2015 IL App (2d) 130299-U
No. 2-13-0299
Order filed March 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RICKY L. GRIGGS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 11-CF-3518 Honorable Rosemary Collins, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by denying defendant's motion to dismiss the superseding indictment; the State proved defendant guilty of burglary beyond a reasonable doubt; the State proved defendant guilty of possession of another's credit or debit card beyond a reasonable doubt; defendant's right to a speedy trial was not violated; and the trial court did not abuse its discretion by admitting evidence of other-crimes. Affirmed.

¶ 2 Following a jury trial, defendant, Ricky L. Griggs, was found guilty of burglary to a motor vehicle (720 ILCS 5/19-1(a) (West 2010)) and possession of another's credit or debit card (720 ILCS 5/17-32(b) (West 2010)). The trial court sentenced defendant to 20 years' imprisonment on the burglary conviction to be served concurrently with a sentence of 6 years for

possession of another's credit or debit card. Defendant appeals *pro se*. He raises nine issues in his "Issues Presented for Review" section of his appellate brief. However, two issues raise the same argument and three others were not addressed in the argument section of his appellate brief. Accordingly, we are left with the following issues: (1) whether the trial court erred by denying defendant's motion to dismiss the superseding indictment; (2) whether the State proved defendant guilty of burglary beyond a reasonable; (3) whether the State proved defendant guilty of possession of another's credit or debit card beyond a reasonable doubt; (4) whether defendant's right to a speedy trial was violated; and (5) whether the trial court abused its discretion by admitting other-crimes evidence at trial. We affirm.

¶ 3 I. FACTS

¶ 4 Defendant was charged by indictment on January 4, 2012, with one count of burglary in that defendant knowingly entered the vehicle of Ryan Steig on December 6, 2011, with the intent to commit a theft therein. On January 20, 2012, a superseding bill of indictment charged defendant with the offense of burglary to a motor vehicle (count I) and possession of another's credit or debit card (count II), which were committed on December 6, 2011.

¶ 5 Defendant represented himself *pro se* at trial. Steig testified at trial that, on December 6, 2011, around 9 p.m., he parked his car in a shopping center in Rockford, Illinois, to exercise at Anytime Fitness, a nearby fitness facility. When he left the facility, he found the driver's side window of his car had been shattered. After checking his car, Steig noticed that his wallet was missing. Steig also found part of a knife near the car. Steig did not know defendant, and he had not given defendant permission to enter his car or use his credit cards.

¶ 6 While speaking to a Wells Fargo bank representative to cancel his credit card, Steig was informed that there was a charge made at the Perry Creek Phillips 66 gas station (Phillips station)

located on Perryville Road in Rockford on December 6, 2011. Steig stated that he had not been there on December 6, that the charge was made during the time he was exercising, and that he did not use his credit card to purchase beer and cigars on that date. Steig did not recognize the signature on the sales receipt.

¶ 7 Katherine McLuckie, a Rockford police officer, testified that she responded to a call regarding a "suspicious person" at a Mobil gas station around 10:30 p.m. While driving there, she received a report of a burglary to a car parked near Anytime Fitness. Lee Nygre, the clerk of the Mobil station, informed McLuckie that a "dark-skinned black male" had come into the gas station. She described him as having a gray beard, approximately 5'6" in height, 150 pounds, and wearing a black jacket and a red hat. This person, later identified as defendant, tried to purchase alcohol with a credit card, but he refused to show the identification on the card. After he left, Nygren noticed what she assumed was blood on the counter, on the floor, and on the front door. By the time McLuckie arrived at the Mobil station, Nygren had wiped up the blood on the counter. Nygren showed the blood on the floor and the front door to McLuckie. The towel used to clean the blood from the counter had been cleaned in a bleach solution, so Nygren could not show it to McLuckie. McLuckie and her partner then left to respond to the reported car burglary.

¶ 8 McLuckie observed the broken car window, a knife on the ground, and she spoke to Steig, the owner of the car. McLuckie photographed the damage to the car and the knife, which she identified in court. Steig told McLuckie that, when he called to cancel his credit cards, he was told that a purchase was made with his credit card at the Phillips station across the street from Anytime Fitness. McLuckie sent Officer Trout to that gas station to gather information.

