No. 125945

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, First District,
Plaintiff-Appellee,	)	No. 1-17-1728
	)	
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois,
	)	No. 15-CR-20441
	)	
CROSETTI BRAND,	)	The Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ROBERT J. SONNENFELT
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-3000
Eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

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NATURE OF THE CASE

Defendant appeals the appellate court's judgment affirming his convictions, following a bench trial, for home invasion and possession of a stolen or converted motor vehicle. R232-36.[1] Defendant raises no issue on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant forfeited his claim that the trial court abused its discretion in finding that the People properly authenticated Facebook messages received by the victim as communications sent by defendant; alternatively, whether this claim lacks merit.

2. Whether the People proved beyond a reasonable doubt that defendant possessed a stolen or converted motor vehicle.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On September 30, 2020, this Court allowed defendant's petition for leave to appeal.

STATEMENT OF FACTS

On November 3, 2015, defendant forcefully entered the apartment of his former girlfriend, Anita Shannon; attacked Shannon and threatened her 15-year-old son, M.B.; and fled in Shannon's Kia Sedona. R115-24.

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[1] C_," "R_," "E_," "Sup. C._," and "Def. Br. _" refer to the common law record, report of proceedings, exhibits, supplement to the common law record, and defendant's brief, respectively.

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Following defendant's arrest, the People charged him with two counts of home invasion, one count of aggravated domestic battery, and one count of possession of a stolen or converted motor vehicle. Sup. C.11-16.

The trial evidence showed that Shannon and defendant dated for approximately two years before Shannon ended their relationship on October 30, 2015. R106-07. On November 3, 2015, defendant approached Shannon at her place of employment hoping to speak with her, but Shannon told him that she no longer wanted to talk to him. R107-08.

At her apartment later that evening, Shannon heard a knock on the door while preparing dinner for her four children. R111-12. Defendant announced himself, and Shannon opened the door about six inches to tell him that she did not want to be with him. R112-14. Defendant responded that Shannon needed to come up "with a better answer than that," but Shannon closed the door. R112-14. When defendant knocked on the door again, Shannon opened it to tell him that if he did not stop, she would call the police. R114. Defendant then "barged" into the apartment, closed and locked the door, and pulled out a gun. R115-17. Defendant forced Shannon against the wall, put the gun to her head, and held his other hand around her throat so that she could not breathe. R117-18. Shannon sustained a scratch to her neck while defendant strangled her, and the People introduced a photograph of the scratch into evidence. R126-27.

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After hearing the door slam, M.B. emerged from his bedroom to find defendant strangling Shannon. R119, R178-81. M.B. asked defendant what he was doing and attempted to approach, but defendant pointed the gun toward him and told him to "get back." R119-20, R178, R180-82. Defendant then dragged Shannon into M.B.'s bedroom, banged her head against a dresser, and threw her to the floor before running into Shannon's bedroom. R121-22, R184. Shannon and M.B. testified that they heard defendant take Shannon's car keys out of her dresser, then saw him exit the bedroom and flee the apartment through the front door. R123, R132, R184-85.

After defendant left, Shannon got up and locked the door, then she and M.B. looked out the window and saw that Shannon's vehicle, a Kia Sedona, was no longer in the parking lot where she had left it. R124, R186. Shannon testified that defendant did not have permission to drive her car and explained that, after discovering that her car was missing, she called 911. R124-25, R144, R158-60, R186, R207-09.

Five days later, on November 8, 2015, Shannon received a message on Facebook Messenger from an account bearing the name "Masetti Meech." R128-31. Shannon testified that she knew that defendant sent the message. R128-29. Defendant raised three general objections during Shannon's testimony about the November 8 message, but the trial court overruled them, and Shannon explained that during their relationship, defendant texted her on Facebook Messenger and used the name "Masetti Meech" when he did so.

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R128-30. Shannon testified that the message contained the exact location of her vehicle, and she explained that when she went to the specified location, she found her vehicle and recovered it with a spare key. R130-31. Shannon testified that she erased the November 8 message because "[e]very time" her "mailbox get[s] full" she erases it. R174.

On November 21, 2015, Shannon received another Facebook message from "Masetti Meech." R134-35. The People introduced a photograph of the message into evidence, which read:

> This is just the beginning. Only if you know what's lined up for your people as well. 79, 37, 71st, 39, 42, workplace, 79 is today. I'm coming in from back way. See your brother and OG. Bullets don't have name on them. I will see you soon. I love the waiting game. I parked up and watch and wait. Your son not going see 16. I see him at school.

R136. Defendant objected to admission of this message on the grounds of relevance, foundation, and a violation of the best evidence rule. R134, R196. But he provided no explanation for his relevance and foundation objections, and argued only that the "best evidence in this case would have been the disk which had the message on it." R196. The trial court overruled the objections. R134, R198. Shannon testified that, in addition to defendant's prior use of the name "Masetti Meech" when he communicated with her, she believed defendant sent this message for the additional reasons that it referenced the streets on which her relatives lived and correctly alluded to M.B.'s age (15). R129, R135-37. Shannon explained that her mother lives on 79th Street; one sister lives on 37th Street; another sister lives on 71st Street; and her brother

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lives on 39th Street. R136-37. She also noted that "42 workplace" referred to the street of the main office of her former place of employment. R137.

Three days after Shannon received the November 21 message, she and her brother saw defendant walking in front of her brother's building on 39th Street. R137-39. Shannon called 911, and her brother flagged down a police officer who arrested defendant. R95-96, R140. Arresting officer Steven Austin testified that, while he could not remember who conducted the custodial search of defendant following his arrest, a search was conducted, just as it is "in all arrests," and he explained that defendant's personal property was placed in a property bag that "went in the lockup with him." R97-99. After defendant's arrest and search, Shannon went to the police station where a detective showed her a bag containing the property recovered from defendant, and she identified her keys. R91-92, R96, R98-99, R140-41.

Defendant presented no witnesses. R212. In an effort to impeach Shannon's testimony, Defendant presented a case incident report generated by an officer who responded to Shannon's home. R207. The parties stipulated that the report made no mention of M.B. or of a dresser; noted that defendant pulled out an object that appeared to be silver in color and that Shannon thought was a weapon; stated that defendant began hitting Shannon in the head; and noted that Shannon told the officer that she saw defendant get into her vehicle and drive away. R207-09. The trial court found defendant guilty on all counts. R232-36.

