No. 125945

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Crosetti Brand, Defendant-Appellant, was convicted of home invasion and possession of stolen motor vehicle after a bench trial and was sentenced to concurrent 16 and three year terms of imprisonment.

On direct appeal, the appellate court held that Brand's case must be remanded for a *Krankel* inquiry but otherwise affirmed his convictions and sentences. *People v. Brand*, 2020 IL App (1st) 171728. This Court allowed Brand's petition for leave to appeal on September 30, 2020.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I. In order to introduce two purported Facebook messages, the State was required to show that Brand controlled the Facebook account from which the messages were allegedly sent *and* that he actually authored the messages. Here, the only evidence that Brand controlled the account was Shannon's uncorroborated testimony, and the only evidence that he authored the messages was the content of the messages themselves. Did the State thus fail to authenticate the two purported Facebook messages as having been authored by Brand?

II. Whether the State proved Brand guilty beyond a reasonable doubt of possession of a stolen motor vehicle, where there was no evidence that Brand took Shannon's car with the intent to permanently deprive her of its use.

STATEMENT OF FACTS

Overview

The State charged Brand with: two counts of home invasion (720 ILCS 5/19-6(a)(3)), in that he committed a home invasion while armed with a firearm; one count of aggravated domestic battery (720 ILCS 5/12-3.3(a-5)); and one count of possession of a stolen motor vehicle ("PSMV") (625 ILCS 5/4-103(a)(1). (Sup C 12-15). The charges stemmed from an incident that allegedly occurred at the apartment of Brand's former girlfriend, Anita Shannon.

At trial, over defense counsel's objection, the court permitted Shannon to testify regarding the contents of two alleged Facebook messages. Shannon claimed that Brand sent her the messages from an account bearing the name "Masetti Meech." According to Shannon, one of the messages told her where she could find her car, which she claimed Brand had stolen during the incident at her apartment, and the other message contained threats against Shannon and her family.

Following a bench trial, the court acquitted Brand of home invasion with a firearm but found him guilty of home invasion while intentionally causing injury. The court also found Brand guilty of aggravated battery and PSMV.

Bench Trial

The State's case consisted primarily of the testimony of Anita Shannon and her 15-year old son, M.B. Brand, in his defense, proceeded by way of stipulated evidence. Shannon and M.B. testified to the following version of events:

Shannon testified that she and Brand had been dating for two years when, on October 30, 2015, she decided to end their relationship. (R. 106-107). On direct examination, Shannon testified that, on November 3, 2015, four days after she

ended their relationship, Brand showed up at her work, a daycare center, while she was walking to the store with a co-worker. (R. 108). Shannon stated that she told Brand that she had already spoken to him earlier and that she did not want to talk to him anymore. (R. 108). However, on cross-examination, Shannon admitted that, in a videotaped statement she gave on November 24, 2015, she had told Detective Murawski that Brand had come with her and her co-worker to the store, and they had allowed him to help carry their grocery bags back to work. (R. 150-151).

According to Shannon, at around 7:15 p.m. on November 3, 2015, she was cooking dinner for her four children when she heard a man, whom she identified in court as Brand, knock on the door of her apartment. (R. 106, 108). Brand's mother and aunt also lived in Shannon's apartment building. (R. 109). Shannon opened the door just enough to see outside, approximately six inches, and told Brand that she had already talked to him earlier that day and that she did not want to be in a relationship with him anymore. (R. 113-114). Brand allegedly said something to the effect that she would have to come up with a better answer than that, at which point Shannon closed the door. (R. 114).

After Brand knocked again, Shannon reopened the door and told him that she was going to call the police if he did not stop. (R. 114). Brand then allegedly pushed the door open, stepped inside the apartment, locked the door behind him, and put a gun up against Shannon's chin. (R. 115-116). According to Shannon, while keeping the gun at her chin, Brand grabbed her by the shirt collar and dragged her down the hall, where he pushed her up against the bathroom door and choked her by the neck. (R. 117).

Shannon's oldest son, M.B., testified that he was in his room, which was

near the bathroom, when he heard a door slam. (R. 178). Out of the corner of his eye, he saw Brand choking Shannon. (R. 178). According to M.B., when he first saw Brand, he did not have a gun in his hand. (R. 188). Rather, Brand had one hand around Shannon's throat and the other near his own waist area. (R. 180). Shannon, by contrast, testified that when Brand was choking her near the bathroom, he had a gun pointed at her temple. (R. 118).

According to Shannon, when M.B. stepped toward Brand and asked what he was doing, Brand pointed the gun at him and told him to step back. (R. 119; 181). Shannon claimed that this happened more than once: M.B. would step forward, and Brand would threaten him with the gun. (R. 120).

Shannon stated that Brand eventually grabbed her by the back of her shirt collar and took her into M.B.'s room, where he pushed the back of her head against M.B.'s dresser several times. (R. 121). M.B, who was also in the room at the time, did not mention having seen Brand push Shannon's head into the dresser. (R. 184). Photographs of Shannon that were taken the next day do not show any injuries to her head. (St. Ex. 5).

Shannon claimed that after pushing her head against the dresser, Brand threw her to the floor and ran into her bedroom. (R. 122-123). Shannon heard the sound of keys, coming from her room, and when she came out of M.B.s' room, Brand was gone. (R. 123). Shortly after, she looked out of the window of her 13th floor apartment and noticed that her car was not in the parking lot below where she had left it. (R. 124). Shannon then called 911. (R. 124). During the call, a recording of which the State introduced into evidence, Shannon stated that her car was stolen, but she did not mention Brand or state that she had suffered any

injuries. (R. 196; St. Ex. 7). Following the call, police officers arrived at Shannon's apartment. Shannon did not tell the officers that she had been injured and did not seek any medical attention for her injuries. (R. 170). Despite having allegedly witnessed the incident, M.B. did not speak to the officers that night. (R. 187).

The next day, Shannon went to court and filed two orders of protection against Brand, one civil and the other criminal. (C. 127-131. St. Ex. 4; R. 126, 152). In an affidavit attached to the civil petition, Shannon did not mention that Brand had pushed her head into M.B.'s dresser. (C. 127-131; R. 156).

While she was at the courthouse filing these petitions, a photograph was taken of Shannon. (St. Ex. 5; R. 125). In the photograph, Shannon has a scratch across her upper chest — which she claimed she received from Brand choking her by the neck — but no other visible injuries. (St. Ex. 5; R. 168-169).

Facebook Messages

Shannon averred that, five days later, on November 8, 2015, she received a Facebook message from someone named "Masetti Meech" — which she claimed was the name that Brand used on Facebook — telling her where her car could be found. (R. 128, 131-132). She went to the location specified in the message and retrieved her car using a second set of keys. (R. 131-132). The State did not introduce a copy of the message into evidence; Shannon claimed that she deleted the message because her Facebook Messenger mailbox was "full." (R. 174).

On November 21, 2015, Shannon received another Facebook message allegedly from "Masetti Meech," a photograph of which was admitted into evidence. (R. 134; St. Ex. 6). Shannon read the contents of this message into evidence:

> This is just the beginning . . . only if you no what's line up for your people as well 79 . .37 . .71 . .39 42 work place . . . 79 is today im

> comeing in from back way see your bother in O.g . . . bullets don't have name on them . . . I will see you soon I love the waiting game I park up in watch in wait . . . Your son not going see 16 I see him at school. (St. Ex. 6).

According to Shannon, the numbers included in the message referred to addresses where she and her relatives either lived or worked. (R. 137).

Defense counsel objected to Shannon's testimony about both the November 8 and November 21 purported Facebook messages, arguing that they were irrelevant and lacked foundation. (R. 134). The court overruled the objections, stating that, "She [Shannon] knows the defendant by the nickname of Masetti Meech . . . . She got a text from him on that day on Facebook or whatever, and that's what he supposedly sent her." (R. 136). A photograph of the November 21 message was admitted into evidence, again over the objection of defense counsel. (R. 196). In Brand's motion for a new trial, defense counsel asserted that the court erred in overruling her objections to Shannon's testimony regarding the messages and in admitting the photograph of the November 21 message into evidence. (C. 103).

Brand's Arrest

Three days after receiving the November 21, 2015 Facebook message, Shannon and her brother saw Brand walking down the street near where her brother lived. (R. 139). Shannon called 911, and her brother flagged down a police officer. (R. 139). Officer Steve Austin arrested Brand and took him into custody. (R. 95-96).

Austin testified that certain items were recovered from Brand during a custodial search, but did not say what those items were. (R. 97). On cross examination, Austin admitted that he did not perform a search of Brand and that he was not even present when the search was performed. (R. 97). Based on this testimony, defense counsel moved to strike Austin's testimony. (R. 101). The court

denied the motion, reasoning that because Austin had said that custodial searches are always performed following an arrest, it was reasonable to infer that one was performed in this case. (R. 102). Any deficiencies in Austin's testimony, said the court, went to weight, not admissibility. (R. 102).

Later on the day of Brand's arrest, Shannon went to the police station and spoke with Detective Murawski. (R. 140). Murawski showed Shannon a personal property bag that he said contained the items recovered from Brand during the alleged custodial search. (St. Ex. 1-3; R. 90). At trial, Shannon was shown a photograph of the bag's contents. (St. Ex. 2; R. 140-141). She stated that among the items included in the photograph were her car keys and the keys to her apartment building. (St. Ex. 2; R. 141). Photographs of the bag were admitted into evidence over defense counsel's objection. (R. 201-202) (St. Ex. 1-3).

Defense counsel did not call any witnesses. The parties stipulated that Officer Donald Smith, the officer who responded to Shannon's 911 call on November 3, 2015, would have testified that: 1) He created a case incident report based on what Shannon told him that night; 2) the report does not mention Brand threatening M.B. with a gun or pushing Shannon's head into a dresser; 3) Shannon told him that when Brand entered the apartment, he pulled out a silver object, which Shannon believed to be a gun, and hit her over the head with it; and 4) Shannon told him that she actually witnessed Brand get into her car and drive away. (R. 207-209).

Court's Findings

The court found Brand guilty on all counts (R. 232-236). However, in finding Brand guilty of home invasion, the court concluded that the State had not proven

beyond a reasonable doubt that Brand was armed with a firearm at the time. (R. 234). Instead, the court ruled that the State had proved that Brand violated a different section of the home invasion statute, specifically 720 ILCS 5/19-6(a)(2), which does not require a showing that the offender was armed with a firearm. (R. 234-235). Under section (a)(2), it is sufficient that the offender intentionally caused injury to the victim, regardless of whether a firearm was involved. The court found that the State had met this burden by establishing that Brand had choked Shannon by the neck. (R. 235).

Post-Trial Motion and Sentencing

Prior to the hearing on his motion for a new trial, Brand informed the court that he wanted to file a motion alleging that his trial counsel was ineffective. (R. 245). The court responded by telling Brand that, "you can file whatever you'd like to file and I will set it for a *Krankel* hearing," but no *Krankel* hearing was ever held. (R. 246). Instead, after asking Brand if he wanted to "proceed *pro se* altogether at this point," the court allowed Brand to file his motion for a continuance. (C. 105-108; R. 246). In the motion, Brand stated, *inter alia*, that he intended to "raise issues of ineffective assistance of counsel which may require defendant to either seek new counsel, or in the alternative, file a motion for a new trial on his own behalf." (C. 107). At the next court date, however, Brand stated that he no longer wanted to proceed *pro se*. (R. 252).

Brand's motion for a new trial alleged, in relevant part, that the court had erred by admitting the November 8 and November 21 Facebook messages. (C. 103). The court denied the motion and sentenced Brand to 16 years in prison for home invasion and three years for PSMV, to run concurrently. (C. 125; R. 232-236,

314). Brand filed a motion to reconsider sentence, which the court denied. (C. 126).

Direct Appeal

On appeal, Brand argued, *inter alia*, that: 1) his convictions for home invasion and PSMV should be reversed and remanded for a new trial because the State had failed to prove that he controlled the Masetti Meech Facebook account, or that, even if he did control the account, he actually sent the November 8 and November 21 messages; and 2) his conviction for PSMV should be reversed outright because the State had failed to prove beyond a reasonable doubt that the took Shannon's car with the intention of permanently depriving her of its use. Additionally, Brand argued, and the State conceded, that the court erred by failing to hold a *Krankel* hearing after Brand alleged his trial counsel's ineffectiveness.

In a published decision, the appellate court accepted the State's concession and held that Brand's case should be remanded for a *Krankel* hearing. *People v. Brand*, 2020 IL App (1st) 171728, at ¶ 46. However, the court rejected Brand's other arguments. The Court found that the Facebook messages were authenticated based on: 1) Shannon's claim that Brand used the name Masetti Meech on Facebook; and 2) the content of the messages, specifically that the November 8 message told Shannon where she could find her car and the November 21 message contained threats against Shannon and her family. *Id.* at ¶¶ 35, 37.

