

FOURTH DIVISION
June 9, 2016

1-15-0167

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 C 661776
)	
JAIME LOPEZ,)	Honorable
)	Tommy Brewer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendants' conviction for theft and misappropriation of financial institution property is affirmed; the State presented sufficient foundational evidence for the admission of computer-generated bank records into evidence and the evidence was sufficient to prove beyond a reasonable doubt defendant committed the offenses charged.
- ¶ 2 The State charged defendant, Jaime Lopez, with one count of theft by obtaining or exerting unauthorized control over the property of another and one count of misappropriation of financial institution property. Following a bench trial, the circuit court of Cook County convicted defendant and sentenced him to two years' probation. This court reversed, finding the

State failed to elicit sufficient evidence to establish an adequate foundation to admit computer-generated bank records into evidence under the business records exception to the rule against hearsay. On retrial before a jury, the court once again admitted the records at issue into evidence, and the jury found defendant guilty of both counts. Defendant appeals, arguing the State again failed to elicit sufficient foundational evidence for the admission of the computer-generated records. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 This matter returns to this court following remand for a second trial after this court found that the trial court improperly admitted evidence in defendant's first trial, the trial court's error was not harmless beyond a reasonable doubt, and double jeopardy did not bar retrying defendant. The charges against defendant arose from two events at TCF Bank in Calumet City where defendant was formerly employed as a teller and assistant manager.

¶ 5 On August 7, 2007, a customer entered the bank to cash a personal check for \$80. When the customer received a statement from the bank she discovered that on the same day she cashed the check for \$80 her account had been debited for \$5,400, which she did not authorize. The withdrawal of the \$5,400 resulted in a negative balance in the customer's account. The customer notified the bank, and the bank credited that amount back to her account. On August 20, 2007, a second bank customer withdrew \$1,200 from his account. The second customer later discovered that on the same day he withdrew the \$1,200 from his account, \$5,200 was also debited from his account. The second customer did not authorize a \$5,200 debit, which resulted in his account having a negative balance. The second customer brought the unauthorized debit to the attention of the bank, and the bank credited that amount to his account.

¶ 6 The bank investigated the two incidents in August 2007 and discovered through computer records that defendant was the teller who processed all of the transactions. Tellers must log onto

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a computer system using a teller number and password unique to the teller. The computer system records every transaction conducted by that teller. According to the records, which the trial court admitted into evidence over defendant's objection, the first customer cashed a check for \$80 at 6:36:52 p.m. and a debit of \$5,400 from the same account was processed at 6:36:15 p.m. The records also showed that the second customer withdrew \$1,200 at 12:51:14 and a debit of \$5,200 to the same account was made at 12:51:02. The records showed that defendant was the teller on both sets of transactions. Both unauthorized transactions (the \$5,400 and \$5,200 debits) were made using a code that must be input by a manager to permit a transaction where the account has insufficient funds to cover the transaction.

¶ 7 After discovering this information, the bank conducted a "surprise audit" of defendant's teller drawer. An audit is a process in which the amount of cash and checks in a teller drawer is compared to a computer record of the amount that should be in the drawer. The amount that "should" be in the drawer is based on the amount in the drawer at the beginning of the teller's shift and the record of transactions conducted by the teller. Tellers are each assigned their own drawer, and the beginning balance is the amount recorded by the teller as the amount in the drawer at the end of the teller's previous shift. At the end of each shift, tellers are required to "balance" their drawers by counting the cash and checks in the drawer to make sure it totals the same amount the computer records reflect should be in the drawer based on the beginning balance and the day's transactions. If those numbers match the drawer is balanced and if they do not match, the drawer is unbalanced. An audit is usually conducted by the teller and another party. Defendant was asked to participate in his surprise audit but declined. The surprise audit revealed that defendant's teller drawer was unbalanced by \$3,000. That is, the drawer contained \$3,000 less than computer records showed it should have contained.