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Defendant's motion for new trial, alleging, *inter alia*, that the trial court "erred in admitting" Shannon's testimony about the November 8 message and the "screen shot" of the November 21 message, asserted no bases for the trial court's alleged errors. C103. At the hearing on the motion, defendant argued that Shannon's "story is so incredible . . . that the Facebook message alone, which we argue should not have been admitted but even if you consider it, that it does not rise to the level of proof beyond a reasonable doubt." R276. The trial court denied the motion, explaining that it "found…Shannon to be a credible witness who testified about what happened to her regarding [defendant]." R286-87. Thereafter, the court considered defendant's prior criminal history, which included four felony convictions from 2009: one for possession of a stolen motor vehicle and three for violations of an order of protection, R308; and nine misdemeanor convictions, including for domestic battery in 2013, criminal damage to property in 2007, aggravated assault in 2007, and violations of an order of protection in 2007. R308-09. The court sentenced defendant to concurrent terms of imprisonment: 16 years for home invasion (which merged with aggravated domestic battery) and 3 years for possession of a stolen or converted motor vehicle. R314, R318.

Defendant appealed, arguing that the trial court erroneously admitted the contents of the Facebook messages because the People had failed to properly authenticate that defendant had created them. A11 ¶ 28. He

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further argued that the evidence was insufficient to convict him of possession of a stolen motor vehicle because the People failed to establish that he took Shannon's vehicle with the intent to permanently deprive her of its use. A15 ¶ 39.

The appellate court unanimously rejected both arguments and affirmed the trial court's judgment. A13 ¶¶ 34, 38; A16-17 ¶ 41. The court determined that the trial court reasonably found that defendant created the messages because Shannon testified that defendant previously used the name "Masetti Meech" when he communicated with her on Facebook. A14 ¶ 34. The court further noted that the November 8 message contained the location of Shannon's vehicle, and defendant was uniquely positioned to know its location. *Id.* In turn, the court explained that defendant, as Shannon's former boyfriend of two years, was one of only a few persons who would know the totality of the information contained in the November 21 message, which referenced M.B.'s age, the street addresses of several of Shannon's relatives' homes, and the location of Shannon's former place of employment. *Id.*

In rejecting defendant's sufficiency claim, the appellate court noted that the People charged defendant with possession of the vehicle knowing it to be stolen *or converted*, and therefore, the People did not need to prove that defendant intended to permanently deprive Shannon of her vehicle. A16 ¶ 40. The court concluded that the People presented sufficient evidence to sustain defendant's conviction by establishing that he knowingly and

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wrongfully deprived Shannon of her vehicle for several days, thereby proving that he knew the vehicle was converted. A16-17 ¶ 41.

STANDARDS OF REVIEW

The admission of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *People v. Taylor*, 2011 IL 110067, ¶ 27; *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion occurs 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." *Caffey*, 205 Ill. 2d at 89.

This Court reviews questions of statutory interpretation de novo. *People v. Johnson*, 2019 IL 123318, ¶ 14.

And "[w]hen a court reviews a challenge to the sufficiency of the evidence, the question is '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.'" *People v. McLaurin*, 2020 IL 124563, ¶ 22 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

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ARGUMENT

I. Defendant's Claim that the People Failed to Authenticate the Facebook Messages Is Forfeited and Meritless.

This Court should decline to review defendant's claim that the People failed to authenticate the November 8 and November 21 Facebook messages because defendant forfeited it. Forfeiture aside, the claim is meritless, for the trial court did not abuse its discretion by admitting the Facebook messages at trial upon finding that the People had properly authenticated them.

A. Defendant Forfeited His Claim that the Trial Court Erroneously Admitted the Facebook Messages.

Defendant failed to preserve his claim that the People insufficiently authenticated the Facebook messages because he neither raised the issue by objecting at trial nor included it in his post-trial motion.

A "defendant must both specifically object at trial and raise the specific issue again in a posttrial motion to preserve any alleged error for review." *People v. Woods*, 214 Ill. 2d 455, 470 (2005); *see also* Ill. R. Evid. 103(a)(1) (an objection must "stat[e] the specific ground of objection"). Where a defendant fails to satisfy either requirement, he forfeits his challenge on appeal. *Woods*, 214 Ill. 2d at 470. "This rule is particularly appropriate when a defendant argues that the State failed to lay the proper technical foundation for the admission of evidence, and a defendant's lack of a timely and specific

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objection deprives the State of the opportunity to correct any deficiency in the foundational proof at the trial level." *Id.*

Here, defendant raised only general objections during Shannon's testimony about the November 8 message, and at no point argued that the People failed to authenticate it. R128-30. Defendant similarly failed to raise the issue in his motion for new trial, where he claimed only that the "Court erred in admitting" testimony about the message and did not explain why he believed the testimony was error. C103. Nor did defendant explain the grounds for his claim at the hearing on his motion for a new trial. In one sentence spanning the 17-page transcript of the hearing on defendant's motion for new trial, R270-87, defendant asserted only as a passing comment in a larger argument challenging the sufficiency of the evidence and Shannon's credibility that the messages "should not have been admitted." R276. Thus, defendant failed to raise his present claim that the People insufficiently authenticated the November 8 message in either a specific objection at trial or in his motion for a new trial, and it is forfeited. *See People v. Thomas*, 178 Ill. 2d 215, 234 (1997) (forfeiture occurred where attorney raised only general objection to admission of statements, did not include argument in post-trial motion, and did not argue the point at hearing on motion).

Defendant similarly failed to preserve any claim that the People insufficiently authenticated the November 21 message. At trial, defendant

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objected to the admission of the screen shot of the November 21 message on grounds of relevance, foundation, and a violation of the best evidence rule, but he expounded only upon his best evidence objection and argued no basis for his relevance and foundation objections. R134, R196, R276. "It is well settled that a specific objection to the admission of evidence waives all grounds not specified." *People v. Casillas*, 195 Ill. 2d 461, 491 (2000). Defendant also failed to sufficiently raise the claim in his motion for new trial, where he noted only that the "Court erred in admitting the 'screen shot.'" C103. Because defendant failed to raise his present claim with respect to the November 21 message in a specific objection or in his motion for new trial, he has forfeited the issue. *Thomas*, 178 Ill. 2d at 234.

The fact that defendant raised a general foundation objection to the admission of the screen shot regarding the November 21 message does not change this result. Because defendant did not specify the particular ground upon which he based his general foundation objection, he could have been raising either of two distinct foundational claims: a lack of foundation to authenticate the November 21 message or a lack of foundation to warrant its admission under the best evidence rule. *See People v. Baptist*, 76 Ill. 2d 19, 26-27 (1979) (noting introduction of secondary evidence like parol evidence or copies of originals requires "a sufficient foundation" from proponent that it is not within his power to produce the original). Because defendant's objection could have been understood as raising either of these two separate

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foundational claims, defendant preserved nothing by failing to specify the particular ground upon which he based that objection. *See People v. Furby*, 138 Ill. 2d 434, 449-50 (1990) (defendant forfeited claim contesting admission of testimony where foundation objection at trial failed to specify which of two foundational vulnerabilities defendant was attacking and failed to raise the objection in his post-trial motion).