McLuckie did not observe blood in Steig's car. She did not take any fingerprints from the car or call an identification detective to take fingerprints.

¶ 9 Nygren testified, essentially depicting what she had told McLuckie. She was shown a surveillance DVD of the December 6, 2011, transaction at the Mobil station. Nygren identified defendant as the person about whom she had called the police. The DVD portrayed the time period in which defendant attempted to purchase alcohol with a credit card.

¶ 10 Nygren could not tell what type of credit card defendant tried to use. She thought defendant was suspicious, in part, because he would not show her the ID on the card. Nygren was not 100% sure that it was defendant who had dripped blood on the counter.

¶ 11 Matthew Colburn, a clerk at the Phillips station, testified that he was familiar with defendant, who was a regular customer. The first time defendant came into the store on December 6, 2011, he purchased a cigar with some change. Defendant returned to the store later that day and used a credit card to buy a case of Heineken beer and two boxes of Black & Mild cigars. Colburn noted that the credit card purchase was unusual because he had never known defendant to purchase anything with a credit card before December 6. Colburn did not ask defendant for identification when he used the credit card because he knew defendant was over 27 years old and the company's policy did not require identification when the purchase was less than $50.

¶ 12 Colburn identified surveillance footage from the night of December 6-7, 2011. He testified that it was an accurate depiction of the transaction defendant made on December 6. On December 12, 2011, while Colburn was working at the Phillips station, defendant walked into the store and Colburn immediately called 911.

¶ 13 Daniel Fick, an officer of the Rockford police department, responded to Colburn's call and found defendant there when he arrived. Fick was told by Colburn that "the guy that's using the stolen credit cards is back in the store." Fick spoke to defendant, who told him his name was "Jeffrey Lockwood," and that he was born on October 14, 1965. Fick searched for defendant by the birth date given to him and he looked at an emailed photograph, which resembled defendant. Fick also found Black & Mild cigars on defendant.

¶ 14 A copy of the credit card receipt used for the transaction in question from December 6, 2011, and the surveillance footage from that date were admitted into evidence. Jeffrey Beaulieul, the manager of the Phillips station, testified that a copy of the receipt of the transaction that occurred on December 6, 2011, was used to determine which portion of the December 6 surveillance tape to copy. The receipt had a time stamp of "2231," or 10:31 p.m. Beaulieul relied on the approximate date and time period of where he should be looking on the surveillance tape based on information provided by Colburn and a Rockford police department detective. He stated that credit card receipts do not have the name of the credit card holder but they do identify the employee who completes the transaction, and in this case it was Colburn.

¶ 15 Jeff Stovall, a detective in the burglary division of the Rockford police department, was assigned to investigate the burglary to Steig's car. He reviewed the original reports about the offense, and contacted the Mobil station and the Phillips station connected to the incident. He then collected copies of the surveillance footage from the Mobil and Phillips stations, and a copy of the transaction receipt from the Phillips station.

¶ 16 Detectives Swenson and Schelling interviewed defendant. After reading him his *Miranda* rights, defendant denied using a credit card to buy the Black & Mild cigars and the case

of Heineken beer at the Phillips station. He told the detectives that he used cash to purchase those items.

¶ 17 Jean Houzenga testified that she and her husband had gone to Franchesco's restaurant for dinner on December 10, 2011. They arrived around 6-7 p.m. and left about one hour and fifteen minutes later. When her husband went to retrieve the car, he found the driver's side window had been smashed. Houzenga stated that her purse was missing from the car. The purse had a wallet containing gift certificates, cash, and credit cards. Her husband called the police, but no one came to the scene.

¶ 18 Houzenga called Discover card and the representative asked if she had used the card for purchases in a specific amount at the Phillips station on December 10, and she stated that she had not. Houzenga did not know an individual named Ricky Griggs and had never given him permission to use her credit card or to enter her car.