¶ 8 The jury found defendant guilty of both counts. Defendant filed a motion for a new trial which the trial court denied. The court sentenced defendant to two years' probation. At the time of the verdict defendant had already served the full sentence and had been discharged from probation. The trial court terminated defendant's probation *instanter*.

¶ 9 This appeal followed.

¶ 10 ANALYSIS

¶ 11 Defendant challenges the admissibility of the bank's records as well as the sufficiency of the evidence to sustain his conviction. The admissibility of evidence is within the sound discretion of the trial court, and when a defendant challenges the admission of evidence in a jury trial, this court will not reverse the trial court's ruling unless there has been an abuse of that discretion. *People v. Williams*, 181 Ill. 2d 297, 313 (1998). "An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court." *People v. Nixon*, 2015 IL App (1st) 130132, ¶ 101.

"When a defendant claims he was convicted with insufficient evidence, the evidence must be reviewed in a light most favorable to the prosecution and the court must determine whether any rational trier of fact could have found defendant guilty of the crime beyond a reasonable doubt. ([Citation.]) A reviewing court will not reverse a conviction unless the evidence presented was so unreasonable, improbable, or unsatisfactory as to raise a reasonable doubt of defendant's guilt. ([Citation.]) All the evidence presented at trial, including the evidence challenged on appeal, may be considered in determining whether defendant was convicted beyond a reasonable doubt." *People v. Friedland*, 202 Ill. App. 3d 1094, 1102 (1990).

¶ 12 A. Admissibility of the Evidence

¶ 13 On appeal in this case, defendant argues that the testimony of Brian Basick failed to meet the foundational requirements for admitting the computer records of the transactions at issue.

¶ 14 The State sought to admit the records of the bank transactions discussed above as business records. A record in any form of any act is not excluded by the hearsay rule if the record is made at or near the time by a person with knowledge of the act and the record is kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record. Ill. R. Evidence 803(6) (eff. Jan. 1, 2011). The foregoing requirements must be shown by the testimony of a qualified witness. *Id.*

¶ 15 “In the case of computer-generated records, a proper foundation *** requires a showing that standard equipment was used; the particular computer generates accurate records when used appropriately; the computer was used appropriately; and the sources of the information, the method of recording utilized, and the time of preparation indicate that the record is trustworthy and should be admitted into evidence. [Citations.]” (Internal quotation marks omitted.) *Nixon*, 2015 IL App (1st) 130132, ¶ 111.

¶ 16 A bank employee who is knowledgeable about the bank’s computer system can lay an adequate foundation for the admission of computer records as business records:

“Recently, this court discussed what was needed to satisfy the requirements for a computer-generated business record. In [*US Bank, National Ass’n v. Avdic*, 2014 IL App (1st) 121759,] we held that a bank employee, who was knowledgeable about the bank’s computer system for recording loans, had established the foundation for a computer-generated business record by averring: (1) that the computer software system was customarily used in the business for this purpose; (2) that the same system had been in place during the relevant time period; (3) that the system was regularly checked and tested for reliability; and (4) that its

access was restricted to trained personnel who had been authorized to use it.

[Citation.]” *Id.* ¶ 112 (citing *Avdic*, 2014 IL App (1st) 121759, ¶ 25).

¶ 17 We will recount Mr. Basick’s testimony, particularly regarding the foundational requirements for the computer records, in some detail.

¶ 18 Basick testified he has been employed by TCF Bank for eleven years. In 2007 he was a regional manager covering the south suburbs of Chicago, including the Calumet City branch where defendant worked and the transactions occurred. He testified regarding procedures for tellers. Tellers balance their teller drawers at the end of their shift by making sure the cash in the drawer matches what the computer tells the teller he or she should have in their drawer. Then the teller puts in their totals and whether or not their drawer is balanced and signs off of the computer system. Tellers sign on to a computer system they use during the workday. The computer system records any transactions conducted by the teller. The transactions are recorded at the time of the transaction. The same computer system was used by all of the branches in Illinois, Indiana, and Wisconsin. Information input by a teller is retrievable by other users of the system.

