from the driveway of defendant's home at 26176 South Countyfair Drive in Monee in January 2013. Defendant shared this home with co-defendant Dasia Blue. The search of the trash revealed a letter to Dasia Blue from the College of Du Page containing a library card, various mailings addressed to Dasia and defendant, a Cricket replenishment card used to purchase broadband and internet access, and a Visa Ready

card in the name of Jonathan Blackmore. The Visa Ready card had been cut up. The card was used by the University of Phoenix to disburse financial aid.

¶ 26 Following the search of defendant and Dasia Blue's trash, a search warrant was issued on the house at 26176 South Countyfair Drive in Monee. The warrant was served on February 7, 2013. In the driveway of the residence were parked a Lexus GX470 and a Cadillac. The license plates from the vehicles matched the plates used by the persons who made ATM withdrawals from the account of David Steinbring; the Lexus GX470 on October 20, 2012, and the Cadillac on October 21, 2012.

¶ 27 Inside defendant's house, police found U.S. Bank debit cards and Visa Ready cards in the names of David Steinbring, Kyle Copeland, Jonathan Blackmore, Salvadore Ruiz, Joseph Becker, Cherikka Burks, Oliva Hagen, and Amy Hawkins. All of these names were registered as students as the College of Du Page, University of Phoenix, or both. A U.S. Bank card in the name of Beverly Williams was found in the house with the activation instructions provided by the College of Du Page still attached. Visa Ready card activation forms addressed to Joseph Becker and Kyle Copeland were also found in the house. The address associated with these activation forms wa 2751 West 7th Place Court in Gary, Indiana, the same address associated with co-defendant Jesse Wright. Also found at defendant's residence were a Vanilla Gift Card and Walmart MoneyCard which were also used to register sixteen College of Du Page students in Nelnet prepayment plans.

¶ 28 Munsterman testified that a notebook was discovered in defendant's home that contained a homework assignment purported to have been written by David Steinbring. That same notebook contained the name "Jeremy" and the number "602-713-8910". Jeremy Jahnke, an enrollment counselor at University of Phoenix, used of that number. Munsterman recalled that

defendant's master bedroom contained a Motorola TracPhone with the number 312-361-7515. That number was used to call the College of Du Page on November 7, 2012, in regard to David Steinbring's student account. The number was also used to call the College of Du Page regarding Beverly Williams' student account. Additionally, that number's records show that it was used between August 2012 and November 2012 for calls placed to and received from the College of Du Pages's registration, financial aid, and cashier's office. Addtionally, the number was used in sixty calls to and from University of Phoenix enrollment advisors working in the area of financial aid, including Jeremy Jahnke.

¶ 29 In the office of defendant's home, a box containing material related to auto recovery businesses was discovered. Included in that material was 1) a business license and Fifth Third Bank statement for D&M Recovery; 2) a 2008 independent contractor agreement between D&M Recovery and Salvador Ruiz; 3) a copy of Salvador Ruiz's driver's license; 4) a Fifth Third Bank statement showing 2008 payments to Joseph Becker; 4) names and social security numbers of Jonathan Blackmore, Joseph Becker, Michael Simon, and Walter Martineck (as well as a copy of Martineck's driver's license); 5) a Bank of America statement for DTM Recovery; 6) DTM Recovery independent contractor agreements with David Steinbring and Jonathan Blackmore; 7) David Steinbring's DTM Recovery repossession agent ID card; and 8) a Bank of America check card issued in the names of DTM Recovery and Dasia Blue.

¶ 30 In addition to the litany of evidence discovered in defendant's home office, police discovered a 2009 insurance proposal for another recovery company, Dynamic Recovery. Defendant was listed as the owner of Dynamic Recovery and a check from Dasia Blue's bank account made out to the insurance company in the amount of the down payment was discovered. A 2009 handwritten statement by defendant stating that he worked for different repossession

companies since as early as 2002 and was currenly employed as a repossession agent was also found with the insurance proposal. Along with the insurance proposal, a Chase business debit card in the names of Dynamic Recovery and Dasia Blue was found.

¶ 31 Defendant was arrested and read his *Miranda* rights by Munsterman. While being interviewed by Munsterman, defendant said that he would not be surprised if Dasia Blue was involved in fraud or identity theft. He admitted to Munsterman that he withdrew money from ATM machines with debit cards given to him by Dasia Blue. Defendant told Munsterman that Dasia said it was none of defendant's business where the cards came from.