¶ 19 Houzenga was shown the credit card receipt with a signature on it. She identified her name but stated it was not her signature. Houzenga did not go to the Phillips station on December 10, 2011, and she did not purchase Black & Mild cigars and Heineken beer on that date.

¶ 20 On December 12, 2011, Stovall was assigned to investigate the December 11 burglary-to-vehicle incident at Franchesco's restaurant. He collected a copy of a receipt of the transaction and surveillance footage from the Phillips station. He then compared the December 10, 2011, videotaped footage from the Phillips station with the December 6, 2011, footage from both the Mobil and the Phillips stations and noted that the subject was the same person.

¶ 21 Stovall and Detective Duane Hackbarth interviewed defendant on December 16, 2011. Defendant waived his *Miranda* rights. Stoval and Hackbarth explained to defendant that they

were investigating two counts of burglary to vehicles and defendant denied it. They told defendant that they knew he had used a credit card at the Phillips station on December 6, 2011, that they identified him from the surveillance footage from the store, and that the clerk had recognized him as a repeat customer. Defendant denied using a credit card. Defendant told them that he had not been asked for his identification during the purchase and therefore he could not be charged by the police.

¶ 22 Stovall further testified that he and Hackbarth explained to defendant that he was at the Phillips station using a stolen credit card on two different occasions. Defendant responded, "[y]ou're saying I used a lady's credit card?" The detectives, however, had not discussed with defendant who owned the credit card and never mentioned that one of the cards belonged to a woman. The detectives told defendant that they had never mentioned anything about a lady's credit card and defendant stated "[y]ou said I stole a purse." The detectives had not told defendant that a wallet with a credit card in it had been taken from a purse.

¶ 23 Stovall asked defendant if he had used the credit cards and defendant responded that he was not admitting to using the credit cards and he was not denying using the credit cards. Defendant told Stovall that, if he did use the credit cards, "he would have found them on the street."

¶ 24 Stovall testified he did not find anyone who could have identified defendant as the person that burgled a car. He stated that the evidence proving defendant had been in the cars was his use of the credit cards that had been taken from the cars. Stovall testified that he told defendant that, if he admitted to the two burglaries, he would "throw out" three or four other burglaries of which he was suspected.

¶ 25 Stovall further testified that he did not examine the burgled car on December 6, 2011, for fingerprints because "prior to the investigation even being handled" defendant was at the Mobil station using the stolen credit card. The December 6, 2011, surveillance footage from the Mobil station showed defendant in that establishment, and the December 6, 2011, receipt from the Phillips station showed defendant a time stamp of 10:31 p.m.

¶ 26 The State was not able to extrapolate enough DNA from the knife found by Steig's car to create a profile for comparison purposes. The swab did not have sufficient DNA to indicate whether defendant could or could not have committed the crime.

¶ 27 The jury found defendant guilty of both charges of burglary to a vehicle and possession of another's credit or debit card. The trial court denied defendant's motion for a new trial and an amended motion for a new trial. Defendant was sentenced and his motion to reconsider was denied. This timely appeal follows.

¶ 28 II. ANALYSIS

¶ 29 A. Compliance with 30-day Rule

¶ 30 Defendant contends that the trial court abused its discretion by denying his motion to dismiss the superseding indictment because he was not indicted within 30 days of his arrest. An abuse of discretion standard of review is applied when determining whether a trial court properly denied a motion which alleged a violation of this 30-day rule. *People v. Clarke*, 231 Ill. App. 3d 504, 508 (1992).

¶ 31 An individual who is arrested must be taken "without unnecessary delay" before a judge and be informed of the charge against him, advised of his right to counsel, and scheduled for a preliminary hearing when appropriate, admitted to bail, and have an order of protection issued when appropriate. 725 ILCS 5/109-1(a), (b), (b)(1), (b)(2), (b)(3), (b)(4), (c) (West 2010).