¶ 19 Basick testified that in his experience with the computer system, if data was entered correctly into that system, the system would generate accurate results based on that information. Basick could not remember the specific models of computers that are at the tellers’ stations other than “they ran on Windows.” Basick described the computers used as those that are readily available on the computer market. The system would stop transactions if data was incorrectly entered, meaning, for example, the system “would stop if you were trying to take money out of an account that there is not sufficient funds in.” However, management could use an override function. Basick testified he personally used the system tellers used and that he received training on the system. He described his training as the “teller training that you go to before you go to

the branch” and continued that, daily “you are getting used to the system” and asking management for help if needed. He used the system routinely in the course of his employment with TCF Bank.

¶ 20 Basick identified several exhibits including a document “for a teller audit,” lists of customer transactions, and journals of transactions made under a particular teller number.

Basick testified all of the records were used in the regular course of business for the bank.

¶ 21 On cross-examination, Basick testified that he does not test whether the software tellers use is functioning properly, but the “IT department” does. Basick is not in the IT department. He did not know the last time the software was tested prior to August 2007. Basick did not know if there was a testing process used by the IT department. When asked how he knew that the computer equipment at the bank was operating properly, Basick answered: “If it didn’t run properly, *** how could we stay in business?” Basick testified that to the best of his knowledge the system was operating accurately in August 2007. He did not know the name of the teller system at the bank.

¶ 22 Basick also testified that the bank had electronic journals in 2007. Electronic journals record a transaction as it occurs. He testified that to the best of his knowledge the computer system at TCF Bank was accurate and accurately recording when it was used in 2007. When asked what knowledge he meant, Basick testified: “That I am able to operate it if it is functioning properly, to the best of my knowledge.” When asked how he knew the system was operating correctly in the first place, Basick testified: “if I can sign on, it is working.”

¶ 23 The trial court found the State had established a foundation and admitted the exhibits into evidence. Basick went on to testify that the exhibits the court entered into evidence showed that a customer cashed a check for \$80 and the bank debited that customer’s account \$5,400 on the same day. The \$5,400 debit was input at 6:36:15 p.m. and the cashing of the \$80 check was

input at 6:36:52 p.m. Basick testified both transactions were associated with the same account¹ and that the teller number associated with both transactions was assigned to defendant. Basick also testified as to the second customer's account, stating that the exhibits showed the customer made a cash withdrawal of \$1,200 and the bank debited that customer's account \$5,200 on the same day. The debit was done at 12:51:02 p.m. and the cash withdrawal was time stamped 12:51:14 p.m. The teller number assigned to both transactions for the second customer was also the teller number assigned to defendant.

¶ 24 Basick also testified as to a record of an audit of defendant's teller drawer conducted on August 30, 2007. Basick offered defendant the opportunity to stay for the audit, but defendant gave back the keys the bank issued him and left the bank. Basick testified that the actual total in defendant's teller drawer was exactly \$3,000 less than what the computer said should be in his drawer.

¶ 25 Basick testified he never saw defendant take money out of the bank or from the drawer, and never saw any other person give defendant money.

¶ 26 Defendant argues (1) the State failed to show the bank used standard equipment; and (2) the State failed to prove (a) the particular computer generates accurate records when used appropriately, (b) the computer was used appropriately, and (c) the sources of information, the method of recording, and the time of preparation indicated the records were trustworthy.

¹ The account numbers listed on the pages of the exhibit showing the two transactions for the first customer differed by one number. One account ended in "2888" and the other ended in "8288." Basick affirmatively testified the amounts were debited from the same customer's account based on the appearance of her social security number on the bank's records. The trier of fact was entitled to credit his testimony. "The trier of fact is also given the function of resolving discrepancies or conflicts in the testimony." *People v. Nwosu*, 289 Ill. App. 3d 487, 493 (1997).