¶ 32 The state then called Ryan Murphy, an computer forensics examiner for the United States Secret Service, to testify to the contents of two laptop computers and a desktop computer submitted to the Secret Service for analysis. Murphy testified that the first laptop examined, a Gateway laptop, showed that it had been used to access the email account for the address lorinbrown134@live.com. The analysis of that Gateway laptop also showed hundreds of visits to Department of Education websites having to do with financial aid. Specifically, 526 visits to web pages at studentloans.gov, 125 visits to web pages at fafsa.ed.gov, 38 visits to web pages at pin.ed.gov, and 82 visits to web pages at nslds.ed.gov (including pages titled "Grant Detail – David Steinbring" and "Loan Detail – DAVID E. STEINBRING"). Also, 124 visits to web pages at University of Phoenix's website (phoenix.edu) and 209 visits to webs pages at College of Du Page (cod.edu) were found. The analysis of the Gateway laptop revealed 85 visits to various pages at mail.yahoo.com. These included pages titled "johnathanblackmore – Yahoo! Mail," "harrisjuwanda – Yahoo! Mail," "salvadorruiz70 – Yahoo! Mail," bevwilli67 – Yahoo! Mail," "ashley_fisher83 – Yahoo! Mail," "jaquilinemoore – Yahoo! Mail," "martineckwalter – Yahoo! Mail," and "crystalwill1 – Yahoo! Mail."

¶ 33 Murphy also testified that analysis of the Gateway laptop computer revealed visits to web pages at gmail.com title "Your Federal Financial Aid Eligibility – ashleyfisher1030@gmail.com – Gmail." Also, a gmail.com webpage with "New voicemail from (602) 713-1140 at 11:40 AM – ashleyfisher0130@gmail.com – Gmail (the phone number was associated with University of Phoenix) was found. Additionally, the analysis of the Gateway laptop showed 3 visits to web pages at accelapay.com, 15 visits to web pages at consumercardaccess.com/accelapay, 4 visits to myreadycard.com, 58 visits to web pages at walmartmoneycard.com, and 39 visits to web pages at mycricket.com. AccelaPay is the of debit card used by U.S. Bank for financial aid disbursements were also found.

¶ 34 Murphy recalled that he searched the Gateway laptop for names and social security numbers of suspected fraudulent students provided by Detective Munsterman. The search returned positive hits for Salvador Ruiz, Candance Scott, Olivia Hagan, Kenneth Williams, Kentria Conner, Kenyatta Short, Juwanda Harris, Michelle Little, Beverly Williams, Dominique Cole, Cherrika Burks, Victor Gibson, Selena Issac, Amy Hawkins, Latonya Minter, Daniel Minter, Madonna Little, Monique Burns, Janice Conley, Walter Martineck, Mickel Somen, David Steinbring, Naqueshia Wallace, Debora Young, Crystal Williams, Kyle Copeland, and Lisa Johnson. Twenty different social security numbers also produced positive hits through a search of the Gateway laptop computer.

¶ 35 Murphy then testified to his analysis of the HP Pavilion desktop computer seized from defendant's home. The analysis revealed hits from the list provided by Detective Munsterman for Madonna Little, Crystal Williams, and Lisa Johnson. Also, University of Phoenix email addresses for Lisa Johnson and emails to and from the yahoo.com email address used to enroll Juwanda Harris into the College of Du Page and University of Phoenix regarding financial aid

disbursements. College of Du Page financial aid documents in the name of Michael Somen were also found as well as a tax return in the name of Cherrika Burks.

¶ 36 The analysis of the Toshiba laptop computer seized from defendant's home showed 66 visits to defendant's Facebook page. One of these visits, on February 24, 2012, at 7:49 p.m., was followed by a visit to the College of Du Page website at 8:18 p.m., and Yahoo mail at 8:19 p.m. Murphy testified that the Toshiba laptop computer contained homework assignments in the name of Beverly Williams, Kyle Copeland, Salvador Ruiz, and David Steinbring. Additionally discovered were 1) student financial aid documents completed in Walter Martineck's and Michael Somen's names; 2) a University of Phoenix student financial aid document completed in David Steinbring's name; 3) a FAFSA from in Ashley Fisher's name; 4) a graded midterm examination in Jonathan Blackmore's name; 5) correspondence between Univesity of Phoenix and Blackmore congratulating him on his eligibility to receive federal financial aid loans; and 6) a College of Du Page petition for failing grades in Naqueshia Wallace's name which provided a mailing address of 543 Peregrine Parkway in Bartlett.