In short, at no point did defendant raise any claim at trial that the People failed to authenticate the Facebook messages. He made no trial objections raising the issue, and he failed to raise any such issue in his motion for new trial. Additionally, defendant made no argument resembling the one he now makes before this Court, which seeks to impose a new authentication standard for social media messages. Def. Br. 20, 24. Accordingly, defendant has forfeited his authentication claim.

Defendant cannot excuse his forfeiture as plain error. Under the plain error doctrine, a reviewing court may address a forfeited claim when:

> (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.

People v. Piatkowski, 225 Ill. 2d 551, 565 (2007). Defendant carries the burden of persuasion under both prongs of the plain-error test. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Here, any plain error argument would fail at

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the threshold because defendant can show no error, let alone plain error, as the trial court properly authenticated the Facebook messages. *See infra* pp. 22-30. The lack of any error is particularly evident here, where defendant faults the trial court for failing to apply a wholly new authentication standard for social media messages that he never brought to the trial court's attention and now asks this Court to adopt. Def. Br. 20, 24. Because defendant can show no error, let alone plain error, this Court should decline to review defendant's forfeited authentication claim.

B. The Trial Court Did Not Abuse Its Discretion in Finding that the People Sufficiently Authenticated the Facebook Messages.

In any event, even if defendant had preserved his claim, the trial court properly found that the People authenticated the Facebook messages as communications from defendant.

The Illinois Rules of Evidence (Rules) provide that authentication, i.e., a finding that a piece of evidence is what its proponent claims it to be, is a "condition precedent" to the admissibility of evidence. Ill. R. Evid. 901(a); *People v. Meyers*, 2016 IL App (1st) 142323, ¶ 24. While Rule 901 includes examples of methods that satisfy the authentication requirement, they are for "illustration only," and do not limit the means by which a proponent may authenticate evidence. Ill. R. Evid. 901(b); *see In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 76 (authentication is satisfied "in any number of ways"). Additionally, the burden of proof for authentication is slight, as the

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Rules require only "evidence sufficient to support a finding" that a matter is what its proponent claims. Ill. R. Evid. 901(a); *People v. Chromik*, 308 Ill. App. 3d 1028, 1046 (3d Dist. 2011) (authentication is "merely a finding" of "sufficient evidence to justify presentation" to trier of fact). Accordingly, the authentication requirement "tend[s] to be liberally construed favoring admission" of evidence. *People v. Fillyaw*, 2018 IL App (2d) 150709, ¶ 122.

To satisfy the authentication requirement, a proponent "need only prove a rational basis upon which the fact finder may conclude that the exhibit did in fact belong to the defendant." *People v. Downin*, 357 Ill. App. 3d 193, 203 (3d Dist. 2005); *see also Flynn v. Golden Grain Co.*, 269 Ill. App. 3d 871, 886 (1st Dist. 1995) (evidence must only be sufficient for reasonable juror to find it is "more probably true than not true" that matter is what proponent claims). When considering whether a proponent meets that burden, a trial court views the evidence in support of authentication "in its totality." *People v. Diomedes*, 2014 IL App (2d) 121080, ¶ 18. Moreover, "'the court must view all the evidence introduced as to authentication or identification, including issues of credibility, most favorable to the proponent.'" *LaRocque*, 2018 IL App (2d) 160973, ¶ 76 (quoting Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 901.1, at 803 (8th ed. 2004)).

Despite these well-established principles, defendant argues that a far more rigorous authentication standard should apply to social media messages

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due to their alleged "unique" susceptibility to fabrication and fraud, Def. Br. 12, proposing a new rule that a proponent must wholly disprove any theory of fabrication or tampering and affirmatively prove authorship, *see* Def. Br. 20 (arguing that proponent of social media communication must prove that purported author controlled account from which message was sent and that purported author actually sent message). Such a standard contradicts Rule 901 and is unsupported by Illinois case law.

1. Facebook messages, like any other documentary evidence, are subject to the flexible authentication requirements established by the Illinois Rules of Evidence.

Defendant correctly concedes that social media messages are "subject to the same authentication requirements as any other document," Def. Br. 17. *See People v. Curry*, 2020 IL App (2d) 180148, ¶ 55-56 (treating Facebook messages as documentary evidence for admissibility purposes); *People v. Kent*, 2017 IL App (2d) 140917, ¶ 86 (Facebook posts qualify as document for admissibility purposes despite digital nature). Yet he nevertheless argues that there are reliability concerns associated with social media messages that mandate a more stringent authentication analysis because a third party could send a message under a purported author's name after creating a fraudulent account or after obtaining unauthorized access to the individual's actual account. Def. Br. 12, 18-20.

But these are not novel reliability concerns, and Illinois's current authentication framework already accounts for them. Illinois courts have

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long recognized that "'fraud, mistake, [and] undue jury credulity are omnipresent possibilities'" attributable to writings across various media, including electronic sources. *People v. Munoz*, 70 Ill. App. 3d 76, 85-86 (1st Dist. 1979) (quoting Strong, Liberalizing the Authentication of Private Writings, 52 Cornell L.Q. 284, 287 (1967)); *see also People v. Atchley*, 97 Ill. App. 3d 85, 88 (3d Dist. 1981) (recognizing that "possibility [of evidence tampering] always exists"). For example, in *People v. Kent*, the court acknowledged that unverified information contained in an individual's Facebook profile poses the very same reliability concerns that exist where the same information is contained on a flyer found on a street. 2017 IL App (2d) 140917, ¶ 99 (citing *United States v. Vayner*, 769 F.3d 125, 132 (2d Cir. 2014)). Nevertheless, courts have had no difficulty in applying Rule 901 to find writings, including electronic writings, properly authenticated where the evidence supports that the writing is what its proponent claims, regardless of its source and even in the face of technological advancements. *See Munoz*, 70 Ill. App. 3d at 88 (letter authenticated despite lack of direct evidence of identity of author); *Downin,* 257 Ill. App. 3d at 202-03 (evidence authenticated despite there being "no way to tell that the e-mail copy was not falsified"); *Chromik*, 408 Ill. App. 3d at 1047-48 (authenticating third-party transcription of defendant's text messages despite inaccuracies); *Diomedes*, 2014 IL App (2d) 121080, ¶ 17-19 (e-mail authenticated despite absence of evidence that defendant "authored and sent" it); *Curry*, 2020 IL App (2d)

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180148, ¶ 57 (authenticating Facebook messages despite lack of direct evidence that defendant authored them). Accordingly, there is no precedent for abandoning the established authentication principles under Rule 901 and applying a stricter standard to social networking messages. Instead, a "proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated," and authentication requires a proponent to establish "only a rational basis upon which the fact finder can conclude" that a document "belong[s] to or was authored by the party alleged." *People v. Ziemba*, 2018 IL App (2d) 170048, ¶ 51.