¶ 27 For his first claim defendant argues that testimony that other banks use similar software and equipment is not sufficient to show that specific software and equipment is standard and accurate. Rather, defendant argues, testimony describing the specific software used and the process by which transactions are entered into the computer is necessary to establish that the equipment and software was standard. In support of his argument, defendant relies on *People v. Bovio*, 118 Ill. App. 3d 836, 842 (1983), which found testimony by a single witness insufficient to satisfy the foundational requirements to admit a customer's bank statement into evidence. The *Bovio* court held that although the witness "testified that other banks used similar systems and computers, such general testimony is insufficient to prove that the particular equipment at the data center used by the [bank] is standard and accurate." *Id.* In this case, defendant argues, Basick's testimony that all of the banks in the region used the same system is similarly insufficient. However, the testimony in *Bovio* and the testimony in this case are different, and it is in that distinction where the basis of the *Bovio* court's decision lies.

¶ 28 In *Bovio*, the witness testified that when a check written by a customer of her bank is processed by another bank (not the one generating the statement sought to be admitted in that case), that other bank sends the check to the Federal Reserve Bank, the data center at the Federal Reserve Bank "makes all the computations of transactions for the account" and the data center sends a record (a microfiche) to the first bank to give to its customer. *Id.* at 839. She testified most banks used the same method of processing checks. *Id.* Specifically, and a potential source of confusion, after describing how checks were *processed* through the banking system (a payee's bank sending a check to the Federal Reserve Bank, which does the calculations and sends the check to the payor's bank), the opinion states the witness "testified that most banks use the same or a similar system." *Id.* The witness testified the bank where she worked keeps the statement in

the regular course of business after being received on microfiche (*id.* at 842), but she did not “describe the equipment that is used at the data center, or the method that is used there for entering deposits or withdrawals, or the type of program that is used” (*id.* at 839).

¶ 29 In other words, the witness in *Bovio* offered no testimony about the computer system that actually generated the record at issue because it was not located at the bank where she worked and she offered no testimony to show her knowledge or experience with that system, other than to say the record is created at another location and sent to her bank, where it is kept in the regular course of business. *Id.* at 842 (“Her testimony only established that the bank statement was kept by the bank in the regular course of business after being received on microfiche from the data center.”). Despite the fact numerous banks rely on the data center at the Federal Reserve Bank, it was the fact that there was a lack of any foundational testimony about the computer system at the data center itself that led the court to conclude that the witness’s testimony failed to establish that that systems at the data center were standard or trustworthy. *Id.* (“Although Ms. Long testified that other banks used similar systems and computers, such general testimony is insufficient to prove that the *particular equipment at the data center* used by the Bank of Sugar Grove is standard and accurate.” (Emphasis added.)). The court found “there is nothing in her testimony which described how transaction information was entered into and processed through the computer system at the data center which would verify the accuracy of the output on the microfiche. For example, the use of a keyboard in conjunction with a visual display screen is more error-free than a system that utilizes keypunched cards because of reduced human involvement.” *Id.*

¶ 30 The testimony in this case is different from the testimony in *Bovio* in that Basick’s testimony described the systems in use at the bank where he worked and which generated the records at issue, unlike the testimony in *Bovio* which only described how the records were

received and not how they were created. In this case, Basick testified that the tellers utilized software that operated on standard Windows-based computers that are readily available on the market, and that the same computer system was used by all of the bank's branches in Illinois, Indiana, and Wisconsin. He also testified that the bank's IT department tests whether the software is functioning properly.

¶ 31 We hold that Basick's testimony was sufficient to establish the first foundational requirement for the admission of computer-generated records: that the electronic computing equipment is recognized as standard. In *Avdic*, the witness testified "that the computer software system was customarily used in the business, was used for the life of the loan at issue, and was regularly tested for reliability." *Avdic*, 2014 IL App (1st) 121759, ¶ 30. In *Avdic*, the court held that the witness's testimony "satisfied the foundational requirements for admission of the records and demonstrated that they were trustworthy and reliable." *Id.* In this case, Basick testified that the computer software system was customarily used by several TCF Bank branches, was used during both transactions at issue in this case, and was regularly tested for reliability.