¶ 37 The state's final witness was Jonathan Lorenzi, a forensic analyst with the United States Secret Service. Lorenzi testified regarding his analysis of an iPhone 4S and iPhone 3G recovered from defendant's home. The iPhone 4S had telephone number 708-516-1653. It contained a calendar titled "Lorin's calendar." The iPhone 4S contained phone number 312-361-7515 (the number used to call College of Du Page on November 7, 2012) as a "note," created on September 19, 2012. The iPhone 3G contained a notation identitfying "L.B." as the phone's owner. This phone was associated with the email address lorinbrown134@live.com. Three text messages were recovered by Lorenzi that were part of a single text message sent from the iPhone 3G to +14046683188. The party associated with that number was never identified. Lorenzi

testified, over defendant's objection to relevancy and foundation, that the message was split into three messages by the phone's wireless carrier and read as follows:

> "Oh! Since Dasia likes to run her mouth about everyone here's some of her business…she is fraud, that's why she can't get a job, all that furniture in your house is stolen and she's still doing fraud. Somebody was watching your house. That's why she got rid of the computer. There's some of here [sic] business. Have a good day! No response necessary. I won't give a reply if you do."

At the close of the state's evidence, the defendant moved for a directed verdict. Defendant argued that no evidence introduced by the state showed that he committed any of the acts charged in the indictment. Defendant also argued that the evidence failed to show that he was accountable for acts of his co-defendants under a theory of accountability. The trial court denied defendant's motion.

¶ 38 Defendant opted not to testify at trial. A stipulation was entered by defendant that Detective Munsterman, if recalled to testify, would say that no witness ever mentioned defendant's name in connection with the charged offenses during his investigation.

¶ 39 Defendant was found guilty by the trial court of all counts in the indictment. The trial court found that defendant was aware of, and an active participant in, the scheme to defraud. Thus, defendant was accountable for the actions of his three co-defendants.

¶ 40 Defendant filed a motion for a new trial which was denied by the trial court. He was sentenced to an aggregate sentence of nine years in IDOC for the eleven counts in the indictment. Defendant was also ordered to pay restitution of $319,600.25. Defendant timely appealed.

¶ 41 ANALYSIS

¶ 42 Defendant raises three contentions in the present appeal. First, defendant contends that the state failed to prove him guilty beyond a reasonable doubt of the charged offenses under a theory of accountability. Second, defendant contends that the trial court erred in admitting two pieces of evidence: 1) a telephone call with Jane Yasak of College of Du Page who identified the caller as an African-American man in his twenties; and 2) a text message allegedly sent by defendant indicating co-defendant, Dasia Blue, was involved in fraud. Third, defendant contends that the trial court erred by ordering defendant to pay restitution of $319,600.25 for losses suffered by College of Du Page and University of Phoenix. We will first address defendant's arguments on the trial court's admission of both the Yasak testimony and text message.

¶ 43 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion. *People v. Caffey*, 205 Ill. 2d. 52, 89 (2001). 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. *Id.*

¶ 44 Defendant argues that the trial court abused its discretion in admitting testimony from Jane Yasak about the telephone call made from, and to, the College of Du Page on November 7, 2012, by 312-361-7515. The crux of defendant's argument is that the state was unable to lay the required foundation for the call. Defendant claims that Yasak had no prior conversations with defendant before November 7, 2012, and could not identify his voice based on personal knowledge. Yasak was only able to identify the caller as an African-American male in his mid-twenties, a description too vague and broad to establish the proper foundation for admission of Yasak's testimony.

¶ 45 Telephone conversations that are relevant to the issues at trial are competent if a proper foundation is laid. *People v. Caffey*, 205 Ill. 2d. 52, 94 (2001). Testimony as to a telephone conversation between a witness and another person is inadmissible in the absence of a claim by the witness that he or she knows the other person or can identify the person's voice or other corroborative circumstances from which the caller can be identified as the person who talked to the witness. *Id*.

