

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (3d) 130687-U

Order filed October 26, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0687
LUIS A. LOMELI,)	Circuit No. 11-CF-240
Defendant-Appellant.)	Honorable Cynthia M. Raccuglia, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not question the potential jurors in compliance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012); however, this error was not plain error. (2) The trial court did not err in admitting evidence of defendant's other bad acts. (3) Defendant's argument that the cumulative effect of the errors deprived him of a fair trial fails absent multiple errors.

¶ 2 A jury found defendant, Luis A. Lomeli, guilty of two counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2010)). On appeal, defendant argues that: (1) the court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012); (2) he was denied a fair trial

where the court allowed the State to introduce evidence of defendant's prior bad acts; and (3) the cumulative effects of the errors deprived defendant of a fair trial and denied him due process of law. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged by indictment with two counts of first degree murder. Prior to trial, defendant filed a motion *in limine* to exclude evidence of his prior bad acts. The State filed a motion to use the prior bad acts evidence to show a scheme by defendant and his accomplices to commit robberies to obtain money to party.

¶ 5

At a hearing on the motions, the State argued that prior to the charged murder, defendant was part of a scheme with Joshua Ward, Jason Ward, and Sylvia Enriquez to commit robberies. In Aurora, Sylvia went into a bar to lure a male victim outside for them to rob. At the same time, defendant, Jason, and Joshua attacked, robbed, and stabbed the victim in the parking lot. Later that evening, Sylvia, defendant, Jason, and Joshua traveled to the residence of Syvlia's former boyfriend in Montgomery. Sylvia intended to lure her former boyfriend out of his house where defendant, Joshua, and Jason could rob him; however, the group was unable to complete the robbery. At the conclusion of the hearing, the court granted the State's motion to use the prior bad acts evidence to establish defendant's motive and intent, and the case proceeded to a jury trial.

¶ 6

During jury selection, defense counsel asked one potential juror if the fact that he had a young son would cause him to take the position "better safe than sorry rather than following the beyond a reasonable doubt" standard. The juror responded that he was more of a "safe than sorry" type but he hoped that he could put that attitude aside in deciding whether the State had proved defendant's guilt beyond a reasonable doubt. The court then said:

"the safe than sorry could be not guilty or the other way, but if there is doubt, reasonable doubt is what the struggle is and say if as a group – you won't be making the only decision. If as a group you decide there's reasonable doubt, it's not a safe or sorry question. There's reasonable doubt. Do you understand that?"

Three jurors, who were later empanelled, heard the court's statement regarding reasonable doubt.

¶ 7 While selecting the jury, the court asked several jurors if they understood the principles stated in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). The court asked several other jurors whether they had "any difficulty with" or "any problems with" the Rule 431(b) principles. The court did not ask any of the jurors if they accepted the Rule 431(b) principles.

¶ 8 At trial, Joshua Ward testified that on May 1, 2011, he and his brother, Jason, went to see Jason's girlfriend, Jamie Lomeli in Ottawa. On that day, Jamie had also called defendant and Sylvia to her house for a cookout. Later, Joshua decided that he needed to get money in Aurora. Joshua, Jason, Sylvia, and defendant drove Sylvia's car, a Pontiac, to Aurora.

¶ 9 In Aurora, Joshua was unable to get money from his acquaintance, and the group planned to commit a robbery to get money "[t]o party" and purchase liquor. Prior to committing any robberies, Joshua contacted the mother of his child, and made arrangements to use her Ford Escape sport utility vehicle (SUV). Around 10 p.m., the group drove the SUV to La Villita, a bar and liquor store in Aurora. Sylvia went into the bar to lure an individual out for them to rob. Outside the liquor store, defendant, Joshua and Jason robbed Rolando Perez as he got into his car. Defendant pinned Perez in the car while Jason held a knife. Joshua took \$300 from Perez and Jason stabbed Perez more than 10 times. Joshua, Jason, and defendant left La Villita without Sylvia and drove to a nearby house where Jason washed the blood off his hands, and defendant

cleaned a cut that he received during the robbery. When Sylvia arrived, the group switched cars again and got back into the Pontiac and purchased cocaine from an unnamed individual in Aurora. The group consumed the cocaine and drove to the home of the father of Sylvia's child, Fernando Mata. Mata owed Sylvia money, which the group intended to take to purchase more drugs and alcohol.

¶ 10 At Mata's house, Sylvia went to the front door, and Joshua, Jason and defendant stood at the side of the house. Mata opened the door and the men ran into the house. Jason forced two individuals to the ground by pretending that he had a gun, and defendant fought with Mata. Eventually, Mata broke loose and let his dog into the house. Sylvia directed Joshua, Jason, and defendant to leave because she thought that Mata was calling the police. The group left without collecting any money. The group then drove back to Jamie's house in Ottawa. Along the way, defendant disposed of the knife that was used in the La Villita robbery and stabbing.