¶ 32 Defendant notes Basick was unable to identify the name of the software the bank used. In *People v. Lombardi*, 305 Ill. App. 3d 33, 43 (1999), the court "acknowledged that the State did not specifically elicit testimony that [the bank's] computer system was standard in the industry." The *Lombardi* court noted, however, that the State did elicit testimony that "the mainframe software was used by other banking institutions and the Compaq software was used by over 500 banking institutions." *Id.* Further, the court noted, "the ultimate issue is whether the foundation sufficiently guarantees trustworthiness to justify introduction." *Id.* In this case, we find that Basick's testimony provided sufficient guaranties that the bank used standard banking software. Basick's testimony that the same software was used by the bank in three states and the reasonable inference that the same software had been in use throughout his employment with the

bank is sufficient to satisfy the first foundational prong for the admission of computer-generated business records.

¶ 33 We also find that the evidence was sufficient to establish that the input is entered in the regular course of business reasonably close in time to the happening of the event recorded.² Basick testified that the tellers' transactions are recorded at the time of the transaction. The evidence is also sufficient to establish that the bank's system generates accurate records when used appropriately and was used appropriately. Basick testified that in his experience with the computer system, if data was entered correctly into that system, the system would generate accurate results based on that information. A reasonable trier of fact could infer that the basis of Basick's testimony was the fact that tellers were required to reconcile the information in the computer system with the actual cash in their teller drawers by physically counting the cash in the drawer, and the fact that tellers performed this "balancing" of their drawers daily. Basick testified that to the best of his knowledge the system was operating accurately in August 2007. When asked how he knew that the computer equipment at the bank was operating properly, Basick answered: "If it didn't run properly, *** how could we stay in business?" In *People v. Rivera*, 182 Ill. App. 3d 33, 44 (1989), the court held that the trial court had not abused its discretion in introducing Illinois Bell telephone records into evidence. The *Rivera* court began by reiterating that "the 'circumstantial probability' of the trustworthiness of the evidence is the basis of the record's admissibility." *Id.* at 43. In reviewing the " 'circumstances' disclosed by the evidence" (*id.* at 43-44) the court found lastly, but most importantly, "the judge knew that

² "Tangible printouts of 'computer-stored' data are admissible under the business records exception to the hearsay rule if (1) the electronic computing equipment is recognized as standard, (2) the input is entered in the regular course of business reasonably close in time to the happening of the event recorded, and (3) the foundation testimony establishes that the sources of information, method and time of preparation indicate its trustworthiness and justify its admission." *People v. Houston*, 288 Ill. App. 3d 90, 98 (1997).

Illinois Bell, a large corporation, disinterested in the outcome of the case, relied on the records in the day to day operation of its business. Such reliance has been recognized as an important factor in determining the trustworthiness of such records” (*id.* at 44).

¶ 34 We additionally note that when the second customer testified, the jury saw defendant utilize a “keyboard in conjunction with a visual display screen” which the court has described as an accurate method of entering transaction information. See *Bovio*, 118 Ill. App. 3d at 842. We hold that evidence that tellers input the information in to the computer system contemporaneously with the transactions being recorded, balance their drawers against the information in the system, the system was in use across the entire three-state region, and the bank relied on the information in the system to remain in business was sufficient to establish the accuracy and appropriate use of the computer system.

¶ 35 Finally, we hold that the foundation testimony establishes that the source of the information, and method and time of preparation, indicate its trustworthiness and justify its admission. The source of the information is the bank’s tellers, who must input their own teller identification number and record the transactions. The method and time of preparation indicate trustworthiness because the preparation of the record of the transaction is contemporaneous with the transaction and is made using standard computer equipment (*i.e.*, a keyboard and screen which has been noted to be more “error free” than other recording methods (see *Bovio*, 118 Ill. App. 3d at 842)).