¶ 46 Here, there was voluminous corroborative circumstantial evidence to establish a proper foundation that defendant was the caller posing as David Steinbring when Yasak spoke with him on November 7, 2012. The call in question came from a telephone discovered in defendant's home concerning the fraudulent disbursement of funds to David Steinbring's account. Steinbring's debit card associated with that account was found in a dresser next to the bed in defendant's home bedroom. Defendant admitted to using a debit card issued in the name of David Steinbring to take cash from an ATM on at least two occasions. Indeed, video surveillance footage from the ATM corroborates that admission. And Yasak's testimony that the caller sounded like an African-American man in his mid-twenties, was corroborated by the fact that defendant is an African-American man, albeit in his early thirties.

¶ 47 While it is true that one of the co-defendants in this scheme (Jesse Wright) is also an African-American man, we do not feel that Yasak's testimony about the age and ethnicity of the caller, as attributed to defendant, to be an abuse of discretion. Here, the classification made by Yasak has the potential to point to another caller, but that would affect only the weight of the evidence, not the admissibility. *People v. Goodman*, 347 Ill. App. 3d 278, 289 (2004). Therefore we do not agree with defendant that the trial court abused its discretion in admitting

Yasak's testimony regarding phone conversations with a caller claiming to be David Steinbring. The circumstantial evidence in this case establishes a proper foundation for this testimony.

¶ 48 We now turn to defendant's argument that the trial court abused its discretion in admitting a text message recovered from defendant's cell phone referencing co-defendant, Dasia Blue, as involved in fraud. Defendant argues that the text message was not properly authenticated as required to lay a satisfactory foundation. Defendant's argument suggests that only the first of three text messages came from his phone while the other two texts may have come from an unknown sender at +14046683188. Additionally, defendant argues that the text message was irrelevant as it preceded the acts charged in the indictment, temporally.

¶ 49 For the purpose of establishing a proper foundation for admissibility, text messages are treated like any other form of documentary evidence. See *People v. Chromik*, 408 Ill. App. 3d 1028, 1046–47 (2011). A proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated. *Id.* at 1046; see also Michael H. Graham, Graham's Handbook of Illinois Evidence § 901.0, at 1034–37 (10th ed. 2010). To authenticate a document, the proponent must present evidence to demonstrate that the document is what the proponent claims it to be. Ill. R. Evid. 901(a) (eff. Jan. 1, 2011); *Chromik*, 408 Ill. App. 3d at 1046. The proponent need only prove a rational basis upon which the fact finder may conclude that the document did in fact belong to or was authored by the party alleged. See *People v. Downin*, 357 Ill. App. 3d 193, 203, 293 (2005). The trial court, serving a limited screening function, must then determine whether the evidence of authentication, viewed in the light most favorable to the proponent, is sufficient for a reasonable trier of fact to conclude that authentication of the particular item of evidence is more probably true than not. 1 Kenneth S. Broun, McCormick on Evidence § 53 (7th ed. 2013); Graham, *supra* § 104.2, at 64–65; see also

Ill. R. Evid. 104(b) (eff. Jan. 1, 2011). If so, the trial court should allow the evidence to be admitted. *Id.* The trial court's finding of authentication in that regard is "merely a finding that there is sufficient evidence to justify presentation of the offered evidence to the trier of fact and does not preclude the opponent from contesting the genuineness of the writing after the basic authentication requirements are satisfied." *Downin,* 357 Ill. App. 3d at 202–03, 293. If the trial court, after serving its screening function, allows the evidence to be admitted, the issue of authorship of the document is then ultimately up to the trier of fact to determine. *Id.* at 203; McCormick, *supra* § 53; Graham, *supra* § 104.2, at 64–65.

¶ 50 Documentary evidence, such as a text message, may be authenticated by either direct or circumstantial evidence. *Downin,* 357 Ill.App.3d at 203, 293; see also Ill. R. Evid. 901(b) (eff. Jan. 1, 2011). Circumstantial evidence of authentication includes such factors as appearance, contents, substance, and distinctive characteristics, which are to be taken into consideration with the surrounding circumstances. See *Downin,* 357 Ill. App. 3d at 203, 293; Graham, *supra* § 901.4, at 1051–52. Documentary evidence, therefore, may be authenticated by its contents if it is shown to contain information that would only be known by the alleged author of the document or, at the very least, by a small group of people including the alleged author. See *Id.* A trial court's decision to admit documentary evidence will not be reversed absent an abuse of discretion. *Id*. at 202.