As to Brand's argument regarding his conviction for PSMV, the appellate court held that the State was not required to prove that Brand took Shannon's car with the intention of permanently depriving her of its use. *Brand*, 2020 IL App (1st) 171728 at ¶¶ 39-41. The appellate court reasoned that the State is only required to make such a showing where the defendant is charged solely with

possession of a *stolen* motor vehicle. *Id.* at ¶ 40-41. Here, because Brand was charged with a stolen *or converted* motor vehicle, the appellate court held that the State was not required to show an intention to deprive in order to sustain a conviction for possession of a stolen motor vehicle. *Id.*

Petition for Leave to Appeal

On September 30, 2020, this Court granted Brand's petition for leave to appeal, in which he raised two issues: 1) What quantum of evidence is necessary to authenticate a social media post or message? And 2) Where the State alleges that the defendant was personally responsible for the theft of a vehicle, can a conviction for PSMV be sustained absent proof that the defendant took the vehicle with the intention of depriving the lawful owner of its use?

ARGUMENT

I. **The State failed to authenticate the Facebook messages in question. The State was required to show that Brand controlled the Facebook account from which the messages were allegedly sent *and* that Brand actually authored the messages. The State failed to make such a showing. The only evidence that Brand controlled the account was Shannon's uncorroborated testimony, and the only evidence that Brand authored the messages was the content of the messages themselves. This evidence was insufficient to authenticate the messages as having been authored by Brand. Accordingly, Brand should be granted a new trial.**

The proponent of a piece of evidence at trial is required to authenticate the evidence, *i.e.,* to present evidence sufficient to show that the evidence is what the proponent claims it to be. Ill. R. Evid. 901(a). In determining whether the proponent has made such a showing, courts are required to take into account the type of evidence the proponent is seeking to admit. This is because different types of evidence present different authentication concerns. For example, a letter presents different concerns than a voice recording, which in turn presents different authentication concerns than a phone call. Ill. R. Evid. 901(b)(2)(3)(5)(6) (setting forth the respective authentication methods for letters, voice recordings, and phone calls). Social media communications are no different in this respect. In the same way that courts are required to take into account the unique concerns associated with authenticating a telephone call, courts must also take into the account the unique concerns associated with authenticating a social media communication.

The concerns associated with authenticating a social media communication include the possibility that the communication was sent from a fraudulent social media account or that someone may have gained unauthorized access to another person's social media account. To account for these concerns, the proponent of a social media communication should be required to establish both that the

purported sender controlled the account from which the message was sent *and* that the purported sender actually authored the message. In this case, the State failed to establish either proposition. For the reasons that follow, Shannon's claim that Brand controlled the Masetti Meech account was insufficient to establish that Brand did, in fact, control this account. Additionally, even if this Court should find that Brand did control the Masetti Meech account, the State failed to establish that Brand — and not someone else who may have gained access to the account — actually composed and sent the messages. Accordingly, this Court should conclude that the that the State failed to authenticate the Facebook messages introduced against Brand at trial, and reverse Brand's convictions and remand for a new trial.

Facebook and Facebook Messenger

Facebook is a social networking website designed to allow users "to stay in touch with their friends, upload photos, share website links and video, and meet new people." Allen D. Hankins, *Compelling Disclosure of Facebook Content Under the Stored Communications Act*, 17 Suffolk J. Trial & App. Advoc. 295 (2012). "Creating an account is easy: go to www.facebook.com enter your full name, birth date, and register your password. Facebook will send a confirmation link to your registered email, which you click on to complete registration." Samantha L. Miller, Note*, The Facebook Frontier: Responding to the Changing Face of Privacy on the Internet*, 97 Ky. L.J. 541, 544 (2009). Once an account is created, the user then creates a"profile" by providing Facebook with their name, gender, and birth date. Nathan Petrashek, *The Fourth Amendment and the Brave New World of Online Social Networking*, 93 Marq. L. Rev. 1495, 1506 (2010). Users can choose to provide

additional information on their profile, including a picture of themselves (known as a "profile picture"), as well as their city, hometown, relationship status, political views, interests, activities, and contact information such as phone numbers. *Id*. at 1506-1507; Miller,97 Ky. L.J, at 544.

Facebook users can connect with other users by sending requests to be "Friends" on Facebook. Miller, 97 Ky. L.J. at 544. Facebook Friends are able to write messages, post photographs, and share articles on each others' "Wall," which is a scroll-able feed of a user's Facebook activity. Hankins, 17 Suffolk J. Trial & App. Advoc. at 308. Users who are Friends on Facebook can generally view all of the personal information associated with each other's profiles. *Id.* at 309; Miller, 97 Ky. L.J. at 544. However, Facebook considers a profile's user name, profile photograph, gender, and location to be publicly available information. Petrashek, Marq. L. Rev. at 1507-1508. As a result, this information can be viewed by anyone, even profiles the user is not Friends with. *Id.* Similarly, some users choose to set their profile to "Public," which allows some or all of their Facebook information, including information posted to the user's Wall, to be viewed by anyone. Hankins, 17 Suffolk J. Trial & App. Advoc. at 308-309.

Facebook users can send private messages to each other using the Facebook website or through the Facebook Messenger application for smart phones. Erica Jaeger, *Facebook Messenger: Eroding User Privacy in Order to Collect, Analyze, and Sell Your Personal Information*, 31 J. Marshall J. Info. Tech. & Privacy L. 393, 397 (2014). A user can send private messages to both Friends and non-Friends. Karissa Bell, *Facebook Just Made it Easier to Talk to People You're Not Friends With,* Mashable, http://mashable/2015/10/27/facebook-messenger-message-requests/

(last accessed December 8, 2020). In fact, a Facebook account is not required to use the Facebook Messenger application. Karissa Bell, *You No Longer Need a Facebook Account to Use Facebook Messenger*, Mashable, http://mashable.com/2015/06/24/facebook-messenger-without-fb/ (last accessed December 8, 2020).

Purported Facebook Messages at Issue in this Case

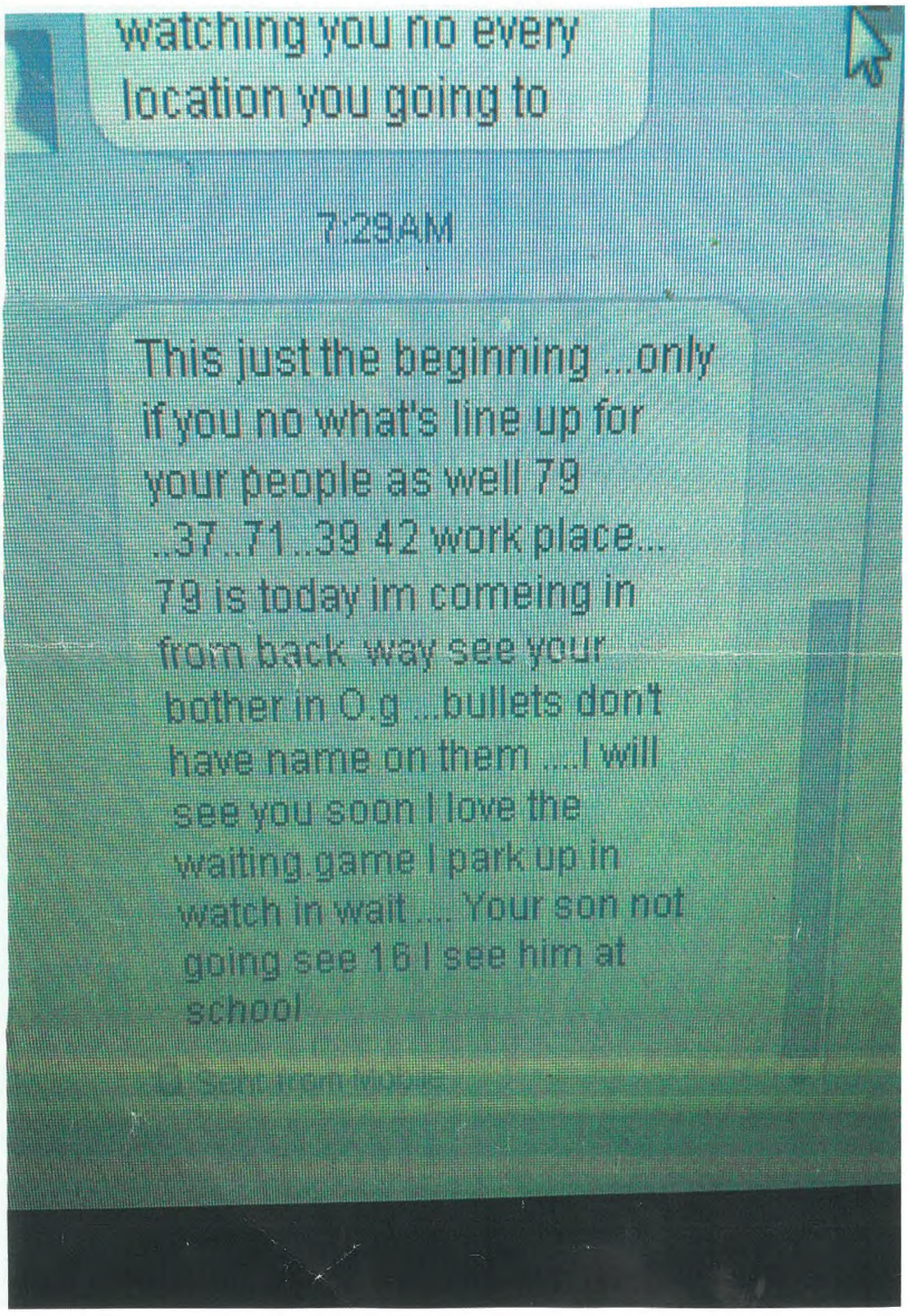
Shannon testified that Brand sent her two messages using Facebook Messenger. The messages were not sent from an account under Brand's name but rather from an account with the name "Masetti Meech," which Shannon claimed was the name Brand used on Facebook Messenger. (R. 128). The State did not present any information about either Shannon's Facebook account or the Masetti Meech Facebook account, and there is thus nothing in the record regarding the privacy settings, profile picture, Friend list, or other personal information associated with these accounts.

According to Shannon, the messages at issue were sent on November 8, 2015, and November 21, 2015. (R. 131-132, 135). However, the State failed to present any evidence to corroborate that the messages were actually sent on these dates.

November 8th Purported Message

The State did not present any physical documentation, such as a screenshot, of the November 8 message. Shannon claimed that she had deleted the message before trial because her "mailbox" was "full". (R. 174). The November 8 Message was thus not memorialized in any form.

November 21 Purported Message



Although the State admitted the above screenshot of the November 21 message, the screenshot does not show the date the message was sent. Nor does it show the name of either the sender or the recipient. Other than the messages's text, the only information provided by the screenshot is that the message was "Sent from mobile," meaning that whoever sent the message sent it from a cell phone rather than a computer. (St.Ex. 6). The State, however, failed to establish the specific device from which the message was sent or whether Brand even owned a cell phone.

Social Media Authentication and Standard of Review

Under the Illinois Rules of Evidence, before an item of evidence can be admitted, the proponent of the evidence must present evidence sufficient to show that the item is what its proponent claims it to be. Ill. R. Evid. 901(a). This can be done through either direct or circumstantial evidence. *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 37. Circumstantial evidence can consist of "appearance, contents, substance, internal patterns, or other distinctive characteristics of an item, including those that apply to the source of an electronic communication, taken in conjunction with circumstances." Ill. R. Evid. 901 (b)(4). The standard of review for admission of evidence is abuse of discretion. *Watkins*, 2015 IL App(3d) at ¶ 35.

A Facebook message is subject to the same authentication requirements as any other document. Ill. R. Evid. 901(b)(4); *People v. Kent*, 2017 IL App (2nd) 140917, ¶ 85. However, owing to its digital nature, "The authentication of social media poses unique issues regarding what is required to make a prima facie showing that the matter is what the proponent claims." *Smith v. State*, 136 So. 3d 424,

432 (Miss. 2014) (citing Samantha L. Miller, Note, *The Facebook Frontier: Responding to the Changing Face of Privacy on the Internet*, 97 Ky. L.J. 541, 544 (2009)); *see also Sublet v. State*, 113 A. 3d 695, 711 (Md. 2015) ("traditional opportunities for authentication [of social media posts and messages] are reduced by the lack of handwriting, the absence of a physical location of the document, and the inherent anonymity provided by posting on websites"). Indeed, "anyone can create a fictitious account and masquerade under another person's name." *Griffin v. State*, 19 A. 3d 415, 426 (Md. 2011).