¶ 36 Defendant argues the testimony falls short of establishing that the source of the information for the records at issue was trustworthy because Basick testified that the bank’s IT department checks the system to determine if the software is functioning properly but he did not know when or the last time the system was tested. Defendant claims the State “offered no foundation that the computer systems *** were ever checked for accuracy, whether TCF even

had a system in place to check for accuracy, or that TCF ever did anything to investigate if their computer calculated accurately.” Basick did provide testimony that the computer system is checked for accuracy. When asked directly whether he tests the software to determine if it is functioning properly, Basick testified the IT department performs those tests. We also find that the daily balancing of the teller drawers is evidence of some investigation into whether the computer system calculates accurately. In addition to Basick’s testimony that proper functioning of the computer was necessary for the bank to remain in business, a reasonable trier of fact could infer that the balancing serves not only as a check on the tellers but on the computer system, and that regularly occurring errors in balancing would result in action by the bank to check their software. See generally *People v. Torruella*, 2015 IL App (2d) 141001, ¶ 39 (the trier of fact is responsible for weighing the evidence and drawing reasonable inferences and conclusions from the evidence).

¶ 37 Defendant cites no authority for the implication that the witness providing the foundational testimony must be the person who tests a computer system for accuracy. In *Avdic*, the affiant “averred that she had been employed by U.S. Bank since 2002 and her duties included reviewing and analyzing U.S. Bank’s business and loan records, which included computer-generated payment histories and copies of origination documents. [She] also averred that she was familiar with, had been trained on, and was qualified to use the computer software system that maintained the records.” *Avdic*, 2014 IL App (1st) 121759, ¶ 7. In that case, the defendant similarly argued that the affiant “did not know about the storage and retrieval methods used by [the bank] in maintaining and processing records.” *Id.* ¶ 9. The court rejected that argument. The *Avdic* court found that the factual averments in the affidavit satisfied the foundational requirements for admission of the records where the affiant averred that “the computer software system was customarily used in the business, was used for the life of the loan at issue, and was

regularly tested for reliability.” *Id.* ¶ 30. Similarly, in this case, Basick testified that he had been employed by the bank for 11 years, his duties included using the computer system, and that he was “familiar with, had been trained on, and was qualified to use the computer system software that maintained the records” at issue in this case. Given similar testimony, the *Avdic* court found that the evidence “satisfied the foundational requirements for admission of the records and demonstrated that they were trustworthy and reliable.” *Id.* We reach the same conclusion and hold that the trial court properly admitted the records in this case.

¶ 38 B. Sufficiency of the Evidence to Prove Guilt

¶ 39 Next, defendant argues the evidence was not sufficient to prove his guilt of the offenses charged beyond a reasonable doubt. Again, we must determine whether any rational trier of fact could have found defendant guilty of the crime beyond a reasonable doubt. *Friedland*, 202 Ill. App. 3d at 1102.

¶ 40 Defendant cites no authority in support of his argument that because the bank’s customers’ account balances were less than the amounts he caused to be debited from them, the State cannot prove any cash was actually taken. The testimony established that the unauthorized transactions resulted in negative balances in both customers’ accounts and that the bank reimbursed those funds. A reasonable trier of fact could infer that the initially debited funds were lost and the bank suffered an additional loss from the reimbursement. Therefore the evidence is sufficient to prove that defendant misappropriated or exerted unauthorized control over the property of either the customers or the bank. At minimum, processing the unauthorized transactions is a willful misapplication of moneys entrusted to the custody or care of the bank. 720 ILCS 5/16H-15 (West 2006).