Unsurprisingly, then, defendant fails to identify a single Illinois decision holding that a proponent must conclusively eliminate all potential for fraud and prove an electronic writing's author before a court will deem it authenticated. Illinois case law consistently affirms that when authenticating documentary evidence, a trial court engages only in a "screening function" when determining whether to admit a writing. *Id.* The "ultimate issue of authorship is for the trier of fact to determine." *Downin*, 357 Ill. App. 3d 193 at 203. Thus, a finding of authentication "does not preclude the opponent from contesting the genuineness of the writing after the basic authentication requirements are satisfied." *Id.* at 202-03. Accordingly, an opponent is "free to . . . challenge the genuineness of documents" after a proponent authenticates them; but to meet the authentication requirements, the proponent need only present enough

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evidence from which a "fact finder may conclude" that a document was written by a defendant. *Id.* at 202-04.

None of the cases defendant relies upon supports a contrary conclusion. First, contrary to defendant's assertion, neither *Curry*, 2020 IL App (2d) 180148, nor *People v. Harper*, 2017 IL App (4th) 150045, required the People to present evidence "sufficient to show that the defendant[s] actually authored" the evidence. Def. Br. 21. Instead, the appellate court applied established authentication principles to evaluate whether the People presented adequate supporting evidence to deem the offered writings sufficiently reliable for presentation, and found that the People did so in *Curry*, but did not in *Harper*. *Curry*, 2020 IL App (2d) 180148, ¶ 57; *Harper*, 2017 IL App (4th) 150045, ¶¶ 62, 65.

In *Curry*, the People obtained Facebook messages that the defendant sent from his account to the victim, in which he told her not to sign a complaint and to recant her police report after he sexually assaulted her. 2020 IL App (2d) 180148, ¶¶ 10, 11, 57. The People also obtained records directly from Facebook that affirmed the details of the account from which the messages were sent, including the subscriber's name, address, phone number, and e-mail address. *Id.* at ¶¶ 21, 57. The People attempted to admit all of the Facebook evidence as self-authenticating business records and submitted a certificate of authenticity from a qualified individual at Facebook. *Id.* at ¶¶ 7, 23. While the trial court admitted the records

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confirming the account's details, it determined that the contents of the messages were not self-authenticating as business records. *Id.* at ¶ 49. Accordingly, the People presented the victim's testimony that the defendant was a family friend, that the messages contained the defendant's nickname for her, that the author had personal knowledge of the assault, and that the messages were delivered only about 20 minutes after she called the police. *Id*. at ¶¶ 10, 57. From this testimony, the trial court determined that the People sufficiently authenticated the messages as authored by the defendant and admitted them. *Id.* at ¶ 23. The appellate court affirmed, finding that the victim's testimony as to the contents of the messages provided sufficient circumstantial evidence to "suggest" that defendant authored them and warrant authentication. *Id.* at ¶¶ 49, 57-59.

The defendant in *Harper* fatally shot his victim during an attempted marijuana sale. 2017 IL App (4th) 150045, ¶¶ 6-8. At trial, the People introduced a cell phone call log through a Verizon representative, who testified that the log showed several phone calls to and from a phone number registered to the defendant around the time of the shooting. *Id.* at ¶ 20. The log also contained the contents of several text messages sent to the defendant from an unknown source stating, "I heard a white boy got killed in the hood and you and some of your guys did it." *Id.* at ¶ 23. The trial court admitted the text messages over the defendant's hearsay objection. *Id.* at ¶¶ 21-22. The appellate court reversed, finding, in part, that the People did not present

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a sufficient foundation to admit the contents of the messages. *Id.* at ¶ 65. The court first noted that the Verizon representative's testimony linking the defendant to one of the phone numbers in the call log sufficiently authenticated "[t]he fact calls and texts were made and received by defendant." *Id.* at ¶¶ 57-58. However, the record lacked any information as to the source of the text messages the defendant received, the identity of the sender, or how the sender knew of the defendant's involvement in the shooting. *Id.* at ¶¶ 62, 65. Absent such evidence, the court held that the People failed to establish the reliability of the "blatant hearsay" in the messages. *Id.* at ¶ 62.

Thus, in *Curry* and *Harper* the appellate court applied established authentication principles, and not the more stringent standard defendant urges, to evaluate whether electronic writings were admissible. Defendant's citation to cases from other jurisdictions is misplaced for similar reasons. Although these cases explicitly highlighted the potential security, privacy, and identification issues attributable to social networking accounts, none required a proponent of social media messages to definitively prove a purported author's control of the associated account or actual authorship. *See Smith v. State*, 136 So.3d 424, 434-45 (Miss. 2014), ¶¶ 24-25 (while third parties may create fictitious accounts under purported authors' names, prosecution need only make *prima facie* showing that defendant sent Facebook messages from his account to warrant admission); *Griffin v. State*,

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19 A.3d 415, 354 (Md. 2011) (citing *United States v. Drew*, 259 F.R.D. 449, 452 (D.C.D. Cal. 2009)) (despite potential for fabrication or tampering on social networking site, authentication nevertheless satisfied where evidence is "sufficient to support" finding that matter is what proponent claims); *Sublet v. State*, 113 A.3d 695, 711, 716-18, 722 (Md. 2015) (noting similar "challenge[s]" in authenticating social networking posts, but leaving ultimate issue of reliability to factfinder); *Commonwealth v. Mangel*, 181 A.3d 1154, 1162 (Pa. Super. Ct. 2018) (despite authorship concerns, social media messages "can be properly authenticated within existing [authentication] framework"); *Dering v. State*, 465 S.W.3d 668, 671 (Tex. App. 2015) (trial court itself need not be persuaded that social media evidence is authentic); *Campbell v. State*, 382 S.W.3d 545, 549-50, 553 (Tex. App. 2012) (same); *Tienda v. State*, 358 S.W.3d 633, 641, 646 (Tex. Crim. App. 2012) (while computers and passwords can be compromised, prosecution need only make *prima facie* showing that defendant created MySpace pages); *United States v. Browne*, 834 F.3d 403, 410 (3d Cir. 2016) (though social media evidence presents falsification issues, regular "authentication rules do not lose their logical and legal force").