The Mississippi Supreme Court has emphasized the danger associated with fake accounts: *"Not only can anyone create a [Facebook] profile and masquerade as another person*, but such a risk is amplified when a person creates a real profile without the realization that third parties can mine their personal data." *Smith,* 136 So. 3d at 432 (emphasis added)(internal citations omitted). The court observed that, "Friends and strangers alike may have access to family photos, intimate details about one's likes and dislikes, hobbies, employer details, and other personal information, and, consequently, the desire to share information with one's friends may also expose users to unknown third parties who may misuse their information." *Id.* Accordingly, the court concluded that concern over authentication arises "because *anyone can create a fictitious account and masquerade under another person's name* . . . and, consequently, the *potential for fabricating or tampering with electronically stored information on a social networking sight is high*, and poses challenges to authenticating printouts from the website." *Id.* (emphasis added). Similarly, the Maryland Court of Appeals, which is the highest court in Maryland, has stressed that, "[O]nline social networking poses two threats: that information may be (1)

available because of one's own role as the creator of content, or (2) generated by a third party, whether or not it is accurate." *Griffin*, 19 A. 3d at 421.

Moreover, social media accounts are particularly susceptible to security breaches. *Smith*, 136 So. 3d at 435. There are a number of ways in which a person may obtain another's username and password. *Griffin*, 19 A. at 421. Romantic partners or close friends will often share their account information with one another. *Smith*, 136 So. 3d at 435 ("[C]ases in which romantic partners have accessed social networking accounts illustrate the susceptibility of social media account to security breaches")(citing *Campbell v. State*, 382 S.W. 3d 545, 552 (Tex. App. 2012). Even if a user does not share his password with others, unauthorized access can still occur "when an individual remains logged in to his or her account through their cell phone or computer and leaves them unattended, thereby allowing third parties access to the profile." *Sublet*, 113 A.3d at 712. "Individuals may also obtain unauthorized access to an account by 'guessing or finding . . . a valid password.'" *Sublet*, 113 A. at 712 (quoting Michael Lee, et al., Electronic Commerce, Hackers, and the Search for Legitimacy: A Regulatory Proposal, 14 Berkeley Tech. L.J. 839, 850 (1999)). Moreover, passwords and accounts are subject to compromise by hackers. *See Tienda v. State,* 358 S.W. 3d 633, 641 (Tex. Crim. App. 2012) ("[C]omputers can be hacked, protected passwords can be compromised, and cell phones can be purloined").

The possibility that a person might create a fake Facebook account or gain unauthorized access to another person's account is far from remote. For example, in *United States* v. *Drew*, 259 F.R.D. 449, 452 (D.C.D. Cal. 2009), the defendant was prosecuted under 18 U.S.C. § 1030, the Computer Fraud and Abuse Act, after

she created a MySpace profile for a fictitious 16 year-old male named "Josh Evans." The defendant used the Josh Evans profile to flirt with Megan Meier, a friend of the defendant's daughter, on MySpace. *Id.* After a few days of flirting, the defendant had "Josh" tell Megan that he no longer "liked her" and that "the world would be a better place without her in it." *Id.* After receiving these messages, Megan committed suicide. *Id.* "Thus, the relative ease with which anyone can create fictional personas or gain unauthorized access to another user's profile, with deleterious consequences, is the *Drew* lesson." *Griffin*, 19 A.3d at 421-422.

The Two-Pronged Approach to Authenticating Social Media

In order to account for the unique concerns associated with the authentication of social media, it is clear that, in most every case, the proponent of a social media communication should be required to establish two propositions:

1. **The purported author controlled the account from which the message was sent.**

2. **The purported author actually sent the message.**

The Second District Appellate Court's recent decision in *Curry* illustrates the necessity of establishing both propositions. 2020 IL App (2d) 180148. In *Curry*, the trial and appellate courts utilized a bifurcated approach to determine whether the State had properly authenticated Facebook messages sent by the defendant to the complainant. The defendant in *Curry* was charged with sexually assaulting a family friend. *Id.* at ¶¶ 3, 8. The complainant told the police that, while the defendant was in custody following his arrest, he sent her messages through Facebook Messenger in which he threatened her and asked her to withdraw the complaint against him. *Id.* at ¶ 11. Based on this information, the detective assigned to the case obtained a search warrant for the defendant's and the complainant's

Facebook account information. *Id.* at ¶ 21. The detective then sent the warrant to Facebook along with a request to preserve the messages in the defendant's account. *Id.* In response, Facebook sent the detective a certificate of authenticity that included the messages and the name, address, telephone number, and e-mail address associated with the defendant's account. *Id.* at ¶¶ 21, 52. At trial, the detective testified that the messages provided by Facebook matched the ones he had observed on the complainant's phone. *Id.* at ¶ 21.

The trial court found that the certificate of authenticity was sufficient to establish that the messages were exchanged between the defendant's and the complainant's accounts *but insufficient* to authenticate the content of the messages themselves. *Id.* at ¶ 7. In other words, the certificate of authenticity was sufficient to show only "where the messages came from and where they went to." *Id.* In order to admit the content of the messages, the State was required to present evidence sufficient to show that the defendant actually authored the messages. *Id.*

In *Harper*, the appellate court reached the same conclusion in the context of text messages, finding that, although phone records from Verizon were sufficient to establish that the text messages at issue were sent from the defendant's phone number, they were nevertheless insufficient to establish that the defendant actually authored the messages. 2017 IL App (4th) 150045, ¶¶ 58, 62; *see also United States v. Browne*, 834 F. 3d 403, 410 (3d Cir. 2016) (Certificate of authenticity from Facebook sufficient to show that "communications took place as alleged between the named Facebook accounts" but insufficient to authenticate the messages as actually having been authored by the defendant); *Smith*, 136 So. 3d at 434-435 (State failed to show either that purported sender controlled account or actually

authored messages); *Dehring v. State,* 465 S.W. 3d 668, 671 (Tex. App. 2015) ("Facebook presents an authentication concern that is twofold. First, because anyone can establish a fictitious profile . . . the person viewing the profile has no way of knowing whether the profile is legitimate. Second, because a person may gain access to another person's account . . . the person viewing the communications on or from an account profile cannot be certain that the author is in fact the profile owner")(citing *Griffin*, 19 A. 3d at 421); *Commonwealth v. Mangel*, 181 A. 3d 1154, 1161 (Pa. Super. Ct. 2018) ("[A]uthentication of electronic communications, like documents, requires more than mere confirmation that the number of address belonged to a particular person. Circumstantial evidence, which tends to corroborate the identity of the sender is required) (quoting *Commonwealth v. Koch*, 39 A. 3d 996, 1005 (Pa. Super. Ct. 2011).

In sum, under *Curry* and cases from other jurisdictions, records from Facebook *may* be sufficient, depending on the information included in the records and the facts of the case, to show that the purported author of a Facebook message controlled the account from which the message was sent. 2020 IL App (2d) 180148 at ¶ 7. However, absent other evidence, such records are *never* sufficient to show actual authorship. *Id.* As will be shown, in this case, the State failed to establish that Brand even controlled the Masetti Meech account, let alone that he actually authored the messages.

The State Failed to Establish that Brand Controlled the Masetti Meech Account

At trial, the State failed to provide *any* information about the Masetti Meech account. There is no evidence in the record regarding the name, address, telephone number, or email address of the person who set up the account. Nor is there any

evidence regarding the profile picture, Friend list, or biographical information associated with the Masetti Meech account. Moreover, other than the purported November 8 and November 21 messages, the State did not present evidence of any other messages exchanged between Shannon and the Masetti Meech account. This is significant because it is possible that such messages may have included contextual clues from which the identity of the person who controlled the Masetti Meech account could be discerned.

Owing to the State's failure to present any of the above evidence, Shannon's uncorroborated testimony was the *only* evidence that Brand controlled the Masetti Meech account. This is a far cry from the detailed records the State presented in *Curry*. Accordingly, this Court should find that Shannon's testimony was, on its own, insufficient to establish that Brand controlled the Masetti Meech account. *See Smith*, 136 So. 3d at 434 (State failed to prove that defendant controlled Facebook account at issue even though the account was in the defendant's name and his wife testified that the account belonged to him). Because the State failed to establish that Brand controlled the Masetti Meech account, it failed to authenticate the purported Facebook messages. As a result, Brand must be given a new trial.

The State Failed to Establish that Brand Authored the Messages

Even if this Court should find that Shannon's testimony was sufficient to establish that Brand controlled the Masetti Meech account, it should nevertheless conclude that the State failed to establish that Brand actually authored the messages. *See Commonwealth v. Williams*, 926 N.E.2d 1162, 1172 (Mass. 2010) (MySpace messages not authenticated despite witness's testimony that the message

was sent from the defendant's account: "Analogizing a MySpace webpage to a telephone call, a witness's testimony that he or she has received an incoming call from a person claiming to be 'A,' without more, is insufficient evidence to admit the call as a conversation with 'A'").

In assessing whether the proponent of a social media communication has established actual authorship, courts should look to the six methods for authentication identified by the appellate court in *Kent*:

1. **the purported sender admits authorship;**
2. **the purported sender is seen composing the communication;**
3. **business records of an Internet service provider or cell phone company show that the communication originated from the purported sender's personal computer or cell phone under circumstances in which it is reasonable to believe that only the purported sender would have had access to the computer or cell phone;**
4. **the communication contains information that only the purported sender could be expected to know;**
5. **the purported sender responds to an exchange in such a way as to indicate circumstantially that he was in fact the author of the communication;**
6. **other circumstances peculiar to the case.** 2017 IL App (2d) 140917 at ¶ 118 (citing *Tienda*, 358 S.W. 3d at 640-641).

Applying these methods to the facts of this case, it is clear that the State failed to establish that Brand authored the messages.

As to the first two methods identified by the *Kent* court, Brand did not admit to authoring the messages and no one at trial claimed to have seen Brand author the messages. *Compare People v. Clevenstine*, 68 A.D. 1448, 1450-1451 (N.Y. App. Div. 2009) (MySpace messages authenticated, in part, by defendant's wife's testimony that she saw the messages in the defendant's MySpace account while

using their shared computer).

The State did not even attempt to authenticate the messages via the third method, as it failed to present any evidence from Facebook or an Internet or cell phone service provider regarding the origin of the messages. To be clear, the information contemplated by this method is far more detailed than the general account information that Facebook provided to the State in *Curry*. To satisfy this method, the proponent must establish the particular device used to send a social media communication as well as the defendant's exclusive control over said device at the time the messages were sent. This can be accomplished in a number of ways. *See Bobo v. State,* 285 S.W. 3d 270, 275 (Ark. Ct. App. 2008) (emails allegedly sent by defendant authenticated where expert witness testified that they matched a temporary IP internet address for the defendant's computer); *Commonwealth v. Purdy*, 945 N.E. 2d 372, 381 (Mass. 2011) (emails allegedly sent by defendant authenticated where they were found on the hard drive of a computer belonging to the defendant). Here, as discussed, the screenshot of the November 21 message reflects that the message was sent from a mobile device. (St. Ex. 6). The State, however, failed to establish that Brand even owned a mobile device, much less that he owned the *specific* mobile device from which the November 21 message was sent. The State therefore failed to authenticate the messages via the third *Kent* method.

In concluding that the State had properly authenticated the messages, the *Brand* court relied primarily on the fourth *Kent* method, finding that the messages contained information that only Brand would have known. Specifically, the appellate court found that the November 21 message was authenticated because it referenced

the incident at Shannon's apartment and displayed the partial addresses of Shannon's work and her family members' homes, and that the purported November 8 message was authenticated because it informed Shannon of the location of her stolen car. *Brand*, 2020 IL App (1st) 1711728, ¶¶ 35-37.

Regarding the "addresses" included in the November 21 message, the *Brand* court found that "this information logically would have been known, at best, to only a small group of people close to Ms. Shannon, including defendant, her ex-boyfriend of two years." 2020 IL App (1st) 1171728 at ¶ 36. Initially, it must be stressed that these were not full addresses but rather two digit numbers, and there were no names associated with the numbers. (St. Ex. 6). Moreover, addresses are not closely guarded information. Anyone with access to a phonebook, Google, or social media could have learned the information included in the November 21 message. *See Griffin*, 19 A. 3d at 421 (personal information remains available online "forever" and can be accessed through a simple Google search)(citing David Hector Montes, *Living Our Lives Online: The Privacy Implications of Online Social Networking*, Journal of Law and Policy for the Information Society (Spring 2009), at 507, 508); *Smith,* 136 So. 3d at 432 ("Friends and strangers alike may have access to family photos, intimate details about one's likes and dislikes, hobbies, employer details, and other personal information, and, consequently, the desire to share information with one's friends may also expose users to unknown third parties who may misuse their information").