¶ 51 The text message in question here was sent from defendant's iPhone 3G on August 10, 2011. The iPhone 3G contained a notation identitfying "L.B." as the phone's owner. This phone was associated with the email address lorinbrown134@live.com. The text message was split by defendant's wireless provider into three separate text messages received by the intended recipient at 11:11:15 a.m., 11:11:16 a.m., and 11:11:17 a.m., respectively. Secret Service Agent Lorenzi

testified that while possible, it is nearly implausible that the three text messages were sent in any manner but from defendant's iPhone3G. For defendant's theory that the second two text messages came from the unknown sender to be true, that party would have had to read defendant's first text and then sent two of his or her own text messages in the space of just over one second. Thus, we find defendant's argument that the trial court erred in admitting the text message over his foundation objection to be without merit.

¶ 52 Defendant's argument that the text message should have been excluded as irrelevant is also meritless here. Evidence is relevant if it has the tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence. *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001); see also Ill. R. Evid. 401 (eff. Jan. 1, 2011). In the present case, the state introduced the text message from defendant's iPhone 3G for the purpose of establishing defendant's knowledge of the then-ongoing fraudulent scheme of his co-defendants. Fraudulent applications submitted in the name of Juwanda Harris were submitted to the University of Phoenix on February 3, 2011. David Steinbring and Jonathan Blackmore provided information to DTM Recovery in 2008. That information was used to submit fraudulent applications to secure financial aid and was found inside defendant's home. Although the indictment charges that the acts occurred between January 1, 2012, and February 8, 2013, evidence of his knowledge of the ongoing fraudulent scheme in August 2011 is certainly not irrelevant. The text message sent by defendant revealed in part that "[Dasia] is fraud, that's why she can't get a job, all that furniture in your house is stolen and *she's still doing fraud*" (emphasis added). As the text messages provided wholly relevant evidence, the trial court did not abuse its discretion in admitting the message over defendant's relevancy objection.

¶ 53 We now turn to defendant's contention that the state failed to prove him guilty beyond a reasonable doubt of the charged offenses under a theory of accountability. Defendant argues that the evidence presented failed to prove his accountability for the fraudulent scheme.

¶ 54 In assessing whether the evidence against a defendant was sufficient to prove guilt beyond a reasonable doubt, a reviewing court must determine whether, after 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. Perez*, 189 Ill. 2d 254, 265-66 (2000) (quoting *People v. Taylor*, 186 Ill. 2d 439, 445 (1999)). A defendant's conviction should not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that a reasonable doubt exists about the defendant's guilt. *Id*.

¶ 55 The Illinois statute on accountability states, in relevant part, that a defendant is legally accountable for the actions of another when:

> "(c) either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2014).

¶ 56 The Illinois Supreme Court has long recognized that the underlying intent of this statute is to incorporate the principle of the common-design rule. *People v. Fernandez*, 2014 IL 115527 ¶ 13; *People v. Terry*, 99 Ill. 2d 508, 515 (1984). To prove that a defendant possessed the intent to promote or facilitate the crime, the state may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design. *In re W.C.*, 167 Ill. 2d 307, 337 (1995). Under the common-design rule, if "two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common

design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *Id.* "Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another." *Id.* at 338. Upon review of a question as to a defendant's accountability for an offense, we must determine whether, after 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. *Fernandez,* 2014 IL 115527 ¶ 13; *People v. Cooper,* 194 Ill. 2d 419, 424–25 (2000).

¶ 57 Much of the circumstantial evidence linking defendant to the fraudulent scheme has been discussed in the preceding analysis. We will reiterate that evidence, as well as a litany of additional evidence which renders the trial court's finding of defendant guilty under an accountability theory reasonable.