Thus, in stark contrast to defendant's argument, to authenticate documentary evidence in the form of social media messages under Rule 901, a proponent need only, like any other documentary evidence, present a "rational basis upon which the fact finder may conclude" that the messages

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belonged to the defendant. *Downin*, 357 Ill. App. 3d at 202-03; *see also Kent*, 2017 IL App (2d) 140917, ¶ 86 (applying standard for authentication of documentary evidence to Facebook posts).

2. The People properly authenticated the Facebook messages under Illinois Rule of Evidence 901.

Applying that standard here, the record establishes that the People introduced ample evidence to authenticate the November 8 and November 21 Facebook messages. Documentary evidence may be authenticated by both direct and circumstantial evidence. *People v. Towns*, 157 Ill. 2d 90, 104 (1993) (citing *Munoz*, 70 Ill. App. 3d at 84-85). Evidence is "routinely" authenticated "'through the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that a particular item is, in fact, what its proponent claims it to be.'" *Piser v. State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 349 (1st Dist. 2010) (quoting *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 415 (1st Dist. 2005)); Ill. R. Evid. 901(b)(1). In turn, circumstantial evidence of a document's authenticity may include factors such as the writing's appearance, contents, substance, and distinctive characteristics considered with the surrounding circumstances. *Towns*, 157 Ill. 2d at 104; *Ziemba*, 2018 IL App (2d) 170048, ¶ 52; Ill. R. Evid. 901(b)(4). Thus, documentary evidence "may be authenticated by its contents if it is shown to contain information that would be known only by the alleged author of the document or, at the very least, by a small group of people including the alleged author." *Ziemba*, 2018 IL App (2d) 170048, ¶ 52.

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Here, as now explained, the trial court did not abuse its discretion in admitting evidence about the November 8 and November 21 Facebook messages because the People presented sufficient evidence for a rational trier of fact to conclude that defendant authored and sent them.

a. Shannon's testimony directly linked defendant to the "Masetti Meech" account.

The People offered Shannon's testimony, which drew upon her prior experience communicating with defendant and directly linked defendant to the "Masetti Meech" account; this testimony alone sufficiently authenticated the Facebook messages. Shannon testified that, over the course of their two-year relationship, defendant communicated with her via Facebook Messenger. R127-29. Shannon explained that defendant used the name "Masetti Meech" when he did so. *Id.* Shannon affirmed that the November 8 and November 21 messages bore the same name defendant used when he previously contacted her, and based upon that prior experience, she testified that she knew that defendant sent the messages. *Id.*

Shannon's testimony sufficed to authenticate the Facebook messages as communications from defendant, as prior cases confirm. For example, in *People v. Munoz*, the People sought to authenticate a letter that the defendant's accomplice received as a communication from the defendant. 70 Ill. App. 3d at 76, 83-84. The author of the letter asked the accomplice to "simply say[] that you were under police pressure when you made the statement against me and just simply change your story," and signed the

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writing "Compa." *Id.* To support the letter's authentication, the People presented, *inter alia*, the accomplice's testimony that the defendant used the nickname "Compa" and that she had received letters from the defendant signed "Compa" in the past. *Id.* at 84. The trial court found the letter sufficiently authenticated, and the appellate court affirmed. *Id.* at 83-84, 88. Because the accomplice's prior experience communicating with the defendant under his nickname "Compa" "[p]rima facie connect[ed] the writing to defendant," the appellate court found the accomplice's testimony sufficient to admit the letter. *Id.* at 88-89.

Similarly, in *People v. Downin*, the People sought to authenticate two emails received by a victim of sexual abuse as communications sent by the defendant. 357 Ill. App. 3d at 195-96. The emails contained admissions of guilt and came from the email address "nickd@galesburg.net." *Id.* at 202. To support authentication, the People presented, *inter alia*, the victim's testimony that she communicated with the defendant in the past via email, and that when she did so, the defendant used the email address "nickd@galesburg.net." *Id.* at 194, 196, 202. The trial court found the emails properly authenticated, and the appellate court affirmed. *Id.* at 202-04. The appellate court found that the victim's testimony that she and the defendant communicated via email in the past, coupled with the fact that the emails came from "the same address [the defendant] had previously used to

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communicate with her," established a rational basis from which the fact finder could conclude that the emails came from the defendant. *Id.* at 203-04.

Here, as in both *Munoz* and *Downin*, Shannon's testimony that she previously communicated with defendant via Facebook Messenger while defendant used the name "Masetti Meech" established a rational basis from which a fact finder could conclude that the November 8 and November 21 messages, also from "Masetti Meech," were communications from defendant.

b. The messages contained information that, under the circumstances, supports defendant's authorship.

Though Shannon's testimony sufficed to authenticate the messages, the People presented additional evidence that showed that the messages contained information evidencing "knowledge of a matter sufficiently obscure so as to be known to only a small group of individuals," including defendant. *Downin*, 357 Ill. App. 3d at 203. This was further evidence – if any were needed – upon which a rational trier of fact could conclude that defendant authored and sent the Facebook messages.

First, the November 8 message contained the location of Shannon's vehicle, which defendant was uniquely positioned to know. Shannon and M.B. both testified that just five days earlier, Shannon's vehicle went missing immediately after defendant took her keys during the home invasion and attack at her apartment. R123, R131-32, R184-86. Shannon testified that the November 8 message informed her that she would find her vehicle at a

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particular location, and she explained that she in fact found her vehicle at that location and retrieved it with a spare key. R130-31. The People also presented evidence that Shannon's original set of keys was recovered from defendant on the date of his arrest, following a custodial search. R91-92, R96, R98-99, R140-41. From this evidence, the trial court could conclude that a rational basis existed to find that defendant authored the November 8 message since it contained information about Shannon's vehicle that few others, if any, would have known.

Additionally, defendant and Shannon's two-year dating relationship placed defendant in an ideal and unique position to know the personal information about Shannon and her family contained in the November 21 message. The message threatened Shannon's "people" and contained accurate, if peculiar, references to the streets on which Shannon's relatives lived. R136-37. The message also referred to the street where the main office of Shannon's former place of employment is located. R137. Moreover, the message accurately alluded to M.B.'s age at the time (15), as the author threatened that he would not "see 16." R136.

In addition to these distinctive details, the context surrounding the sending of the November 21 message provides even further support for authentication. Shannon received the message, which contained threats against her and her family members, mere days after she ended her relationship with defendant and after he forced his way into her apartment

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and strangled her at gunpoint. R106-07, R111-12, R134-35. Additionally, the message threatened M.B., the only one of Shannon's four children at the apartment during the November 3 attack to confront defendant. R136, R178, R180-82. Finally, just three days after Shannon received the message, she and her brother saw defendant walking outside of her brother's building on 39th Street, which was one of the streets referenced in the message containing threats against Shannon's "people." R136-39.