Additionally, as *Kent* illustrates, the fact that the messages contained information about the incident with Shannon was *not* a permissible basis for finding that they were authenticated. In *Kent*, the appellate court held that the trial court

abused its discretion when it allowed a detective to testify regarding a Facebook post, allegedly created by the defendant, that stated, "it's my way or the highway.....leave em dead n [sic] his driveway." 2017 IL App (2nd) 140917 at ¶¶ 5, 57. The defendant in *Kent* was, in fact, accused of shooting a man and leaving him to die in his driveway. *Id*. at ¶¶ 3-4. The day after the murder, the detective discovered the above-referenced Facebook post under the account of "Lorenzo Luckii Santos." *Id*. at ¶¶ 5, 57. The State introduced evidence that the defendant's first name was Lorenzo and elicited testimony that he sometimes went by the nickname of "Lucky." *Id*. at ¶ 9. Additionally, the detective testified that a photograph located on the profile resembled the defendant. *Id*. at ¶ 57.

On appeal, the State argued that the post was authenticated because it referenced the charged offense, specifically the fact that victim was shot and left to die in his driveway. The *Kent* court rejected this argument for two reasons, one factual and one logical. As a factual matter, the court observed that the shooting and resulting police activity likely attracted the neighborhood's attention to the shooting. *Id*. at ¶ 113. As a result, "Any person could have created the post if he or she knew the defendant by his alleged alias, knew about the shooting and the underlying feud [between the defendant and the victim], and had digitally mined an image from someone who looked like defendant." *Id*.

Similarly, in this case, anyone who knew about the alleged incident at Shannon's apartment or Brand and Shannon's acrimonious relationship could have authored the November 21 message. This message was not sent until 18 days after the alleged incident at Shannon's apartment. During that time, it is likely that a substantial number of people had learned about the feud between

Shannon and Brand. As in *Kent*, there is simply too great a possibility that a person with a grudge against Brand or a sympathetic friend of Shannon's could have authored the message.

As to the November 8 message, the *Brand* court's conclusion that this message was authenticated as having been authored by Brand because it contained incriminating information — specifically the location of Shannon's car — fails as a matter of basic logic. As the *Kent* court explained in rejecting the State's argument that the post at issue was authenticated because it referenced the shooting:

> T]he statement 'its my way or the highway . . . . leave em dead n his driveway' was *not self-authenticated* by the fact that victim was killed in his driveway. The State's reasoning that the post can be attributed to defendant because it is incriminating is circular. To the extent that the information is 'obscure,' it *would be known by the offender*, not necessarily by *defendant*. 2017 IL App (2d) 140917 at ¶ 112 (emphasis added).

Here, the *Brand* court's conclusion that the November 8 message was authenticated because it told Shannon where she could find her car relies on the very type of circular reasoning rejected by the *Kent* court. In essence, the *Brand* court found that: 1) The State proved that Brand committed the charged offenses by showing that he sent the messages, and 2) The State proved that Brand sent the messages by showing that he committed the charged offenses. This is the definition of a circular argument. The *Brand* court's reasoning makes sense only if one starts from the assumption that Brand was responsible for the theft of the car — *which is the very fact that the messages were introduced to prove*. Accordingly, as in *Kent*, the fact that the messages in this case contained information about the alleged incident with Shannon was not a proper basis for finding that they

were authenticated.

The fifth method for authenticating a social media communication — evidence showing that the "the purported sender respond[ed] to an exchange in such a way as to indicate circumstantially that he was in fact the author of the communication" — is entirely absent in this case. The screenshot of the November 21 message does not show any other messages that may have been exchanged between Shannon and the Masetti Meech account. There is thus no context from which the identity of the author can be inferred.

Although the State did not raise this argument below, the State may attempt to justify its failure to present other messages sent between Shannon and the Masetti Meech account by pointing to the following exchange during defense counsel's cross examination:

> Q: Where is the [November 8 message]?
> A: I erased it.
> Q: And when did you do that?
> A: I'm not sure. Every time my mailbox get full, I erase it. (R. 173-174).

There are a number of reasons to doubt the truth of Shannon's claim that she deleted the November 8 message because her Facebook Messenger mailbox was "full". First, it makes little sense that Shannon would delete the November 8 message when, according to her testimony, the message contained evidence of a crime, *i.e.* the location of her stolen car. (R. 131-132). Second, the State failed to present any evidence that a Facebook Messenger inbox can even become full. Third, the State failed to explain why it could not have obtained the message from the email account linked to Shannon's Facebook account. "If Facebook account settings are set to such a feature, Facebook notifies its members through email whenever . . . one member sends another member a message on Facebook." *Smith*

v. State, 168 So. 3d 992, 998 (Miss. Ct. App. 2013). As the proponent of the messages, it was incumbent on the State to present evidence regarding the settings on Shannon's Facebook account, including whether it was possible for her Facebook Messenger inbox to be full and whether her account was set up to receive e-mail notifications. *See Smith*, 136 So. 3d at 435 (Facebook messages not authenticated due, in part, to State's failure to present evidence regarding security of Facebook account); *Williams*, 926 N.E. 2d at 1172 (messages not authenticated where State failed to present evidence regarding security of MySpace account). Moreover, even accepting Shannon's claim as true, the fact that she deleted the messages in her inbox in no way prevented the State from obtaining those messages directly from Facebook, as it did in *Curry*. 2020 IL App (2d) 180148 at ¶ 21; *see also Browne*, 834 F. 3d at 406 (government obtained chat history between defendant and complainants directly from Facebook).

The sixth method for authenticating a Facebook message encompasses any and all "other circumstances peculiar to the case." This method reflects the *Kent* court's conclusion that whether a social media communication has been authenticated is necessarily a context-specific inquiry. *Kent*, 2017 IL App (2d) 140917 at ¶ 119 (citing *United States v. Vayner*, 769 F. 3d 125, 133 (2d Cir. 2014). Here, other than Shannon's uncorroborated testimony and the content of the messages themselves, the State below did not point to any circumstances tending to show that Brand was the author of the Facebook messages. The sixth method for authentication therefore has no application to the facts of this case.

The State Failed to Authenticate the Purported Facebook Messages

A review of the record reveals that the State did essentially nothing to attempt

to authenticate the messages at issue. As the foregoing demonstrates, the State failed to even establish that Brand controlled the Masetti Meech account. The record contains no evidence regarding the name, address, telephone number, email address, profile picture, or biographical information associated with the Masetti Meech account. The State did not even have to contact Facebook for some of this information, although, as *Curry* demonstrates, it could have easily done so. 2020 IL App (2d) 180148 at ¶ 21. For instance, in order to obtain the profile picture and basic biographical information, all the State needed to do was go to the Facebook website, search for the Masetti Meech account, and then print out the profile associated with the account. Petrashek, Marq. L. Rev. at 1507-1508 (The user name, profile photograph, gender, and location associated with a Facebook account are viewable by anyone). If Shannon was "Friends" on Facebook with the Masetti Meech account (which the State failed to establish), the State would likely have been able to access *all* of the information associated with the account, including Wall posts and any photographs linked to the account, simply by having Shannon log into her Facebook account. Hankins, 17 Suffolk J. Trial & App. Advoc. at 308-309 (Facebook friends can generally view all of the information associated with each other's account, subject to the account's privacy settings). Even if Shannon was not Friends with the Masetti Meech account, this information would have been accessible if the person who controlled the account set the privacy settings to "Public." *Id.*

The State's failure to establish that Brand controlled the Masetti Meech account necessitates a finding that the State failed to authenticate the Facebook messages at issue. However, should this Court conclude otherwise, it should still

find that the State failed to authenticate the messages due to its failure to provide sufficient evidence of authorship. The State could have (but apparently declined to do so) obtained a record of *all* of the messages exchanged between Shannon and the Masetti Meech account —not just the November 8 and November 21 messages — from Facebook. *See Curry*, 2020 IL App (2d) 180148 at ¶ 21; *Browne*, 834 F. 3d at 406. Such messages might have provided critical context for determining the identity of the author of the November 8 and November 21 messages. The State could also have obtained the messages directly from Brand's cell phone or computer, by obtaining a search warrant for these devices. *Browne*, 834 F. 3d at 406 (government recovered text messages and photographs from cell phone it had seized from the defendant). However, the State failed to establish whether Brand owned a cell phone or a computer, or whether he even had access to the internet. Rather than take any of the above steps to authenticate the messages, the State elected to rely entirely on Shannon's testimony and one purported screenshot. For the foregoing reasons, this Court should find that the State's evidence was insufficient to authenticate the messages.

The Erroneous Admission of the Messages was Not Harmless Error

Defense counsel objected to Shannon's testimony regarding the Facebook messages during trial and in a post-trial motion, and the court's error in admitting the messages is therefore fully preserved. (C. 103; R. 127-129, 134); *Brand*, 2020 IL App (1st) at ¶ 26 (finding issue fully preserved). As such, the question before this Court is whether the admission of the photographs was harmless error. Because the State's evidence in this case was not overwhelming and the admission of the Facebook messages was not duplicative of other evidence admitted at trial, this

Court should find that the admission of the Facebook messages contributed to Brand's conviction and was not harmless error. *People v. King*, 2020 IL 123926, ¶ 40 (defining harmless error).

Brand was convicted of home invasion and possession of a stolen motor vehicle ("PSMV"). Shannon's testimony was the only evidence that Brand committed PSMV. No one testified at trial that they ever saw Brand in possession of the car during the five days between the incident at Shannon's apartment and when Shannon recovered the car. Moreover, Shannon's testimony regarding the PSMV charge was inconsistent with her statement to the police. At trial, Shannon testified that she did not actually see Brand take her car. (R. 160). However, the State stipulated that Donald Smith, the officer who responded to Shannon's 911 call, would have testified that Shannon told him that she actually saw Brand get into her car and drive away. (R. 209). The purported November 8 message thus helped bolster Shannon's inconsistent and unreliable testimony. Indeed, in finding Brand guilty of PSMV, the court explicitly relied on the November 8 message, stating, "So it's pretty clear he's the one who took the car, because he knows where the car is at, he tells her where the car is at, and she finds the car where he says the car is going to be at." (R. 232). Given the court's explicit reliance on the November 8 message, its admission cannot be deemed harmless error.

The State's evidence was similarly not overwhelming regarding the home invasion charge. Shannon's statements to police, the allegations included in her petitions for orders of protection, and her testimony at trial were riddled with inconsistencies and omissions. For example, Shannon's testimony regarding what happened when Brand showed up to her work on November 3 was markedly different

than what she told Detective Murawski on November 24. (R. 108, 150-151). At trial, Shannon claimed that Brand showed up at her work and tried to speak with her, but that she told him that she had nothing to say to him. (R. 108). However, in her interview with Detective Murawski, Shannon stated that Brand had come with her and her coworker to the store, and that she had even allowed him to carry her grocery bags back for her. (R. 150-151).

Additionally, Shannon claimed at trial that Brand had shoved her head into her son's dresser, but in her petition for a civil order of protection — filed the day after the incident at her apartment — she did not mention this fact. (C. 127-131; R. 156). Nor, according to Officer Smith's stipulated testimony, did she say anything about Brand shoving her head into a dresser when he spoke to her immediately following the incident. (R. 208). Moreover, Shannon did not seek any medical treatment for her injuries, and a photograph of her taken the day after the incident does not show any injuries to her head. (St. Ex. 4; R. 170). Lastly, during her 911 call, Shannon did not mention Brand. (St. Ex. 7). Instead, she referred to her alleged assailant as someone "who used to be my guy," which could refer to any number of people. Shannon has four children, none of whom were fathered by Brand. (R. 105; SEC C 9). There is thus, at the very least, one other "guy" to whom Shannon could have been referring. (R. 105).

Shannon also gave conflicting accounts of whether Brand threatened her son, M.B. during the incident at her apartment. At trial, she claimed that Brand threatened her son with a gun multiple times. (R. 119-120). However, she never mentioned this allegation in her statements to Officer Smith directly after the incident. (R. 208). Furthermore, Shannon's testimony was inconsistent with M.B.'s

testimony on a number of key points. First, despite the fact that he was in his room at the time and there was nothing obstructing his view of Brand or Shannon, M.B. did not mention seeing Brand shove Shannon's head into a dresser. (R. 184). More significantly, Shannon testified that, after entering her apartment, Brand immediately pulled out a gun and put it to her chin. (R. 116). M.B., by contrast, testified that he did not see Brand with a gun until after he began choking Shannon. (R. 188). Notably, M.B. did not speak with the police until a week after the incident. (R. 187).