¶ 58 Just the volume of evidence found in defendant's home shows that a reasonable trier of fact could find him guilty of the charged offenses under an accountability theory. There is the iPhone 3G with a text acknowledging defendant's awareness of Dasia Blue's participation in ongoing fraud; the Motorola TracPhone with the number 312-361-7515 used to place a call to and receive a call from the College of Du Page on November 7, 2012, regarding David Steinbring's student account; financial aid disbursement cards (including a card issued to Steinbring in his bedside drawer) and activation instructions for financial aid disbursement cards in the names of many of the identity theft victims; three computers that had been used in the scheme to complete homework assignments in the names of the victims and visits to web pages

related to the scheme; and records of information provided to DTM Recovery by victims who had earlier sought employment as repossession agents.

¶ 59 Beyond the mountain of evidence discovered in the home defendant shared with one of his co-defendants was defendant's statement to Detective Munsterman that he believed the source of much of the information used in the scheme came from Dasia Blue's auto recovery companies. A reasonable trier of fact could conclude that defendant knew of an ongoing scheme to defraud the schools and the Department of Education was occurring in his home based merely on the evidence recited to this point. Therefore, we will not disturb the trial court's conviction of the defendant on the 11 count indictment.

¶ 60 Alternatively, defendant contends that he can only be accountable for the acts of his co-defendants regarding the identity thefts of the five witnesses who testified at trial that their identities were used without their knowledge or permission to obtain financial aid funds. We do not find this argument persuasive. A person commits a Class X identity theft when he knowingly "uses any personal identifying information *** of another person to fraudulently obtain credit, money, goods, services, or other property" worth more than $100,000. 720 ILCS 5/16-30(a)(1), (e)(1)(A)(v) (West 2012). There is no requirement that the use of personal identifying information be unauthorized, only that defendant used another person's identifying information to obtain credit, money, goods, services, or other property to which he was not entitled. See 720 ILCS 5/16-30(a)(1) (West 2012); *People v. Montoya*, 373 Ill. App. 3d 78, 82 (2007). Thus, the state need only establish that the co-defendants here used the identities of others totaling more than $100,000 for defendant to be found accountable. And, again, there is voluminous evidence that defendant had knowledge of this scheme based on what was discovered in his home. We find defendant's alternative argument to be without merit.

¶ 61 Finally, we come to defendant's final contention that the trial court erred by ordering defendant to pay restitution of $319,600.25. Defendant argues that the restitution amount did not account for money retained by the College of Du Page and University of Phoenix, and therefore did not constitute a loss to the schools. Additionally, defendant argues that the restitution order was improper because of its failure to specify a repayment plan.

¶ 62 Determining the appropriate amount of a restitution order is a matter within the discretion of the trial court. *People v. Fitzgerald*, 313 Ill. App. 3d 76, 81 (2000). This court will reverse a trial court's restitution order only when no reasonable person would take the view adopted by the trial court. *In re Shatavia S.*, 403 Ill. App. 3d 414, 418 (2010).

¶ 63 The statute governing restitution for criminal conduct with multiple accountable defendants states:

> "(c) In cases where more than one defendant is accountable for the same criminal conduct that results in out-of-pocket expenses, losses, damages, or injuries, each defendant shall be ordered to pay restitution in the amount of the total actual out-of-pocket expenses, losses, damages, or injuries to the victim proximately caused by the conduct of all of the defendants who are legally accountable for the offense." 730 ILCS 5/5-5-6(c) (West 2014).

¶ 64 In the present case, defendant's argument that the restitution amount did not account for money retained by the College of Du Page and University of Phoenix, and therefore did not constitute a loss to the schools is misguided. As was explained by Jennifer Prusko at trial, any time financial aid is wrongly awarded, the College of Du Page (and University of Phoenix) must reimburse the federal government. The schools suffered losses of not just the payments disbursed fraudulently, but also the tuition costs.

¶ 65 However, section 5-5-6(f) provides that the trial court shall fix a period of time within which payment is to be paid in full. 730 ILCS 5/5-5-6(f) (West 2014). Failure to set a payment schedule results in a "fatally incomplete" restitution order. *In re Estate of Yucis*, 382 Ill. App 3d 1062, 1067 (2008). Here, the trial court did not set a payment schedule, even after hearing evidence of defendant's ability to pay. Therefore, the order setting defendant's restitution to the College of Du Page and University of Phoenix in the amount of $319,600.25 must be vacated and remanded for a new hearing.

¶ 66 The judgment of the circuit court of Du Page County is affirmed in part and vacated and remanded in part.

¶ 67 Affirmed in part, vacated and remanded in part.