¶ 32 Defendant was charged by information with a felony. Section 5/109-3.1(b) of the Code of Criminal Procedure of 1960 (Code) states:

> "Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provided in Section 5/109-3, or an indictment by Grand Jury as provided in Section 5/111-2, within 30 days from the date he or she was taken into custody.
>
> * * *
>
> The provisions of this paragraph shall not apply in the following situations:
>
> (1) when delay is occasioned by the defendant; or
>
> (2) when the defendant has been indicted by the Grand Jury on the felony offense for which he or she was initially taken into custody or an offense arising from the same transaction or conduct of the defendant that was the basis for the felony offense or offense initially charged." 725 ILCS 5/109-3.1(b) (West 2010).

¶ 33 In this case, defendant was arrested on December 16, 2011, and appeared in court within three days, on December 19, 2011. At that appearance, defendant was apprised of the charge in the information filed against him. Defendant, who was represented by counsel at the time, next appeared in court on December 28, 2011. On January 4, 2012, 20 days after he was arrested, defendant was charged by indictment. This complied with the 30-day statutory requirement.

¶ 34 On January 20, 2012, a superseding bill of indictment was filed, charging defendant with burglary to a motor vehicle (count I) and possession of another's credit or debit card (count II). Defendant argued that the superseding indictment "substantially changed" the initial indictment, and thus exceeded the 30-day limitation.

¶ 35 The court in *People v. Robinson*, 163 Ill. App. 3d 384, 390 (1987), construed section 109-3.1(b)(2) and held that, "as long as the accused is indicted within 30 days for the offense for which he was originally arrested, he may be indicted for a separate offense beyond the 30-day period." Thus, since the initial indictment in the present case fell within the 30-day statutory period, the January 20, 2012, date of the superseding indictment, which added count II, did not exceed the statutory 30-day requirement.

¶ 36 Contrary to defendant's argument, the superseding indictment did not "substantially change" the initial indictment. The superseding bill of indictment included the original offense (count I), and the second offense (count II), which arose from the same transaction as set forth in count I. Accordingly, the initial January 4, 2012, indictment covered both charges which were included in the superseding bill of indictment.

¶ 37 Defendant maintains that he was arrested on December 12, 2011, but does not cite to any document in the record supporting this assertion. In his motion to dismiss, defendant averred that he was in pre-trial detention beginning on December 13, 2011. This assertion does not comport with the record either, which shows that defendant was served with an arrest warrant on December 16, 2011, was arraigned on the information on December 19, 2011, and then was arraigned on the bill of indictment on January 4, 2012. Even assuming the dates defendant alleges were correct, the bill of indictment would have been filed within the 30-day requirement of the statute. In sum, we do not find that the trial court abused its discretion in denying defendant's motion to dismiss the indictment, as defendant was indicted within 30 days of his arrest.

¶ 38 B. Sufficiency of the Evidence

¶ 39 When the defendant challenges the sufficiency of the evidence, we will not set aside a conviction on the basis of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is the jury's function to determine the guilt or innocence of defendant. *People v. Eyler*, 133 Ill. 2d 173, 191 (1989). " '[The] relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' *** 'Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.' " (Emphases in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is the responsibility of the fact finder to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319.

¶ 40 1. Burglary to a Motor Vehicle

¶ 41 Defendant argues that the State failed to prove beyond a reasonable doubt that he was guilty of burglary to a motor vehicle. Defendant points out that he was not seen in or around Steig's car, and no DNA or fingerprints attributable to defendant were found at the scene or in the car.

¶ 42 A person commits burglary when "without authority he knowingly enters or without authority remains within a *** motor vehicle *** or any part thereof, with intent to commit therein a felony or theft." 720 ILCS 5/19-1 (West 2010). A person commits theft when he knowingly "[o]btains or exerts unauthorized control over property of the owner[.]" 720 ILCS 5/16-1(a)(1) (West 2010). Whether the requisite intent existed is a question of fact for the trier

of fact, whose determination will not be disturbed on appeal unless the evidence is so improbable as to cast a reasonable doubt on the defendant's guilt. *People v. Cabrera*, 116 Ill. 2d 474, 493 (1987).