The many inconsistencies in Shannon's testimony — including Officer Smith's stipulated testimony that Shannon told him on the night of the incident that Brand hit her over the head with the gun, which Shannon denied having told him at trial — explain why the trial court found that the State had failed to prove that Brand was armed with a firearm on the night of the alleged incident: "[T]here's some question in my mind where the gun would have come from or when each person saw the gun, M.B. versus Shannon. There's some slight differences there, enough to be a reasonable doubt about the weapon itself." (R. 208, 234-235). The trial court thus had doubts about the State's evidence, and the Facebook messages clearly contributed to its decision to find Brand guilty.

Apparently realizing the weakness of its case, the State, in its closing argument, relied heavily on the messages. After conceding that no one saw Brand take Shannon's car, the State asserted that, despite this deficiency in its case, the November 8 message was strong circumstantial evidence that Brand was guilty of possession of a stolen motor vehicle. (R. 225). Additionally, in attempting to shore up inconsistencies in Shannon's testimony, the State argued that the

November 8 message corroborated Shannon's claim that Brand stole her car. (R. 229, 232). The State highlighted the November 21 message during closing arguments as well. (R. 229). According to the State, several of the alleged threats included in the message — in particular, the sender's warning that "this is just the beginning" and "bullets don't have names" — constituted an "admission" by Brand that he had attacked Shannon on November 3. (R. 229).

Although this was a bench trial, the usual presumption — that the "trial court considered only admissible evidence and disregarded inadmissible evidence in reaching its conclusion" — is unwarranted because, here, the trial court was responsible for the erroneous admission of the Facebook messages. *People v. Naylor*, 229 Ill. 2d 584, 603 (2008) (trial court presumed to consider only properly admitted evidence). It makes little sense that the court, having admitted the Facebook messages, would decline to consider them when determining Brand's guilt. Moreover, as discussed, the trial court explicitly relied on the November 8 message in finding Brand guilty of PSMV, thereby rebutting the presumption that the court considered only proper evidence. (R. 232); *Id.* at 603-604 ("[T]he presumption that trial court considered only competent evidence in reaching its finding 'may be rebutted where the record affirmatively shows the contrary'") (quoting *People v. Gilbert*, 68 Ill. 2d 252, 258-259 (1977).

Accordingly, the court's decision to admit the purported Facebook messages was not harmless error, and this Court should reverse Brand's convictions and remand for a new trial.

II. The State failed to show that Brand took Shannon's car with the intention of permanently depriving her of its use. The State was required to make such a showing because its theory of the case was that Brand was personally responsible for the theft of Shannon's vehicle. Thus, Brand's conviction for possession of a stolen motor vehicle must be reversed.

When a defendant is charged with possession of a stolen motor vehicle ("PSMV") and the State alleges that the defendant was personally responsible for the theft of the vehicle, the State is required to prove that the defendant took the vehicle with the intent to permanently deprive the owner of its use. *People v. Cramer*, 85 Ill. 2d 92 (1981); *People v. Sergey*, 137 Ill. App. 3d 971 (2d Dist. 1985)*; People v. Pozdoll*, 230 Ill. App. 3d 887 (2d Dist. 1992); *People v. Pollards*, 367 Ill. App. 3d 17 (1st Dist. 2006). Here, Shannon alleged that Brand was personally responsible for the theft of her car, and the State was therefore required to prove that Brand took Shannon's car with the intent to permanently depriving her of its use. The appellate court's conclusion that this principle is applicable only when the charge against the defendant is limited to possession of a stolen vehicle, rather than a stolen or converted vehicle, is contrary to Illinois case law, the Illinois Pattern Jury Instructions, and the common law understanding of conversion. *People v. Brand*, 2020 IL App (1st) 171728, ¶ 41. Accordingly, because the State failed to prove that Brand took Shannon's car with the intention of permanently depriving her of its use, this Court should reverse his conviction for PSMV.

Standard of Review

Whether the State was required to prove an intent to permanently deprive is a question of law that is reviewed de novo. *People v. Smith*, 191 Ill. 2d 408, 411 (2000). Whether the State succeeded in making this showing involves the sufficiency of the evidence. As such, the question is whether, after viewing the evidence in

the light most favorable to the prosecution, any rational trier of fact could have found that the State proved, beyond a reasonable doubt, that Brand took Shannon's car with the intention of permanently depriving her of its use. *Jackson v. Virginia*, 443 U.S. 307 (1979); *In re Winship*, 397 U.S. 358, 361 (1970).

The State was required to prove that Brand took Shannon's car with the intention of permanently depriving her of its use

The origin of the intent to permanently deprive requirement, as applied to cases involving the possession of a stolen motor vehicle, dates back to this Court's decision in *Cramer*. 85 Ill. 2d 92, 100 (1981). The defendant in *Cramer* was charged with theft based on his unauthorized taking of a truck belonging to the complainant. *Id.* at 94. On appeal, he argued, and the appellate court agreed, that PSMV was a lesser-included offense of theft, and that the trial court had erred by failing to instruct the jury on possession of a stolen motor vehicle. *People v. Cramer*, 81 Ill. App. 3d 525, 527 (3d Dist. 1980). According to the appellate court, PSMV was a lesser-included offense of theft because, unlike with theft, the State would not have prove to an intent to permanently deprive in order to sustain a conviction for PSMV. *Id.* at 529.

This Court reversed, finding that, because the State alleged that the defendant was personally responsible for the theft of the complainant's vehicle, a conviction for PSMV could not be sustained absent a showing of an intent to permanently deprive:

> Here, there was no evidence that the vehicle had been taken by another person. Thus defendant could be convicted of [PSMV] only if he possessed the vehicle, without authorization, knowing it to have been stolen or converted. The word "stolen" here obviously refers to a theft. *Accordingly, defendant would have to know he had stolen or converted the truck, i. e., he would have had to have stolen or converted it, before he could be found guilty.* He could not, under these

> facts, be found guilty of violating this section on the basis of unauthorized possession of the truck, as defendant urges. *Cramer*, 85 Ill. 2d at 100 (emphasis added).

Stated differently, a conviction for PSMV requires the State to prove that the defendant knew the car was stolen. If the defendant is alleged to have personally stolen the car, then in order to prove that the defendant knew the car was stolen, the State would have to show that the defendant intended to steal it. And in order to show that the defendant intended to steal the car, the State would have to show that he took the car with an intent to permanently deprive the owner of its use, as this is one of the elements of theft. Based on this analysis, this Court found that, where the defendant is alleged to have personally stolen the vehicle at issue, PSMV is not a lesser-included of theft because, in such a situation, a conviction for PSMV could only be sustained on the same facts necessary to sustain a conviction for theft, including an intent to permanently deprive. *Id.*

In affirming Brand's conviction for PSMV, the *Brand* court drew a distinction between possession of a *stolen* motor vehicle and possession of a *converted* vehicle. 2020 IL App (1st) 171728, ¶¶ 40-41. According to the court, "Where the indictment charges the defendant with a violation of section 4-103(a)(1) based on his knowing possession of a vehicle that he had stolen, and makes no charge based on the vehicle being converted, the State must show that a 'theft' occurred, an essential element of which is the intent to permanently deprive the owner of the use and benefit of the vehicle." *Id.* at ¶ 40 (citing *People v. Bivens*, 156 Ill. App. 3d 222, 229-230 (2d Dist. 1987). The *Brand* court concluded that, because Brand had been charged with possession of a stolen or converted vehicle, the State was not required to show an intent to permanently deprive. *Id.* at ¶ 41.

However, as other appellate court decisions make clear, the distinction drawn by the *Brand* court between possession of a stolen vehicle and possession of a converted vehicle is unwarranted. For example, in *Sergey* and *Pozdoll*, the appellate court found that the State is required to show an intent to permanently deprive when the defendant is charged with possessing a converted vehicle and the State alleges that the defendant personally converted the vehicle. *Sergey*, 137 Ill. App. 3d 971 (2d Dist. 1985); *Pozdoll*, 230 Ill. App. 3d 887 (2d Dist. 1992). In *Sergey*, the defendant was charged with possessing a stolen or converted vehicle, after he borrowed a car that he mistakenly believed belonged to his employer. 137 Ill. App. 3d at 973 (2d Dist. 1985). On appeal, the defendant argued that his actions did not constitute a conversion. *Id.* at 972-973. The court agreed and reversed the defendant's conviction, finding that, in order to prove that the defendant had converted the vehicle, the State was required to show that the defendant had taken the vehicle with the "intent to permanently deprive the owner[.]" *Id.* at 975. To hold otherwise, the court reasoned, would mean that "every act of borrowing a friend's chattel without his express permission at that time would constitute a criminal conversion." *Id.* at 976.

Likewise, in *Pozdoll*, the court recognized that the State must show an intent to permanently deprive when the defendant is charged with possession of a converted motor vehicle. 230 Ill. App. 3d at 888-889 (2d Dist. 1992). The defendant in *Pozdoll* was charged with possessing a vehicle knowing it to have been stolen or converted, after he took a car that he had found idling in a parking lot. *Id.* On appeal, he argued that the State had failed to prove that he had converted the car or that he knew that a conversion had occurred. *Id.* at 889. The court rejected both

arguments, but in doing so, considered whether the State had shown an intent to permanently deprive. *Id.* at 888-889. Although the court ultimately found there was sufficient evidence to sustain the defendant's conviction for possessing a converted vehicle, *Pozdoll* nevertheless stands for the proposition that, where the defendant is alleged to have personally taken the car in question, a conviction for possession of a converted motor vehicle cannot be sustained absent a showing of an intent to permanently deprive.

Additionally, in *Pollards*, the appellate court reversed the defendant's conviction for PSMV, finding that the trial court had erred by failing to instruct the jury that the State was required to prove that the defendant took the complainant's car with the intention of permanently depriving the owner of its use. 367 Ill. App. 3d at 23-24 (1st Dist. 2006). In so ruling, the appellate court relied on the Committee Note to Illinois Pattern Jury Instruction 23.36, which directs that, "when a defendant is charged with possession of a *stolen or converted* vehicle and it is alleged, or the evidence shows, that [defendant] participated in the actual taking of the vehicle, it may be necessary to include the phrase 'intent to permanently deprive' in the definition and issues instructions." *Id.* at 20 (emphasis added). The *Pollards* court found that, "although the note says *'may* be necessary,'" the instruction was warranted because, as in this case, the State's theory was that the defendant was personally responsible for taking the car. *Id.* at 21-22.

Thus, as *Pollards* illustrates, whether the State is required to prove an intent to permanently deprive to secure a conviction for PSMV is not contingent upon the language used in the charging instrument, but rather solely upon whether the State alleges that the defendant was personally responsible for taking the

complainant's car. IPI 23.36 uses stolen or converted interchangeably, as does IPI 23.35. Titled "Definitions of Possession of Stolen or Converted Vehicle," IPI 23.35 lists stolen or converted in the same phrase without any brackets indicating that they should be treated differently: "A person commits the offense of possession of a stolen or converted vehicle when that person [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] [(a vehicle) (an essential part of a vehicle)] when not entitled to possession of the [(vehicle) (essential part of a vehicle)] and when knowing it to have been stolen or converted."

In addition to IPIs 23.35 and 23.36, further support for the conclusion that there is no difference between possession of a converted motor vehicle and possession of a stolen motor vehicle, in terms of whether the State is required to prove an intent to permanently deprive, comes from the fact that neither the Motor Vehicle Code nor the Criminal Code define conversion. And while it is true that IPI 23.35(A) provides, "Property has been 'converted' if a person lawfully entitled to possession of that property has been wrongfully deprived of it," the IPIs provide no indication as to how long a person must be "wrongfully deprived" of their property in order for that property to be considered converted. Notably, in the civil context, Illinois courts define conversion as "any unauthorized act that deprives a person of their property permanently or for an indefinite amount of time." *Wei Quan v. Arcotech Uniexpat, Inc.*, 2018 IL App (1st) 180227, ¶ 12 (citing *In Re Thebus*, 108 Ill. 2d 255, 259 (1985)).