¶ 41 Defendant argues the State failed to prove he had control over the money because the State failed to link any of the money to defendant other than the fact he was the teller at the time

the money went missing. He asserts the State “failed to offer a single plausible method [defendant] could have used to obtain control over the money he *** was convicted of stealing.” Defendant relies on the court’s decision in *People v. Frig*, 100 Ill. App. 3d 602 (1981), in support of his argument. Defendant argues that due to the absence of evidence of changed lifestyle, large purchases, bank deposits, vacations, financial difficulty, or upgraded standard of living (see *Frig*, 100 Ill. App. 3d at 606), the State failed to adduce evidence linking him to the amounts missing from the bank. However, *Frig* does not stand for the proposition that such evidence is necessary whenever a defendant is charged with theft but is not found in actual physical possession or to have disposed of the proceeds. See *Frig*, 100 Ill. App. 3d at 605-06.

¶ 42 In *Frig*, the court found the evidence insufficient to prove the defendant stole cash that was kept in her unlocked desk drawer because of the several ways in which the money could have gone missing. *Id.* at 605. There were others in the office who knew the defendant kept the cash in her desk and had access to it. *Id.* at 604. The office where the defendant worked had been packed and moved to another location, and the contents of her desk had been stored in a box for several days before the cash went missing. *Id.* After the move several nonemployees were moving through the new office, the boxes were unpacked in a hurried fashion, and the defendant did not organize her desk for a week and a half. *Id.* at 605. The defendant told her superiors she thought the cash may have been thrown out with the trash. *Id.* The court found that there was insufficient evidence that a crime had been committed. *Id.* The missing money “could have been lost. It could have been thrown out with the trash. Mrs. Frig could have taken it, of course, along with numerous other persons. Whether the money was stolen and whether Mrs. Frig took it is a matter for guess, speculation, and conjecture.” *Id.* We find that defendant’s guilt is not a matter of guess, speculation, or conjecture. Rather, defendant’s guilt of the crimes charged is a reasonable inference from the evidence.

¶ 43 To prove the offenses charged the State had to prove beyond a reasonable doubt either that defendant knowingly (1) obtained or exerted unauthorized control over property of the owner (720 ILCS 5/16-1(a)(1) (West 2012)), or (2) misappropriated, embezzled, abstracted, purloined or willfully misapplied any of the moneys of or entrusted to the custody or care of the bank (720 ILCS 5/16H-15 (West 2006), renumbered 720 ILCS 5/17-10.6(a) (West 2012)). The circumstantial evidence was sufficient to permit a reasonable trier of fact to infer that defendant committed the crimes charged. A conviction may rest on circumstantial evidence as long as the elements of the crime have been proven beyond a reasonable doubt. *People v. Smith*, 2014 IL App (1st) 123094, ¶ 13. Circumstantial evidence is proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience. *Id.* It is the responsibility of the trier of fact to draw reasonable inferences from basic facts to ultimate facts. *Id.* “In determining whether an inference is reasonable, the trier of fact need not look for all possible explanations consistent with innocence or ‘be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.’ (Internal quotation marks omitted.) [Citation.] Instead, it is sufficient if all the evidence, taken as a whole, satisfies the trier of fact that the defendant is guilty beyond a reasonable doubt.” *Id.*

¶ 44 To prove defendant’s guilt based on the amounts debited from the two customers’ accounts and the \$3,000 missing from his teller drawer, the State was not required to elicit evidence that defendant’s drawer was unbalanced after those transactions or of defendant physically removing cash from the drawer. *Smith*, 2014 IL App (1st) 123094, ¶ 13 (“In determining whether an inference is reasonable, the trier of fact need not look for all possible explanations consistent with innocence or ‘be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.’ ”). Defendant’s arguments to the contrary are not persuasive. In support of finding that the evidence in this case is sufficient to prove defendant’s guilt beyond a

reasonable doubt the State cites *Friedland*, 202 Ill. App. 3d at 1102, wherein the court found the evidence sufficient to convict the defendant of theft (*id.*), although the court did reverse the defendant's conviction on other grounds (*id.* at 1101).