¶ 43 The evidence reveals that Steig did not give anyone permission to enter his car, the driver's side window of his car had been smashed, and his wallet was missing from the car. Steig discovered that his credit card had been used to purchase items at a Phillips station at the time he was at the fitness facility. The gas station attendant recognized defendant as the person who used the credit card, and surveillance footage showed defendant made the purchases with Steig's credit card. Steig's signature was not on the receipt used to purchase the items. The time stamp on the receipt verified that it was used during the time when Steig was at the fitness facility. Because the State proved that defendant used the credit card that was inside Steig's wallet, which was in his car, it is reasonable for the jury to infer that defendant, without authority, knowingly entered Steig's car with the intent to commit therein a theft.

¶ 44 Although defendant was not seen in or around Steig's car, and neither his DNA nor his fingerprints were found at the scene, the circumstantial evidence points to defendant as having been the person who entered the vehicle. As stated, the evidence, taken in the light most favorable to the prosecution, would lead a rational trier of fact to deduce that it was defendant who had entered Steig's car and had taken Steig's credit card. Furthermore, evidence of DNA or fingerprints is not necessary to prove defendant guilty beyond a reasonable doubt, as the conviction may be sustained on circumstantial evidence. See *People v. Beauchamp*, 241 Ill. 2d 1, 9 (2011) (burglary conviction sustained on circumstantial evidence although State did not present direct evidence that defendants "broke the close" of the car).

¶ 45 Defendant contends that he merely possessed the stolen property and was not the individual who burgled Steig's car. He relies on *People v. Housby*, 84 Ill. 2d 415 (1981), which sets forth three tests to determine whether a defendant's due process rights have been infringed when circumstantial evidence is presented at trial. *Id*. at 424. This contention lacks merit. Defendant fails to raise any argument tying the facts of this case to the law set forth in *Housby*. It is not the responsibility of this court to scour the record in search of facts that support the argument being advanced by a party.

¶ 46 While defendant does not apply the *Housby* three-part test to the facts, it is clear that he is arguing exclusive, unexplained possession of stolen property is not enough to convict. In *Housby*, the supreme court found the defendant's possession of recently stolen property, standing alone, did not provide sufficient evidence to sustain a burglary conviction. *Id*. at 423. In *People v. Richardson*, 104 Ill. 2d 8 (1984), our supreme court later explained the *Housby* decision as follows:

> "*Housby* and the United States Supreme Court cases on which it is based *Sandstrom v. Montana*, 442 U.S. 510 (1979); *County Court v. Allen*, 442 U.S. 140 (1979)), involved jury instructions which encouraged the jury to draw inferences. The *Housby* test applies only to instructions which advise a jury of inferences it may draw; it insures that the jury applies the reasonable-doubt test." *Richardson*, 104 Ill. 2d at 11-12.

¶ 47 Here, defendant does not challenge the jury instructions, and the jury did not receive the instruction at issue in *Housby*. See *Housby*, 84 Ill. 2d at 419.

¶ 48 Moreover, construing the evidence in the State's favor, the evidence showed more than mere unexplained possession of the credit card, *i.e.*, (1) the proximity in time between the

burglary and the use of the credit card; (2) the reasonable inference that it was defendant who bled on the counter at the Mobil station; and (3) the nearly identical facts to the other-crimes evidence. Accordingly, after reviewing the evidence in the light most favorable to the State, we do not find the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of defendant's guilt of burglary to a vehicle.

¶ 49 Defendant argues that the trial court made "reversible errors" when it failed to give a curative instruction after a statement made by Detective Stovall. At trial, during defendant's cross-examination of Stovall, after defendant asked him if he had examined Steig's car, the following colloquy occurred:

> THE COURT: Did you go back and examine the vehicle from what date; from December 6th?
>
> DEFENDANT: From December 6th. I'm sorry, Your Honor, December 6th.
>
> THE COURT: Did you go back and examine the vehicle from December 6th for fingerprints or DNA?
>
> DETECTIVE STOVAL: No.
>
> DEFENDANT: Could you explain why?
>
> STOVAL: Because prior to the investigation even being handled, the initial investigation, you were at the Mobil station using the stolen credit card.
>
> DEFENDANT: Objection, Your Honor. I'm going to object to that.
>
> THE COURT: You can't object to it. You asked the question; he answered it. You may not like the answer, but that's his answer."