This Court should hold that the civil law requirement of permanent deprivation also applies in the criminal context, as a contrary holding would defy basic common sense. Under the *Brand* court's interpretation, the State can lessen

its evidentiary burden simply by adding the word "converted" to the charging document. If that is truly the law — if a conviction for possession of a converted vehicle can be sustained on *less* evidence than that necessary to sustain a conviction for possession of a stolen motor vehicle — then why would the State ever charge a defendant with possession of a stolen motor vehicle? Why would the State not simply limit the charge to possession of a converted motor vehicle? Moreover, if an intent to permanently deprive never applies to possession of a converted vehicle, why would the legislature make the penalty for possession of a converted motor vehicle the same as for possession of a stolen motor vehicle? After all, a defendant who takes a car without an intent to permanently deprive the owner of its use is less culpable than a defendant who takes a car with this intention. Accordingly, in order for the *Brand* court's position to make sense, it would have to be the case that the legislature intended to impose the same penalty for the less culpable offense of possession of a converted vehicle as for possession of a stolen motor vehicle. This Court should decline to find that the legislature intended such an absurd result. *See People v. Hannah*, 207 Ill. 2d 486, 487 (2003) ("The principle that statutory language should not be construed to produce an absurd result is a deeply rooted one"); *Croissant v. Joliet Park District*, 141 Ill. 2d 449, 455 (1990) ("Statutes are to be construed in a manner that avoids absurd or unjust results").

Critically, the State's own theory of prosecution demonstrates that there is no difference between possession of a converted vehicle and possession of a stolen vehicle, at least in terms of whether the State is required to show an intent to permanently deprive. At trial, the State never argued conversion or even uttered the word. It was not until Brand raised this issue in the appellate court that the

State first argued conversion. The State's theory of prosecution below was that Brand had stolen, not converted, Shannon's car. (R. 224-225).

The State failed to prove that Brand took Shannon's car with the intention of permanently depriving her of its use

For the foregoing reasons, *Brand,* and the cases it relied on, wrongly concluded that the State is never required to show an intent to permanently deprive when the defendant is charged with PSMV based on possessing a converted vehicle. *Brand*, 2020 IL App (1st) 171728 ¶ 41, citing *Gengler*, 251 Ill. App. 3d at 221-222 (2d Dist 1993), *Bivens*, 156 Ill. App. 3d 222, 229-230 (1st Dist. 1987). The State was required to show that Brand took Shannon's car with the intention of permanently depriving her of its use, and it failed to do so. According to the State's theory of the case, Brand used Shannon's car as, essentially, a getaway vehicle. (R. 224-225). In this respect, this case is similar to *Bivens*, where the appellate court found that the State had failed to prove the defendant took the complainant's car with the intention of permanently depriving the complainant of its use. 156 Ill. App. 3d at 230-231. In *Bivens*, the defendant and his accomplice, both of whom had just escaped from prison, approached a car with three people inside and forced two of the people out of the car. *Id.* at 230. The defendant and his accomplice then drove away with one of the complainants still in the backseat. *Id.* at 231. After driving around for an indeterminate amount of time, the defendant and his accomplice abandoned the vehicle. *Id.* The appellate court found that the defendant's commandeering of the complainant's car to aid in his escape attempt "was insufficient to prove beyond a reasonable doubt that defendant exerted control of the car with the intent to or knowledge that his actions would permanently deprive the owner of its use and benefit [.]" *Id.*

Similarly, in this case, it is clear that, accepting the State's evidence as true, Brand did not take Shannon's car with the intention to permanently deprive her of its use. This is borne out by the short amount of time he was allegedly in possession of the car (only five days) as well as the fact that he purportedly contacted Shannon and told her where she could find her car. If Brand had intended to permanently deprive Shannon of her car, he would not have contacted her and facilitated the car's return. Rather, as in *Bivens*, the State's evidence suggests that Brand's intention was to use Shannon's car temporarily before returning it, which he eventually did. *See Pozdoll*, 230 Ill. App. 3d at 890 (In determining whether the State has shown an intent to permanently deprive, courts look to whether there is "any evidence of an intent to return the property or to leave it in a place where the owner could safely recover it"). Accordingly, the State failed to show that Brand took Shannon's car with the intention of permanently depriving her of its use, and this Court should thus reverse his conviction for PSMV.

CONCLUSION

For the foregoing reasons, Crosetti Brand, Defendant-Appellant, respectfully requests that this Court reverse his convictions for home invasion and possession of a stolen motor vehicle and remand for a new trial and/or reverse his conviction for possession of a stolen motor vehicle outright. Alternatively, this Court affirm the appellate court's ruling that this case be remanded for a *Krankel* hearing.

Respectfully submitted,

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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, is 46 pages.

/s/Joseph Michael Benak
JOSEPH MICHAEL BENAK
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APPENDIX TO THE BRIEF

INDEX TO THE RECORD

Common Law eRecord ("C") **Page**

Secured eRecord

Supplemental eRecord

Report of Proceedings ("R")

State App Defender

2020 IL App (1st) 171728
Opinion filed: March 13, 2020

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-1728

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 CR 20441
	)	
CROSETTI BRAND,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.
Presiding Justice Hoffman and Justice Delort concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant, Crosetti Brand, was convicted of aggravated domestic battery, home invasion, and possession of a stolen or converted motor vehicle. The trial court sentenced defendant to 16 years' imprisonment for home invasion (merged with aggravated domestic battery) to be served concurrently with 3 years' imprisonment for possession of a stolen or converted motor vehicle. The court also entered an order of protection on behalf of the victim against defendant, set to expire two years after defendant's release from prison. Defendant appeals, contending (1) the trial court erred by admitting evidence regarding the contents of two Facebook messages that defendant allegedly sent to the victim; (2) the State failed to prove him guilty beyond a reasonable doubt of possession of a stolen or converted motor vehicle; (3) the trial court erred by admitting photographs of the victim's car keys allegedly recovered from defendant and inventoried by the police, where the State failed to present a sufficient chain of custody; (4) the court erred by failing to conduct an inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984), regarding his posttrial allegations of ineffective assistance of counsel; (5) the court erroneously

considered improper factors during sentencing; (6) the order of protection should be vacated because it was entered in contravention of the statutory requirements; and (7) the mittimus should be corrected to accurately reflect that he was convicted of home invasion under section 19-6(a)(2) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/19-6(a)(2) (West 2014)), instead of under section 19-6(a)(3) (*id.* § 19-6(a)(3)). We affirm defendant's convictions and sentence, remand for a *Krankel* hearing, and correct the mittimus.

¶ 2 At trial, the victim, Anita Shannon, testified that defendant was her ex-boyfriend and that they had dated about two years, until she ended the relationship on October 30, 2015. On November 3, 2015, four days after she ended their relationship, defendant showed up at her place of employment to speak with her. Ms. Shannon told defendant that she did not want to talk to him anymore.

¶ 3 Later that evening, at about 7:15 p.m., Ms. Shannon was in her apartment preparing dinner for her four children when defendant knocked on the door. She opened the door about six inches and told defendant that she no longer wanted to be with him. Defendant told her that she needed "to come with a better answer than that." Ms. Shannon closed the door.

¶ 4 Defendant knocked on the door again. Ms. Shannon reopened the door just enough to "peek out" and told defendant that if he did not leave her alone, she would call the police on him. Defendant then pushed the door open, barged in, locked the door behind him, and put a gun to her chin. Defendant grabbed Ms. Shannon by the shirt collar, pushed her up against the wall next to the bathroom door, and began choking her.

¶ 5 Ms. Shannon's 15-year-old son, Maurice, stepped forward and asked defendant what he was doing. Defendant told Maurice to "get back," and pointed the gun at him. Defendant eventually dragged Ms. Shannon into Maurice's room, banged her head against a dresser, and threw her to

the ground. Then defendant ran into Ms. Shannon's bedroom, from where she heard the sound of keys jingling. Defendant exited the bedroom and fled the apartment. Ms. Shannon got up and locked the door behind him. She looked out the window and saw that her car, a 2014 Kia Sedona, was gone. Then she called 911.

¶ 6 On November 8, 2015, Ms. Shannon received a Facebook message from a person named "Masetti Meech." Ms. Shannon explained that "Masetti Meech" was a name that defendant had used when he communicated with her on Facebook while they were dating. Accordingly, Ms. Shannon believed that when communicating via Facebook messenger with Masetti Meech on November 8, 2015, she was actually communicating with defendant.

¶ 7 In the November 8 message, Masetti Meech told Ms. Shannon the location on 64th Street where she could recover her 2014 Kia Sedona. Ms. Shannon subsequently went to that location and retrieved her vehicle using a spare key. The State did not introduce a copy of the November 8 Facebook message into evidence because Ms. Shannon had deleted it once her "mailbox [got] full."

¶ 8 On November 21, 2015, Ms. Shannon received another Facebook message from Masetti Meech, a photograph of which was admitted into evidence. Ms. Shannon read the contents of the message into evidence:

> "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 to see 16. I see him at school."

¶ 9 Ms. Shannon testified as follows regarding the numbers listed in the November 21 Facebook message:

"Q. Now, you read a series of numbers, 79, what does that number mean to you?

A. That's where my mom stay.

Q. On 79th Street?

A. Yes.

Q. What's 37?

A. That's where my sister stay.

Q. 37th Street?

A. Yes.

Q. What about 71?

A. My other sister stay there.

Q And 39?

A. That's where my brother stays.

Q. And what's 42?

A. That's the main office to the workplace where I used to work."

¶ 10 On November 24, 2015, Ms. Shannon and her brother saw defendant walking on 39th Street near her brother's building. Ms. Shannon called 911 and her brother flagged down a police officer.

¶ 11 Later on November 24, 2015, Ms. Shannon went to the police station and spoke with a detective, who showed her a bag containing the car keys that defendant had taken from her bedroom. A photograph of the bag's contents was admitted into evidence over defendant's objection.

¶ 12 Maurice Bates testified that he lives with his mother, Ms. Shannon, and his three brothers and sisters. At about 7:15 p.m. on November 3, 2015, Maurice was in his bedroom when he heard

a door slam and then saw defendant choking Ms. Shannon in the hallway outside of his room. Maurice walked toward defendant, who then pointed a gun at Maurice and said, "Is this what you want?"

¶ 13 Defendant put the gun underneath Ms. Shannon's chin and dragged her into Maurice's bedroom. Defendant shoved Ms. Shannon to the floor and went into her bedroom and retrieved her car keys. Defendant then left the apartment. Maurice called 911 and handed the phone to Ms. Shannon to speak to the operator. Maurice looked out the window and saw that Ms. Shannon's car was gone.

¶ 14 On cross-examination, Maurice testified that he was at home when the police arrived in response to the 911 call but that he did not speak with the officers that evening. Maurice spoke with the officers a week later, on November 10, and told them what he had seen.

¶ 15 Officer Steve Austin testified that he arrested defendant at about 3:30 p.m. on November 24, 2015. A custodial search was performed on defendant, and personal property was taken off him and placed in a personal property bag. Officer Austin identified three photographs of a personal property bag as depicting the bag that contained the items recovered from defendant during his custodial search. Officer Austin did not state what the items were.

¶ 16 On cross-examination, Officer Austin admitted that he did not personally perform the custodial search of defendant and he does not remember whether he was present during the search.

¶ 17 On redirect-examination, Officer Austin stated that a custodial search is performed during "all arrests." The trial court then questioned Officer Austin as follows:

> "Q. When a guy comes into the lockup, it's normal to do a custodial search to see what the guy has on him; correct?
>
> A. Yes.

Q. And then the stuff was inventoried in those three photographs?

A. That was his personal property that was put in those bags and went in the lockup with him."

¶ 18 On recross-examination, Officer Austin stated that he did not know who performed the custodial search. The trial court then questioned Officer Austin:

"Q. Where would this be done at, the custodial search?

A. It could have been done on the street at the location of arrest. It could have been done in the station in the 2nd District tact office.

Q. You don't recall where—

A. No, I don't recall where it took place."

¶ 19 Defendant did not call any witnesses. The parties stipulated that Officer Donald Smith, who responded to the 911 call on November 3, 2015, would have testified that he created a case incident report based on what Ms. Shannon told him that night. Ms. Shannon told him that, when defendant entered her apartment, he pulled out a silver object that she believed to be a gun and hit her in the head with it. She witnessed defendant subsequently get into her car and drive away. The report does not mention any statement by Ms. Shannon that defendant pushed her head into a drawer or pointed his gun at her son Maurice.

¶ 20 The trial court convicted defendant on all counts. In finding defendant guilty of home invasion, the court ruled that the State had not proven beyond a reasonable doubt that defendant was armed at the time, as required for a conviction under section 19-6(a)(3) of the home invasion statute (720 ILCS 5/19-6(a)(3) (West 2014)). Instead, the court found that the State had proven defendant's guilt under section 19-6(a)(2), which only required that defendant had intentionally injured the victim within the apartment, regardless of whether a firearm was involved. See *id.* § 19-

6(a)(2). However, the sentencing order incorrectly states that defendant was convicted of home invasion under section 19-6(a)(3).

¶ 21 Prior to the hearing on his motion for a new trial, defendant informed the court that he wanted to file a *pro se* motion alleging that his counsel was ineffective. The court informed defendant that "you can file whatever you'd like to file and I will set it for a *Krankel* (102 Ill. 2d 181 (1984)) hearing," but no *Krankel* hearing was ever held.