From the entirety of this evidence, the trial court could conclude that a rational basis existed to find that defendant authored and sent the November 8 and November 21 messages. *See Curry*, 2020 IL App (2d) 180148, ¶¶ 56-57 (Facebook messages from defendant, a family friend of victim, sufficiently authenticated where messages contained defendant's nickname for victim and references to recent sexual assault, information that few beyond defendant and victim would know); *Diomedes*, 2014 IL App (2d) 121080, ¶ 19 (circumstantial evidence that information in email matched information on written folder confiscated from defendant was sufficient for trial court to reasonably find defendant wrote email).

Defendant's reliance upon *People v. Kent*, 2017 IL App (2d) 140917, Def. Br. 26-28, is misplaced, for it is readily distinguishable. In *Kent*, a jury convicted the defendant of the murder of a victim found shot in a driveway. 2017 IL App (2d) 140917, ¶¶ 3-4. At trial, the People presented a screenshot taken by a detective of a Facebook post under the name "Lorenzo Luckii

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Santos" with an accompanying photo that the police and the People claimed resembled the defendant. *Id.* at ¶ 6. The post read, "its my way or the highway . . . leave em dead n his driveway," which the People argued amounted to an admission by the defendant to the crime. *Id.* at ¶¶ 6, 121. However, the People presented no testimony linking the defendant to the account, apart from evidence that the defendant's nickname was "Lucky." *Id.* at ¶ 24. The defendant appealed his conviction, claiming that the People had failed to authenticate the Facebook post, and the appellate court agreed. *Id.* at ¶ 122. The court first highlighted that no direct or circumstantial evidence tied the "Lorenzo Luckii Santos" profile to the defendant since the People presented no evidence that defendant ever used Facebook or that "Santos" was the defendant's mother's last name. *Id.* at ¶ 111. Further, although the post may have referenced the crime scene, because the defendant presented testimony that the crime drew a large crowd, the People failed to show that this was information known solely to the defendant or a small group of people. *Id.* at ¶¶ 112-13. Accordingly, the court concluded that absent any direct or circumstantial evidence linking the defendant to the post, the connection was too tenuous for a rational trier of fact to find that defendant authored it, and therefore, the People failed to authenticate it. *Id.* at ¶ 119.

Kent is readily distinguishable. Unlike *Kent*, where no evidence tied the defendant to the "Lorenzo Luckii Santos" account, here, Shannon linked defendant to the "Masetti Meech" account via her testimony that defendant

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previously communicated with her through Facebook and used the name "Masetti Meech" when he did so. R127-29. Additionally, whereas the *Kent* defendant presented testimony that a crowd gathered at the crime scene, and therefore that the universe of people who could have known about the details of the statement was too broad to connect the defendant to the post, here, the record lacks any evidence that anyone beyond Shannon, M.B., defendant, and the police knew about the missing vehicle or defendant's violent entry into Shannon's home. Accordingly, the record does not support defendant's speculative claim that it is "likely that a substantial number of people . . . learned" about defendant's attack and his taking of Shannon's vehicle. Def. Br. 27-28. Moreover, even assuming, *arguendo*, that others did learn about these events during the time between their occurrence and when Shannon received the messages, it is "not . . . necessary that in proving [p]rima facie authorship, the authorship of all others beyond the purported writer must be disproved." *Munoz*, 70 Ill. App. 3d at 88. Instead, it is enough that a proponent establish that a writing contains information that would be known "by a small group of people including the alleged author." *Ziemba*, 2018 IL App (2d) 170048, ¶ 52. Here, the small group that could have known the information in the Facebook messages irrefutably includes defendant.[2]

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[2] Additionally, defendant argues that the six factors identified in *Kent* should direct how and when social media messages are authenticated, *i.e.*, whether: (1) the purported sender admits authorship; (2) the purported sender is seen composing the message; (3) internet or phone records showing that the message originated from the purported sender's computer or phone; (4) the message contains information only the purported sender could know; (5) the

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The People thus presented sufficient evidence for the trial court to conclude that a rational basis existed to find that defendant authored the Facebook messages. Shannon's testimony firmly linked defendant to the "Masetti Meech" account, the messages contained information that few beyond defendant and Shannon would know, and the circumstances surrounding the messages tied them to defendant. Accordingly, the People properly authenticated the messages, and the trial court did not abuse its discretion in admitting them.

C. Admission of the Facebook Messages Was Harmless.

Finally, if this Court finds defendant's authentication claim preserved, and assuming, without granting, that the admission of the Facebook messages constituted error, reversal is unwarranted because any error was harmless. "When the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result, the conviction may be affirmed." *People v. Arman*, 131 Ill. 2d 115, 124 (1989).

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purported sender responds to a message in a way that circumstantially indicates he, in fact, authored the message; and (6) other circumstances peculiar to the case that would establish *prima facie* authenticity. 2017 IL App (2d) 140917, ¶ 118. But *Kent* itself belies adoption of such a rigid analytical framework, as the court specifically noted that the factors are "examples" and "intended only as a guide." *Id.* at ¶ 119. Similarly, as previously noted, Rule 901 expressly leaves open the means by which a proponent may authenticate evidence. Ill. R. Evid. 901(b).

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The People presented overwhelming evidence of defendant's guilt of home invasion and possession of a stolen or converted motor vehicle, even without considering the Facebook messages. Shannon testified about defendant's acts of barging into her apartment and strangling her at gunpoint, causing a scratch to her neck. R115-18, R126-27. Defendant took Shannon's keys during the attack, and immediately following the attack she noticed that her vehicle was missing. R123-24, R132, R186. She recovered her vehicle several days later using a spare key, and her original keys were obtained from defendant after the police arrested and searched him. R130-31, R140-41. The trial court could reasonably conclude from this evidence that defendant wrongfully possessed Shannon's vehicle for a period of several days and deprived her of its possession knowing it to have been stolen or converted. The Facebook messages thus added little to the robust evidence of defendant's guilt. *People v. Barner*, 2015 IL 116949, ¶ 71 (when determining whether error is harmless, court may look to whether error contributed to conviction, whether the other properly admitted evidence overwhelmingly supported the conviction, and whether the improperly admitted evidence is merely cumulative or duplicative to properly admitted evidence). Accordingly, though no error actually occurred, even assuming that the trial court improperly found the Facebook messages authenticated, any error would be harmless.

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II. The Evidence Sufficed to Convict Defendant of Possession of a Stolen or Converted Motor Vehicle.