¶ 50 We agree with the trial court's finding. "If a defendant procures, invites or acquiesces in the admission of evidence, even though it be improper, he cannot complain." *People v. Burag*e,

23 Ill. 2d 280, 283 (1961). Moreover, defendant had asked the question to Stovall and the answer was responsive and not prejudicial. Thus, even if defendant had asked the court to give a curative instruction during the trial, the court was not required to give one as nothing needed to be cured.

¶ 51 2. Possession of the Credit Card of Another

¶ 52 Defendant next contends that the State failed to prove him guilty of possession of another's credit card beyond a reasonable doubt. A person commits possession of another's credit card when he receives possession, without the cardholder's consent, with the intent to use it. 720 ILCS 5/17-32(b) (West 2012).

¶ 53 Here, the evidence shows that Steig did not give defendant permission to use his credit card to purchase beer and cigars on December 6, 2011. The surveillance footage from the store shows defendant made the purchases with Steig's credit card on that date, and the signature on the receipt for the purchases was not Steig's. Thus, after reviewing the evidence in the light most favorable to the State, we do not find the evidence is unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of defendant's guilt of possession of another's credit card.

¶ 54 C. Right to a Speedy Trial

¶ 55 In Illinois, a defendant has both a constitutional and a statutory right to a speedy trial. U.S. Const., amends. VI, XIV; Ill. Const.1970, art. I, § 8; 725 ILCS 5/103-5 (West 2012). The Illinois speedy-trial statute contained in the Code implements the constitutional right to a speedy trial. 725 ILCS 5/103-5 (West 2010); *People v. Cordell*, 223 Ill. 2d 380, 385-86, (2006). The speedy-trial provisions of the Code are to be liberally construed in favor of a defendant because they were enacted to avoid infringements of the defendant's constitutional speedy-trial right.

People v. Bauman, 2012 IL App (2d) 110544, ¶ 16 (citing *People v. Kohler*, 2012 IL App (2d) 100513, ¶ 23). Defendant asserts that his statutory right to a speedy trial was violated because he was not brought to trial within the 120-day speedy trial term. We disagree.

¶ 56 An incarcerated defendant must be brought to trial within 120 days of his demand for trial. 725 ILCS 5/103-5 (West 2010). However, section 103-5(f) of the Code provides that delay caused by the defendant temporarily suspends the running of the speedy-trial period until the expiration of the delay, at which point the statute shall recommence to run. 725 ILCS 5/103-5(f) (West 2010). A delay is occasioned by or attributable to the defendant when the defendant's acts caused or contributed to the delay resulting in the postponement of trial. *People v. Castillo*, 372 Ill. App. 3d 11, 16 (2007). Section 114-1(a)(1) of the Code (725 ILCS 5/114-1(a)(1) (West 2010)) provides that, upon motion of the defendant prior to trial, the court may dismiss an indictment on the grounds that a defendant has not been placed on trial in compliance with section 103-5.

¶ 57 The speedy-trial term in this case began to run when defendant was arrested and remained in custody on December 16, 2011. Trial began on December 17, 2012. The 12 days that passed from December 16, 2011, until December 28, 2011, when defendant appeared in court and made a speedy-trial demand, are attributed to the State. The time between December 28 and January 12, 2012, when the bill of indictment was filed, is also attributed to the State. Thus, from December 16 through January 12, 28 days was charged to the State.

¶ 58 From then on, the time set for trial was delayed by defendant. On January 12, 2012, defense counsel continued the case on his motion and continued the case on every court date thereafter. On January 26, 2012, on defense counsel's motion, time was tolled to March 2. On March 2, on defense counsel's motion, jury trial was set to April 16. The April 16 trial was

cancelled and time was tolled on defense counsel's motion to May 7. On May 7, defense counsel wanted certain evidence to be tested, and the case was continued on his motion. Several other continuances followed on defense counsel's motions. On August 27, 2012, defendant represented himself and time was tolled and attributed to him until trial on December 17, 2012.