¶ 22 The trial court denied defendant's motion for a new trial and sentenced him to 16 years in prison for home invasion and 3 years in prison for possession of a stolen or converted motor vehicle, to run concurrently. Defendant appeals.

¶ 23 First, defendant argues that the trial court erred by admitting evidence regarding the contents of the November 8 and November 21 Facebook messages from Masetti Meech without proper authentication. The parties agree that despite its digital nature, the Facebook messages qualify as documents for admissibility purposes. See *People v. Kent*, 2017 IL App (2d) 140917, ¶ 86 (treating a Facebook post like any other form of documentary evidence). The State must lay a proper foundation by authenticating the Facebook messages before presenting evidence regarding their contents. See Ill. R. Evid. 901 (eff. Jan. 1, 2011). Authentication may be made by direct or circumstantial evidence, which is routinely the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that the item is, in fact, what its proponent claims it to be. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 349 (2010); Ill. R. Evid. 901(a) (eff. Jan. 1, 2011).

¶ 24 "Circumstantial evidence of authenticity includes such factors as appearance, contents, substance, and distinctive characteristics, which are to be considered with the surrounding circumstances." *People v. Ziemba*, 2018 IL App (2d) 170048, ¶ 52. "Documentary evidence,

therefore, 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." *Id.* The trial court's decision to admit evidence regarding the contents of the Facebook messages will not be reversed absent an abuse of discretion. *People v. Chromik*, 408 Ill. App. 3d 1028, 1046 (2011).

¶ 25 The State contends that defendant forfeited review by failing to raise a foundation/authentication objection to the evidence regarding the Facebook messages at trial. The State cites *People v. Watt*, 2013 IL App (2d) 120183, ¶ 46, which held that "[t]o preserve an error, an objection must be timely, meaning contemporaneous with the objectionable conduct, and the objecting party must identify the same basis for his objection that he will argue on appeal."

¶ 26 Review of the record indicates that there was no forfeiture here. When the State began questioning Ms. Shannon about the November 8 Facebook message from Masetti Meech, defendant immediately voiced a general objection, which the trial court overruled. When the State subsequently began questioning Ms. Shannon about the November 21 Facebook message from Masetti Meech, defendant immediately stated that he was "going to object to relevance" and "foundation as well." The trial court overruled the objection, stating, "She got a message from Masetti Meech. She knows him by the name on her Facebook account." Defendant subsequently argued in his posttrial motion that the court erred in admitting evidence of the November 8 and November 21 Facebook messages over his objections. The trial court denied the posttrial motion.

¶ 27 This record indicates to us that the trial court was made aware of defendant's claim that the November 8 and November 21 Facebook messages from Masetti Meech were not properly authenticated because there was insufficient evidence that they actually came from him but that the court rejected that claim on the basis of Ms. Shannon's testimony that defendant previously

had used the name Masetti Meech when messaging her on Facebook. Where, as here, the trial court clearly had the opportunity to review the same essential claim that is later raised on appeal, there is no forfeiture. *People v. Heider*, 231 Ill. 2d 1, 18 (2008).

¶ 28 We proceed to address defendant's argument that the November 8 and November 21 Facebook messages were not properly authenticated. *Kent*, 2017 IL App (2d) 140917, is informative. In *Kent*, the defendant was charged with the first degree murder of the victim, Donmarquis Jackson, who was shot in the driveway of his residence. *Id.* ¶¶ 3, 4. At trial, Detective Beets testified that the day after the murder, he searched Facebook and found a profile under the name " 'Lorenzo Luckii Santos' " that contained a photograph of a person resembling the defendant. *Id.* ¶ 57. The Santos profile contained a post reading " 'its my way or the highway...leave em dead n his driveway.' " *Id.* Detective Beets testified that the profile name " 'Lorenzo Luckii Santos' " was " 'associated' " with this post, and he printed a screenshot of it. *Id.* The detective provided no testimony regarding when the post was created, but he testified that the post was deleted later that same day. *Id.*

¶ 29 Following Detective Beets's testimony, the defendant objected to the Facebook evidence, arguing that the State had failed to provide sufficient authentication. *Id.* ¶ 58. The trial court overruled the objection, finding that the Facebook post was sufficiently authenticated with the profile name, the photograph of the person resembling defendant, and the statement about leaving someone " 'dead n his driveway.' " *Id.* ¶¶ 57-58.

¶ 30 After he was convicted and sentenced, the defendant appealed, arguing that the trial court abused its discretion in admitting the Facebook post, as it was not properly authenticated. *Id.* ¶ 66. On review, the appellate court noted that " 'The authentication of social media poses unique issues regarding what is required to make a *prima facie* showing that the matter is what the proponent

claims.' " *Id.* ¶ 105 (quoting *Smith v. State*, 2012-CT-00218-SCT (¶ 19) (Miss. 2014)). "[C]oncern over authentication arises because anyone can create a fictitious account and masquerade under another person's name or can gain access to another's account by obtaining the user's username and password, and consequently, the potential for fabricating or tampering with electronically stored information on a social networking website is high and poses challenges to authenticating printouts from the website." *Id.* ¶ 106.

¶ 31 Citing a Texas case (*Tienda v. State*, 358 S.W.3d 633 (Tex. Crim. App. 2012)), which surveyed cases addressing the authentication of various forms of electronically stored information, the appellate court held that the following factors were relevant for determining whether a social media post was properly authenticated:

> "(1) the purported sender admits authorship, (2) the purported sender is seen composing the communication, (3) business records of an Internet service provider or cell phone company show that the communication originated from the purported sender's personal computer or cell phone under circumstances in which it is reasonable to believe that only the purported sender would have had access to the computer or cell phone, (4) the communication contains information that only the purported sender could be expected to know, (5) the purported sender responds to an exchange in such a way as to indicate circumstantially that he was, in fact, the author of the communication, or (6) other circumstances peculiar to the particular case may suffice to establish a *prima facie* showing of authenticity." *Kent*, 2017 IL App (2d) 140917, ¶ 118.

¶ 32 The appellate court noted that these examples "are intended only as a guide" and that " '[e]vidence may be authenticated in many ways, and as with any piece of evidence whose authenticity is in question, the "type and quantum" of evidence necessary to authenticate a web

page will always depend on context.' " *Id.* ¶ 119 (quoting *United States v. Vayner*, 769 F.3d 125, 133 (2d Cir. 2014)).

¶ 33 Turning to the facts before it, the appellate court noted that the State offered neither direct nor circumstantial proof of authentication. *Id.* ¶ 103. Defendant did not admit making the post or creating the Facebook profile, and nobody saw him composing the post. *Id.* At the pretrial hearing, the State represented that the computer from which the Facebook post originated would have an Internet protocol (IP) address belonging to defendant's girlfriend, but no such evidence was presented at trial. *Id.* The State offered no evidence that any of the information in the Facebook post "was known or available only to defendant or, at the very least, to a small group of people including defendant." *Id.* ¶ 116. Also, "the State offered no evidence that defendant ever accessed Facebook or even used the Internet. At best, the photograph and the name on the Facebook profile are *about* defendant and not evidence that defendant himself had created the post or was responsible for its contents." (Emphasis in the original.) *Id.* ¶ 111. Accordingly, the appellate court held that without some basis from which a reasonable juror could conclude that the Facebook post was "not just any Internet post but was, in fact, created by defendant or at his direction," the trial court abused its discretion by admitting the Facebook post and Detective Beets's testimony. *Id.* ¶ 119.

¶ 34 In the present case, in contrast to *Kent*, the State presented sufficient evidence authenticating the November 8 and November 21 Facebook messages from Masetti Meech such that the trial court reasonably could conclude that both messages were created by defendant. Specifically, contrary to *Kent* in which the State there presented no evidence that the defendant ever accessed Facebook or even used the Internet, Ms. Shannon testified here that while they were dating, defendant messaged her on Facebook multiple times under the username "Masetti Meech."

Based on defendant's repeated use of the username Masetti Meech when messaging her on Facebook, Ms. Shannon believed that the November 8 and November 21 Facebook messages from Masetti Meech actually came from defendant.

¶ 35 Also unlike *Kent*, in which the State offered no evidence that any of the information in the Facebook post was known or available only to defendant, or at the very least, to a small group of people including defendant, the State here provided evidence that the November 8 Facebook message contained unique information that was not widely known to persons other than defendant and Ms. Shannon. Specifically, the November 8 Facebook message from Masetti Meech informed Ms. Shannon about the location of her stolen car, which she subsequently retrieved. Ms. Shannon testified that defendant was the person who had stolen her car five days earlier; as such, defendant was in the unique position of knowing where he had disposed of the vehicle. The trial court reasonably could conclude that defendant was the author of the November 8 Facebook message from Masetti Meech to Ms. Shannon, which accurately informed her of the location of her stolen vehicle.

¶ 36 The State also provided evidence that the November 21 Facebook message contained unique information known at the very least to a small group of people, including defendant. Specifically, the November 21 Facebook message from Masetti Meech to Ms. Shannon contained threats to shoot "your people," including her son, who was "not going to see 16,"and stated "79, 37, 71st, 39, 42, workplace, 79 is today." Ms. Shannon explained that "79" represented 79th Street where her mother lives, "37" represents 37th Street where her sister lives, "71" represents 71st Street where her other sister lives, "39" represents 39th Street where her brother lives, and "42" represents "the main office to the workplace where [she] used to work." The author of the November 21 Facebook message thus knew the age of Ms. Shannon's son, as well as the address

of Ms. Shannon's place of work, and the residential addresses of her mother, brother, and two sisters. The totality of this information logically would have been known, at best, only to a small group of people close to Ms. Shannon, including defendant, her ex-boyfriend of two years.

¶ 37 The trial court reasonably could conclude that defendant authored the November 21 Facebook message from Masetti Meech, based on all the following evidence: (1) Masetti Meech was the user name associated with defendant's previous Facebook messages to Ms. Shannon while they were dating; (2) the November 21 message came less than two weeks after the November 8 message, also from Masetti Meech, identifying the location of Ms. Shannon's car stolen by defendant; (3) the November 21 message came after defendant had attacked Ms. Shannon in her apartment on November 3 and pointed a gun at her 15-year-old son; (4) the November 21 message again threatened to attack Ms. Shannon and her son, as well as other of her family members; and (5) the November 21 message displayed intimate knowledge of Ms. Shannon's work address and her family members' residential addresses.

¶ 38 Based on all this evidence, we cannot say that the trial court abused its discretion in finding that the November 8 and November 21 Facebook messages from Masetti Meech to Ms. Shannon had been authenticated as coming from defendant.

¶ 39 Next, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of possession of a stolen or converted motor vehicle in connection with his allegedly unlawful possession of Ms. Shannon's 2014 Kia Sedona because the State failed to prove that he took the car with the intent to permanently deprive Ms. Shannon of its use. The relevant question when reviewing the sufficiency of the evidence is whether, after viewing all 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. Davison*, 233 Ill. 2d 30, 43 (2009).

¶ 40 Section 4-103(a)(1) of the Illinois Vehicle Code states that it is a felony for a person not entitled to the possession of a vehicle to possess it, knowing it to have been "stolen or converted." 625 ILCS 5/4-103(a)(1) (West 2014). Thus, a conviction under section 4-103(a) may be predicated on defendant possessing a vehicle, knowing that it was stolen, or on defendant possessing a vehicle, knowing that it was converted. Where the indictment charges defendant with a violation of section 4-103(a)(1) based on his knowing possession of a vehicle that he had stolen, and makes no charge based on the vehicle being converted, the State must show that a "theft" occurred, an essential element of which is the intent to permanently deprive the owner of the use and benefit of the vehicle. *People v. Bivens*, 156 Ill. App. 3d 222, 229-30 (1987). In the present case, though, defendant's indictment did not charge him with a violation of section 4-103(a)(1) based only on his knowing possession of a stolen vehicle; rather, it alleged that "he, not being entitled to the possession of a motor vehicle, to wit: a 2014 Kia Sedona, property of Anita Shannon, possessed said vehicle knowing it to have been stolen *or converted.*" (Emphasis added.) Therefore, to sustain a conviction for this offense as charged, the State was required to prove beyond a reasonable doubt that defendant (1) possessed Ms. Shannon's 2014 Kia Sedona, (2) was not entitled to possess the vehicle, and (3) knew that the vehicle was either stolen *or* that it was converted.