Defendant's sufficiency challenge is meritless. The relevant question when reviewing the sufficiency of the evidence is 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *accord People v. Anderson*, 188 Ill. 2d 384, 392 (1999). Moreover, a "criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of defendant's guilt." *Anderson*, 188 Ill. 2d at 392. The trier of fact is responsible for determinations of the credibility of witnesses, the weight of the testimony, and the reasonable inferences to be drawn from the evidence. *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998). "Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution"; "it is not the function of [a reviewing] court to retry the defendant." *People v. Bush*, 214 Ill. 2d 318, 326 (2005).

Under 625 ILCS 5/4-103, it is a felony for "[a] person not entitled to the possession of a vehicle or essential part of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted." 625 ILCS 5/4-103(a)(1); *Anderson*, 188 Ill. 2d at 390.

Here, the People presented sufficient evidence to establish that defendant knew that Shannon's vehicle was converted when he possessed it.

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A. The People Need Only Show that Defendant Possessed Shannon's Vehicle While Knowing It Was Converted.

Defendant contends that his conviction under section 4-103(a)(1) cannot stand because the People failed to prove that he knew that Shannon's vehicle was stolen or converted when he took it, since the People could not show that he intended to permanently deprive Shannon of the use of her vehicle. Def. Br. 39. However, this argument conflates the two "distinct legal theories" available to the People in proving a violation of section 4-103(a)(1). *People v. Perkins*, 2020 IL App (2d) 170963, ¶ 68.

"'It is a primary rule of statutory construction that the intention of the legislature should be ascertained and given effect.'" *People v. Bryant*, 128 Ill. 2d 448, 455-56 (1989) (quoting *People v. Robinson*, 89 Ill. 2d 469, 475 (1982)). "When doing so, the language of the statute must be given its plain and ordinary meaning." *Id.* Because section 4-103(a)(1) uses "stolen or converted" in the disjunctive, the People could sustain defendant's conviction by showing that he possessed Shannon's vehicle while knowing that it was stolen *or* while knowing that it was converted. *Perkins*, 2020 IL App (2d) 170963, ¶ 68.

And while "[t]here is no authority that intent to permanently deprive is an element" of a violation of section 4-103(a)(1), the presence of such an intent might be necessary to secure a conviction where the defendant is alleged to have unlawfully possessed a *stolen* vehicle that he himself stole. *People v. Washington*, 184 Ill. App. 3d 703, 708 (2d Dist. 1989). This is

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because this Court has noted that the word "stolen," as used in section 4-103(a)(1), "refers to a theft," which requires a showing that the defendant intended to permanently deprive the owner of his or her property. *People v. Cramer*, 85 Ill. 2d 92, 100 (1981). Thus, where a charge of possessing a stolen motor vehicle is predicated upon the defendant's possession of a vehicle that he stole himself, "proof of that person's mental state inconsistent with that required for theft would prevent a conviction . . . based on possession of a stolen motor vehicle." *Washington*, 184 Ill. App. 3d at 708.

However, where a charge of possessing a *converted* motor vehicle is predicated upon possession by the same individual who *converted* the vehicle, the same concern does not apply. Conversion is defined as the

> "wrongful possession or disposition of another's property as if it were one's own; an act or series of acts or willful interference, without lawful justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property."

In re Karavidas, 2013 IL 115767, ¶ 59 (quoting *Black's Law Dictionary* 381 (9th ed. 2009)). Thus, "'[p]roperty has been "converted" if a person lawfully entitled to possession of that property has been wrongfully deprived of it.'" *Perkins*, 2020 IL App (2d) 170963, ¶ 81 (quoting Illinois Pattern Jury Instructions, Criminal, No. 23.35a (hereinafter, "IPI Criminal")). Accordingly, to sustain a conviction under section 4-103(a)(1) where a defendant is alleged to have converted the vehicle he possessed, the People

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need only show a knowing "wrongful deprivation of the vehicle." *People v. Gengler*, 251 Ill. App. 3d 213, 222 (2d Dist. 1993).

Defendant relies primarily on three cases to argue that the People must establish an intent to permanently deprive, even where the conviction under section 4-103(a)(1) is premised upon a defendant's possession of a vehicle he converted. Def. Br. 40-42. But none of them supports his argument. Two of the three cases evaluated the defendants' culpability under both the "stolen" and "converted" prongs of section 4-103(a)(1) and assessed whether the defendants intended to permanently deprive the owners of their vehicles only in determining whether they knew the vehicles were stolen. And in the third case, the prosecution placed the defendant's intent to permanently deprive at issue by charging him with possession of a stolen motor vehicle and claiming during argument that he stole the vehicle. Here, by contrast, the People charged defendant with possession of a "stolen or converted" vehicle and established his guilt by presenting evidence that he knew that Shannon's vehicle was converted.

In *People v. Sergey*, 137 Ill. App. 3d 971 (2d Dist. 1985), the People charged the defendant with possession of a stolen or converted motor vehicle after he borrowed a car that he mistakenly believed belonged to his employer. *Id.* at 972. At trial, the defendant claimed that he believed that his employer would not mind if he took it, and no evidence rebutted his belief. *Id.* at 972-74. The appellate court reversed. *Id.* at 975-76. Because no pattern jury

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instruction defined "conversion," the court first explored case law considering *civil* conversion, defining it as possession of property that deprives the owner of his rights as owner, especially where the property is damaged. *Id.* at 975. From there, the court analyzed the defendant's culpability under both the stolen and converted prongs of section 4-103(a)(1), and found that his conviction could be sustained under neither prong. *Id.* at 975-76. The defendant did not steal the vehicle because he justifiably believed that he had permission to use it, and therefore, could not have intended to permanently deprive the owner of it. *Id.* at 975. The defendant also did not convert the vehicle under civil conversion law because there was no evidence that he damaged it. *Id.* at 975-76. Thus, defendant lacked the requisite *mens rea* under section 4-103(a)(1), and the court reversed his conviction "for possessing a vehicle knowing it to have been stolen or converted." *Id.* at 978.

In *People v. Pozdoll*, the People charged the defendant with possession of a stolen or converted motor vehicle after he took a car that was idling in a parking lot, depriving the owner of its use for 15 minutes. 230 Ill. App. 3d 887, 888-89 (2d Dist. 1992). The evidence showed that after the police stopped the defendant, he told them several stories about how he came to possess the vehicle. *Id.* at 889. No evidence showed that the defendant intended to return the vehicle. *Id.* On appeal, the defendant relied on *Sergey* to claim, in part, that the People failed to prove that he knew that the vehicle was converted when he took it. *Id.* The appellate court rejected his claim,

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distinguishing *Sergey* on the ground that he could not reasonably claim to have had permission to take the car and because no evidence tended to show that he intended to return the vehicle. *Id.* at 890. The court then found that the defendant's conviction under section 4-103(a)(1) could be sustained under the "stolen" element because, in providing several different stories as to how he came to possess the vehicle, the defendant suggested that he intended to permanently deprive the owner of it. *Id.* (citing *People v. Henry*, 203 Ill. App. 3d 278, 280 (1st Dist. 1990) for proposition that intent to permanently deprive owner of vehicle supported possession of stolen motor vehicle conviction).