¶ 45 In *Friedland*, the defendant was a manager of a Domino's Pizza, and in that capacity he had responsibility for making night deposits of cash into the store's checking account. *Id.* at 1095-96. The defendant's superior discovered a discrepancy between the store's records of night deposits and the store's checking account. *Id.* at 1096. The defendant admitted to signing store documents indicating he had made the night deposits, but testified he did not personally take the deposits to the bank. *Id.* at 1098. At the defendant's trial, another employee testified, referring to the store's bank statements, that a total of 24 deposits were never credited to the store's bank account. *Id.* at 1097. The defendant in *Friedland* challenged the admission of bank statements into evidence on the grounds the State did not lay a proper foundation. *Id.* at 1098. The court agreed and found that it could not say the error in admitting the bank statements was harmless beyond a reasonable doubt. *Id.* at 1101. The court reversed the defendant's conviction and remanded for a new trial. *Id.*

¶ 46 The court went on to address the defendant's argument that he was not convicted beyond a reasonable doubt. *Id.* at 1101-02. The court recounted the evidence of the defendant's guilt:

“The evidence presented at trial established that during the three-month period [the] defendant was store manager, 24 deposits were not credited to the store's bank account. [The] [d]efendant signed for each of the deposits on the daily recap forms and there was testimony that it was [the] defendant's responsibility to take the deposits to the bank. Also, [the] defendant was the only employee who worked every day that deposits were missing. The bank statements, which were

admitted without proper foundation, established the deposits were not credited to the store's bank account." *Id.* at 1102.

¶ 47 After reviewing the evidence, the court found that it was sufficient to prove the defendant guilty beyond a reasonable doubt. *Id.* The evidence against defendant in this case is similar to the evidence against the defendant in *Friedland*. In this case, we have found that the bank records showing that funds were debited from the customer's accounts which the bank had to return, and showing the deficiency in the teller drawer, were properly admitted. The evidence at defendant's second trial established that on two occasions, two customers' accounts were debited through transactions they did not authorize using defendant's teller identification number and an authorization code available only to management-level employees. There was evidence that defendant's teller identification number is unique and protected by a password known only to defendant. Defendant was working during each transaction. Each unauthorized transaction occurred seconds before transactions the customers did authorize. Video evidence showed defendant conducted transactions for the customers at the pertinent times. There was also evidence that the bank credited funds to the customers' accounts.

¶ 48 Thus, contrary to defendant's argument, there is more evidence that defendant misappropriated or exerted unauthorized control over the debited funds than the mere fact defendant used an override code to process the transactions. The circumstantial evidence supports a reasonable inference defendant processed the transactions, the customers testified they did not authorize the transactions, the timing of the separate transactions supports their claims (there is no reasonable need to conduct the transactions separately if they were authorized by the customers from a single account) and that defendant processed both, and the customers complained to the bank about the transactions. Also, properly admitted evidence showed a discrepancy in the balance in defendant's teller drawer for which defendant was responsible.

The evidence established that tellers are assigned their own drawer which can only be accessed with a manager's key and a key in the teller's possession.

¶ 49 Also notable is that in *Friedland*, there was no discussion of the type of evidence defendant claims is missing from this case which allegedly makes the evidence insufficient to prove his guilt. The absence of evidence in this case of the type cited in *Frig* is irrelevant. Despite the absence of such evidence the *Friedland* court found the evidence sufficient to prove the defendant in that case guilty of theft beyond a reasonable doubt. We reach a similar conclusion in this case. A reasonable trier of fact could find beyond a reasonable doubt that defendant obtained or exerted unauthorized control over property of the owner or knowingly misappropriated, embezzled, abstracted, purloined or willfully misapplied any of the moneys of, or entrusted to the custody or care, of the bank.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, defendant's convictions are affirmed.

¶ 52 Affirmed.