¶ 41 "Conversion" of property requires that defendant wrongfully deprive the owner of her vehicle, but it does not require an intent to permanently deprive the rightful owner of possession. See *People v. Gengler*, 251 Ill. App. 3d 213, 221-22 (1993); *People v. Washington*, 184 Ill. App. 3d 703, 709 (1989). The State here proved defendant knowingly and wrongfully deprived Ms. Shannon of her vehicle for several days, which was all the evidence that was necessary to sustain his conviction as charged under section 4-103(a)(1). Viewing the evidence in the light most

favorable to the State (*Davidson*, 233 Ill. 2d at 43), any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

¶ 42 Next, defendant argues that the trial court erred by admitting photographs of Ms. Shannon's keys to the 2014 Kia Sedona, which were allegedly recovered from defendant during his custodial search because the State failed to establish a chain of custody sufficient to show that the keys were actually recovered from defendant. Before real evidence may be admitted at trial, the State must provide an adequate foundation establishing that the item sought to be introduced is the actual item involved in the alleged offense and that its condition is substantially unchanged. *People v. Whirl*, 351 Ill. App. 3d 464, 470 (2004). A sufficiently complete chain of custody will include delivery, presence, and safekeeping of the evidence. *Id.* at 471.

¶ 43 In the present case, the only chain of custody evidence came from Officer Austin, who testified that custodial searches are performed in "all arrests" and that all items recovered from defendant during such a search are placed in an inventory bag and stored in lockup. However, Officer Austin admitted that he did not personally perform the custodial search of defendant, he does not remember whether he was present during the search, and he does not recall where the search occurred. No other officer testified that he or she searched defendant at or near the time of arrest and recovered Ms. Shannon's car keys from him. No officer testified to what, if any, protective measures were taken to safeguard the keys. No officer testified to his or her process of inventorying the keys and storing them in lockup.[1] On this record, the chain of custody is missing

[1]Detective Murawski testified that after defendant's arrest, he retrieved a personal property bag from lockup with defendant's last name on it and showed it to Ms. Shannon, who identified her missing car keys. However, Detective Murawski never provided any chain of custody testimony regarding how, where, or when the keys were discovered, delivered, or safeguarded.

too many links and is insufficient to show that the car keys in the photograph were recovered from defendant during a custodial search.

¶ 44 However, the error in admitting the photograph of the car keys was harmless because, even in the absence of the photograph, defendant would have been convicted based on Ms. Shannon's testimony, which the trial court found credible. See *People v. Mullins*, 242 Ill. 2d 1, 23 (2011) (error is harmless where defendant would have been convicted regardless of the error).

¶ 45 Next, defendant contends that the trial court erred by failing to conduct a hearing pursuant to *Krankel*, 102 Ill. 2d 181, regarding his posttrial claim of ineffective assistance of counsel. When a defendant presents a posttrial *pro se* claim of ineffective assistance of counsel, the trial court should first consider the factual basis underlying defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the trial court determines that the points raised are meritless or pertain to trial strategy, then it may deny the motion. *Id.* at 78. If the allegations show possible ineffective assistance, then the court should appoint new counsel to evaluate defendant's claim. *People v. Chapman*, 194 Ill. 2d 186, 230 (2000).

¶ 46 The State agrees that a *Krankel* hearing should have been held in this case. Accordingly, we remand for the trial court to conduct a *Krankel* hearing on defendant's posttrial claim of ineffective assistance of counsel.

¶ 47 Next, defendant contends that the trial court erred during sentencing when it stated that it had considered not only defendant's prior convictions but also "other matters that the State brought to my attention." Defendant argues that the court did not say what those "other matters" were or when the State had brought them to its attention. Accordingly, defendant asks us to reverse and remand for a new sentencing hearing in order to ensure that his sentence was not affected by the court's consideration of improper evidence.

¶ 48 Initially, we note that defendant forfeited review by failing to object during the sentencing hearing. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 49 Forfeiture aside, we find no reversible sentencing error. During the sentencing hearing, the State argued in aggravation as follows:

> "He has four felony convictions. A 2009 possession of a stolen motor vehicle which he was sentenced to four years in the Illinois Department of Corrections. Three felony violations of an order of protection from 2009. *** He was sentenced concurrently to three years in the Illinois Department of Corrections. During sentencing, which it was a plea, *** the defendant was held in direct criminal contempt *** when he tore up the order of protection that was issued during the plea. He received six months additional penitentiary time on the direct criminal contempt.
>
> He has nine misdemeanor convictions, including a 2013 domestic battery where he was sentenced to 100 days in the Cook County Department of Corrections. A 2007 drinking on the public way. A 2007 criminal damage to property. That was a domestic. The victim was a girlfriend as well. He was sentenced to one year of probation on that. He violated that probation and was sentenced to jail time. A 2007 aggravated assault. He was sentenced to probation. That was terminated unsuccessfully. A 2005 disorderly conduct. A 2005 possession of cannabis. A 2005 battery. And, Judge, there's two additional violations of an order of protection misdemeanor offenses. Those are from 2007. He was sentenced to 100 days on one of those and 250 days on the other one."

¶ 50 Following all the aggravating and mitigating evidence, the trial court specifically referenced the State's argument in aggravation regarding defendant's convictions:

> "[The evidence] shows a person who basically since at least 2009 or before, probably, was a career abuser. *** Domestic battery, September 2013, 100 days in the county jail, domestic battery. Possession of a stolen vehicle, 2009, four years. Before that, also in the same year, he got sentenced with three other cases, three years concurrent. And the three other ones all involved violations of an order of protection, *** based on prior domestic battery. Three similar charges of violation of order of protection three separate times ***. Three years concurrent to the four that he got for the possession of stolen vehicle charge. There's also I believe *other matters that the State brought to my attention as well which I've considered.*" (Emphasis added.)

¶ 51 Clearly, the "other matters that the State brought to [its] attention" referred to defendant's remaining convictions for drinking on the public way, criminal damage to property, aggravated assault, disorderly conduct, possession of cannabis, and battery that the State had argued in aggravation. The trial court committed no error in considering these "other matters," as defendant's criminal history was a statutory aggravating factor that the trial court could properly consider when imposing sentence. See 730 ILCS 5/5-5-3.2(a)(3) (West 2014). There is no evidence in the record that the "other matters" referenced by the trial court involved anything other than defendant's criminal history.

¶ 52 Next, defendant argues that the order of protection should be vacated because it was entered in contravention of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/214 (West 2014)). Defendant forfeited review by failing to object at trial. *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010).

¶ 53 Forfeiture aside, we find no reversible error. The Act protects victims of domestic violence from further acts of physical, emotional, and verbal abuse. *Dibenedetto v. Dibenedetto*, 2019 IL

App (3d) 180761, ¶ 15. To issue an order of protection, the trial court must find that defendant abused the petitioner. *Id.* If the court makes a finding of abuse, the court is required to make certain findings in "an official record or in writing" prior to issuing an order of protection. 750 ILCS 60/214(c)(3)(West 2014). The official record or written order must show that the trial court considered the "relevant factors" defined as:

> "the nature, frequency, severity, pattern and consequences of the respondent's past abuse, neglect or exploitation of the petitioner or any family or household member, including the concealment of his or her location in order to evade service of process or notice, and the likelihood of danger of future abuse, neglect, or exploitation to petitioner or any member of petitioner's or respondent's family or household." *Id.* § 214(c)(1)(i).

¶ 54 After the trial court considers the relevant factors, section 214(c)(3)(ii) requires that it make an oral or written finding that "the conduct or actions of respondent, unless prohibited, will likely cause irreparable harm or continued abuse." *Id.* § 214(c)(3)(ii). The court must also find that "it is necessary to grant the requested relief in order to protect petitioner." *Id.* § 214(c)(3)(iii). We will reverse the trial court's entry of an order of protection if it fails to make the required findings. *Dibenedetto*, 2019 IL App (3d) 180761, ¶ 16.

¶ 55 Defendant contends that the trial court did not consider the relevant statutory factors and did not find that the order was necessary to prevent him from inflicting irreparable harm or continued abuse on Ms. Shannon and her family or that the order was necessary to protect Ms. Shannon and her family from defendant.

¶ 56 The record belies defendant's argument. At the close of trial, the court stated:

> "Based on the evidence that I heard at the trial, the evidence based on his prior record and for what they were, [defendant] is a dangerous young man. He takes out his

hostility on other people. In this case, he just wouldn't take no for an answer. Shannon didn't want him anymore. He wouldn't take no for an answer. For whatever reason, even though she didn't want to see him anymore, he wouldn't let it end at that. He winds up *** in her house by force, getting in by pushing the door open, and then chokes her, hits her head against the dresser *** a few times. She wasn't injured to the extent that she had to be hospitalized for weeks or months or whatever, but nonetheless she was, in fact, injured ***."

¶ 57 The trial court then discussed defendant's criminal background, including his previous violations of an order of protection, and stated:

"So it shows that he has a propensity or—based on his record to use force to do bad things when someone doesn't get along with him for whatever reason, at least in his mind anyway. *** And further, *** he didn't learn from those other experiences when he was in custody anywhere. Three priors for violation of protection based on a domestic battery—based on a prior domestic battery, I should say. So he didn't learn. He gets out and then this case, domestic violence shown against Ms. Shannon as well who just really wanted to say no, that's all. I don't want you anymore. Leave me alone. Find somebody else. He wouldn't take no for an answer."

¶ 58 The trial court stated that after "considering [defendant's] record," it would sign the order of protection.

¶ 59 The trial court's recitation of defendant's attack on Ms. Shannon and his criminal history, and its finding that defendant is a "dangerous young man" with a "propensity to use force and "do bad things when someone doesn't go along with him" and who refuses to take "no for an answer," shows that it considered the relevant statutory factors set forth in section 214(c)(1)(i). The court's

statements also indicate that it found that the order of protection was necessary to prevent continued abuse and to protect Ms. Shannon from defendant, in accordance with section 214(c)(3)(ii) and (iii). Accordingly, the trial court satisfied the dictates of the Act. We find no reversible error.

¶ 60 Finally, both defendant and the State agree that the mittimus must be corrected to reflect that he was convicted of home invasion under section 19-6(a)(2) of the Criminal Code (720 ILCS 5/19-6(a)(2) (West 2014)), which requires a showing that defendant intentionally caused an injury during the home invasion. The mittimus, however, incorrectly states that defendant was convicted of home invasion while armed with a firearm under section 19-6(a)(3) (*id.* § 19-6(a)(3)). Pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we correct the mittimus to accurately reflect defendant's conviction under section 19-6(a)(2). See *People v. Spicer*, 379 Ill. App. 3d 441, 469 (2007) (pursuant to Rule 615(b), the reviewing court may correct the mittimus without remanding the cause to the trial court).

¶ 61 For all the foregoing reasons, we affirm defendant's convictions and sentence; correct the mittimus; and remand for a preliminary *Krankel* hearing.

¶ 62 Affirmed and remanded; mittimus corrected.

No. 1-17-1728

Cite as:	*People v. Brand*, 2020 IL App (1st) 171728
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 15-CR-20441; the Hon. Stanley J. Sacks, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Patricia Mysza, and Joseph Michael Benak, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, Daniel Pwowarcyzk, and Caitlin Costa, Assistant State's Attorneys, of counsel), for the People.

No. 1-17-1728

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- CROSETTI BRAND, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County, Illinois No. 15 CR 20441 Honorable Stanley J. Sacks, Judge Presiding.

ORDER

This matter coming to be heard on Motion to Amend the Notice of Appeal, all parties having been duly notified, and the Court being advised in the premises,

IT IS HEREBY ORDERED:

That the motion to amend the notice of appeal to reflect the correct sentence of concurrent 16 and 3 year terms and to reflect the correct judgment date of June 16, 2017, is hereby allowed/~~denied~~.

PRESIDING JUSTICE

JUSTICE

JUSTICE

DATE: _____

PATRICIA MYSZA
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IN THE CIRCUIT COURT OF COOK COUNTY

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS Plaintiff-Appellee, -vs- CROSETTI BRAND Defendant-Appellant	IND./INF. No. 15 CR 20441 TrialJudge: Stanley J. Sacks Trial Atty: Marni Share Type of Trial: Trial

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, First District:

Appellant(s) Name:	Crosetti Brand
Appellant's Address:	Big Muddy River Correctional Center Register No. M02369 251 N. Illinois Highway 37 Ina, IL 62846
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	203 N. LaSalle St., 24th Floor Chicago, IL 60601
Offense of which convicted:	home invasion, aggravated domestic battery and possession of stolen motor vehicle
Date of Judgment or Order:	June 16, 2017
Sentence:	concurrent 16 and 3 year terms

If appeal is not from a conviction, nature of order appealed:

/s/ Patricia Mysza
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No. 125945

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Crosetti Brand, Register No. M02369, Shawnee Correctional Center, 6665 State Route 146 East, Vienna, IL 62995

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 February 9, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Marquita S. Harrison
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