Defendant's reliance on *Sergey* and *Pozdoll* is misplaced. Neither case requires the People to show, where a defendant is charged with possession of a converted motor vehicle that he converted himself, that the defendant had an intent to permanently deprive the owner of the vehicle. *See, e.g., Washington*, 184 Ill. App. 3d at 709 (*Sergey* does not require "that in all instances [an intent to permanently deprive the owner of his vehicle] must be present to sustain a conviction under section 4-103(a)(1)."). Instead, in both cases, the reviewing courts evaluated the defendants' culpability under both the "stolen" and "converted" prongs of section 4-103(a)(1) and assessed whether the defendants intended to permanently deprive the owners of their vehicles only in determining whether they knew the vehicles were stolen. The *Sergey* court found that the defendant there did not have the requisite

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intent under the stolen prong, while the *Pozdoll* court found that that defendant did. *Sergey*, 137 Ill. App. 3d at 975; *Pozdoll* 230 Ill. App. 3d at 890.

Finally, in *People v. Pollards*, 367 Ill. App. 3d 17 (1st Dist. 2006), the People charged the defendant with possession of a stolen motor vehicle after he took a taxicab while the owner went into a gas station to pay for gas. *Id.* at 18-19. At trial, the prosecutor argued in his opening statement and closing argument that the defendant "was the person who stole the taxicab and drove off with it." *Id.* at 21-22. However, the jury was not instructed on the definitions of stolen property or theft, despite, *inter alia*, the Committee Note to IPI Criminal No. 23.36, which provides that it "may be necessary to include the phrase 'intent to permanently deprive' in the definition and issues instructions" where a "defendant is charged with possession of a stolen or converted vehicle." *Id.* at 20. After the defendant's conviction, he appealed, and the court found that his counsel was ineffective in failing to request the stolen property and theft instructions. *Id.* at 21. The court reasoned that, given the "prosecutor's approach at trial" in alleging that the defendant stole the taxicab, the defendant's intent to permanently deprive the owner of his vehicle was at issue, and "the jury required guidance on the issue of the defendant's intent." *Id.* at 22-23.

Pollards is readily distinguishable. First, defendant's case was a bench trial, and "the trial court is presumed to know the law and apply it properly." *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Second, unlike *Pollards*,

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where the prosecutor's approach placed the defendant's intent to permanently deprive at issue by charging him with possession of a stolen motor vehicle and claiming during argument that he stole the vehicle, here, the People charged defendant with possession of a "stolen or converted" vehicle and established his guilt by presenting evidence that he knew that Shannon's vehicle was converted. Thus, the People were free to prove the "converted" element by showing that the defendant wrongfully deprived Shannon of the use of her vehicle.

People v. Perkins, 2020 IL App (2d) 170963, is illustrative of this point. There, the People charged the defendant with armed violence, alleging that while armed with a handgun, he committed possession of a converted motor vehicle. *Id.* at ¶ 64. The trial evidence showed that the defendant forced the victim, whom he previously dated, to drive him around in her vehicle for approximately two hours at gunpoint until she promised to rekindle the relationship, at which point he allowed her to return to the defendant's home. *Id.* at ¶ 3. The defendant argued that his armed violence conviction could not stand, in part, because the People failed to prove that he knew the vehicle was converted. *Id.* at ¶ 65. The appellate court rejected his argument, finding that "the 'converted' element of the [People]'s theory was satisfied." *Id.* at ¶ 81. Importantly, the court imposed no requirement to show that the defendant intended to permanently deprive the owner of his vehicle. *Id.* at ¶¶ 80-81. Instead, the court reasoned that evidence that the defendant

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forced the victim to drive him around in her vehicle at gunpoint established that he wrongfully deprived her of the free use of her vehicle "for approximately two hours," which was sufficient to "support[] a conclusion that defendant knew that [the victim]'s car was converted." *Id.*

Here, the charging instrument expressly stated that defendant had possessed a stolen *or converted* motor vehicle. Supp. C.15. Like *Perkins*, the People, therefore, were not bound to prove defendant's guilt by showing that he intended to permanently deprive Shannon of her vehicle. Instead, the People could sustain a conviction by proving that defendant knew that Shannon's vehicle was converted through evidence that he wrongfully deprived Shannon of it.

B. The Evidence Sufficed to Establish that Defendant Possessed Shannon's Vehicle While Knowing It Was Converted.

The People presented ample evidence to establish that defendant wrongfully deprived Shannon of her vehicle for several days, and therefore, proved that he possessed her vehicle while knowing that it was converted. Both Shannon and M.B. testified that after barging into the apartment, defendant went to Shannon's room and grabbed her keys from the dresser before fleeing. R123, 132, 184-85. Immediately after defendant left, Shannon and M.B. looked out the window and saw that Shannon's vehicle was no longer in the parking lot where she had left it. R124, R186. Shannon testified that she did not give defendant permission to take her vehicle.

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R144. She further explained that she recovered her vehicle after learning of its location in a Facebook message defendant sent her. R130-31. Finally, Shannon testified that she obtained her original keys from the police on November 24, 2015 after they arrested defendant and searched him. R91-92, R96, R98-99, R140-41. A rational trier of fact could reasonably find from this evidence that defendant converted Shannon's vehicle by wrongfully depriving her of it for a period of several days such that he possessed it while knowing it was converted. *See Perkins*, 2020 IL App (2d) 170963, ¶ 81.

Accordingly, the People presented sufficient evidence to prove beyond a reasonable doubt that defendant committed possession of a stolen or converted motor vehicle.

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CONCLUSION

This Court should affirm the judgment of the appellate court.

April 27, 2021

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ROBERT J. SONNENFELT
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-3000
eserve.criminalappeals@atg.state.il.us

Counsel for Petitioner-Appellee
People of the State of Illinois

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is forty-two pages.

/s/ Robert J. Sonnenfelt
ROBERT J. SONNENFELT
Assistant Attorney General

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 27, 2021, the **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy to all primary and secondary e-mail addresses of record designated by the persons named below through the court's electronic filing system:

Joseph Benak
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
1stdistrict.eserve@osad.state.il.us
Joseph.Benak@osad.state.il.us

Kimberly M. Foxx
Cook County State's Attorney's Office
eserve.criminalappeals@cookcountyil.gov

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Robert J. Sonnenfelt
ROBERT J. SONNENFELT
Assistant Attorney General

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