¶ 59 Defendant maintains that the time from December 13, 2011, to January 26, 2012, from March 9, 2012, to April 13, 2012, and from May 7, 2012, to July 23, 2012, were delays not attributable to him. Defendant also asserts that he had been "constantly" demanding trial. Defendant argues that the order for him to supply a buccal swab that tolled the running of the speedy-trial term should not have been attributed to him. The trial court found defendant's calculations were in error and that the State had not violated defendant's speedy trial rights. Based on our review of the record, we agree with the trial court's conclusion.

¶ 60 Defendant makes a number of other assertions in support of his argument that the State used stalling tactics affecting his speedy-trial rights, such as delaying an order for a buccal swab, failing to do anything with information about the knife blade taken from the scene of the crime and the blood found at the Mobil station until trial, colluding with his defense counsel "concerning the D.N.A.," and "falsifying the D.N.A. results." Some of defendant's assertions are not supported by the record or the facts of the case and have nothing to do with the speedy-trial term being violated. Other assertions fail to provide any coherent explanation, are conclusory, and lacking in specificity.

¶ 61 D. Admission of Other-Crimes Evidence

¶ 62 Defendant next argues that the trial court abused its discretion by allowing evidence of other crimes to be presented to the jury. "Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes." *People v.*

Wilson, 214 Ill. 2d 127, 135 (2005). It is admissible to show *modus operandi*, intent, identity, motive, or absence of mistake. *Id*. at 135-36. It also may be permissibly used to show, by similar acts or incidents, that the act in question was not performed inadvertently, accidently, involuntarily, or without guilty knowledge. *Id*. at 136. Where such other crimes evidence is offered, it is admissible so long as it bears some threshold similarity to the crime charged. *Id.* Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 63 The other-crimes evidence, which the trial court found admissible, included the testimony of Houzenga, who testified that after eating at a restaurant, her husband found the driver's side window of their car smashed and her purse stolen. One of her credit cards was used at the Phillips station by another person who purchased Heineken beer and Black & Mild cigars. When the surveillance footage from the Phillips station was viewed, it showed defendant using Houzenga's credit card. The court admitted this evidence to show "*modus operandi*, intent, identity and absence of mistake."

¶ 64 To be relevant and admissible to prove identity under a theory of *modus operandi*, " 'there must be a "strong and persuasive showing of similarity" between the charged crime and the other-crimes evidence.' " *People v. Robinson*, 167 Ill. 2d 53, 65 (1995) (quoting *People v. Tate*, 87 Ill. 2d 134, 141 (1981)). *Modus operandi* involves reliance on an inference that a distinctive pattern of criminal activity "earmarks the crimes as the work of a particular individual." *Robinson*, 167 Ill. 2d at 65.

¶ 65 There is no doubt that the Houzenga case and the present case are strikingly similar, and the trial court could reasonably infer that there was a distinctive pattern of criminal activity, earmarking the crime as the work of defendant. The point of entry, the method of entry, and the

stolen credit cards used at the same gas station to buy the exact items shortly after each burglary represent a strong and pervasive showing of similarity between the evidence and the crime for which the accused was being tried. Accordingly, we do not find that the trial court abused its discretion by permitting the State to use other-crimes evidence of the burglary to Houzenga's credit card to demonstrate defendant's *modus operandi*.

¶ 66 Defendant notes that Houzenga testified that she and her husband had dinner at Franchesco's the night of December 6, 2011. Additional testimony, however, shows that the prosecutor used the incorrect date during her initial questions to Houzenga. The remainder of the testimony shows that the incident occurred on December 10, 2011. This minor error did not apparently diminish Houzenga's credibility in the eyes of the jury.

¶ 67 E. Forfeiture of the Admission of Other Evidence

¶ 68 Defendant identified three issues regarding the admission at trial of the surveillance footage, the receipt, and the knife blade, but he presented no argument in his appellate brief. Defendant then addressed the issues in his reply brief. Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) states: "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Accordingly, we find defendant has "waived" these issues.

¶ 69 III. CONCLUSION

¶ 70 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 71 Affirmed.