¶ 11 When the group arrived at Jamie's house, Jamie was in the back bedroom and her children were asleep in a neighboring bedroom. The group went to the back bedroom where they drank beer and consumed cocaine. When the cocaine was gone, Jamie contacted Darrio Hunter to purchase more. Approximately 10 to 15 minutes later, Hunter arrived at the house and sold Jamie one gram of cocaine in exchange for "\$40 or \$60" and some marijuana. The group consumed the cocaine, and defendant "got pissed because it was garbage." Jason suggested that the group rob Hunter, and defendant told Jamie to call Hunter back to the house. Jamie sent a text message to Hunter, requesting more cocaine, and eventually, Hunter returned to Jamie's house.

¶ 12 Shortly after Hunter returned, defendant and Jason came out of the back bedroom and attacked Hunter in the kitchen. Hunter pulled out a knife and swung it at Jason. Hunter tried to

get away from defendant and Jason by moving down the hallway. Near the bedrooms, Hunter fell to the floor and Jason and defendant kicked and punched Hunter in the head. Hunter tried to escape into the back bedroom, and Jason and defendant followed him. Sylvia slammed the bedroom door on Hunter's hand and took the knife from Hunter. Jason hit Hunter in the head with a 40-ounce beer bottle while defendant punched Hunter in the head and kicked Hunter about his body. Joshua moved the television out of the bedroom, and when he returned, he saw defendant cut Hunter's face with the knife that Sylvia had taken from Hunter. At the time, Hunter was not moving or fighting back. Defendant then jumped on Hunter's head with both feet. Jason kicked Hunter and went through his pockets. Joshua recalled that the house was covered in blood, and Jamie told him to get Jason and defendant out of the house. Joshua attempted to help Hunter onto the bed, and once Hunter was on the bed, Jason and defendant returned and punched Hunter before they left the house.

¶ 13 Outside the house, Joshua saw defendant take a knife from Sylvia and go around the side of the house. Joshua did not see what defendant did with the knife. A few minutes later, Joshua, Jason, Sylvia, and defendant got in the Pontiac and drove to the house of defendant's mother in Sheridan. Along the way, Jason threw the beer bottle that he used to hit Hunter out the car window, and defendant said that he cut Hunter "like Scar Face."

¶ 14 In Sheridan, defendant told the group to change their clothes. The soiled clothes were placed in a white garbage bag, which defendant placed in a wooded area near his mother's house. The group drove to Yorkville and then to a Motel 6 in Aurora.

¶ 15 Joshua stated that he had felony convictions for obstructing justice, criminal damage to property, aggravated battery/mob action, aggravated fleeing and eluding, residential burglary,

and burglary. Joshua was also charged with the first degree murder of Hunter and he reached a plea agreement with the State in exchange for his testimony in the instant case.

¶ 16 Sylvia Enriquez testified that she dated defendant in May 2011. On May 1, 2011, she and defendant went to a cookout at Jamie's home in Ottawa. In the evening, Sylvia drove defendant, Joshua, and Jason to Aurora in a Pontiac that was owned by defendant's mother. In Aurora, defendant planned to have Sylvia go into a bar to "peep the scene," which meant that Sylvia was to scout the scene for a robbery target. Before enacting the plan, the group switched vehicles and drove to La Villita. Sylvia went into the La Villita bar to locate a robbery target. However, when Sylvia came outside with a target, she noticed a commotion in the parking lot and saw the La Villita security guards approach. Sylvia did not see defendant, Joshua or Jason. Sylvia borrowed a cell phone and called Jamie. Jamie told Sylvia to go to the house of defendant's aunt, which was near the bar. At the house, Sylvia saw Jason and defendant come out of the bathroom and noticed that defendant and Jason had blood on their hands. The group then got back into the Pontiac that they drove from Ottawa to Aurora and went to another house in Aurora to purchase cocaine.

¶ 17 After the group consumed the cocaine, they drove to Mata's house in Montgomery to collect money that Mata owed Sylvia. Defendant said he was going to rob Mata if he did not give Sylvia the money. While Sylvia talked to Mata at the front door, defendant, Jason, and Joshua rushed inside. Thereafter, the men met Sylvia at the car without any of the money. The group then drove back to Ottawa.

¶ 18 Around 1 a.m., the group returned to Jamie's house. Defendant asked Jamie to procure some cocaine for the group, and Jamie contacted Hunter. Approximately 45 minutes later, Hunter brought the cocaine to the house. After using the cocaine, defendant and Jason said it

was not good and became angry. Defendant said that he intended to rob Hunter, and he directed Jamie to call Hunter back to the house. Jamie arranged for Hunter to come back, and when Hunter returned, Sylvia was in the back bedroom. Jamie, defendant, Jason, and Joshua left the room, and Sylvia heard loud noises. Sylvia went to the kitchen where she saw defendant and Jason hitting and punching Hunter. Hunter tried to block the punches and did not retaliate. The fight continued down the hallway and into the bedroom where defendant and Jason continued to hit Hunter in the upper body. Hunter fell to the floor, and defendant told Sylvia to pick up a knife that had fallen on the floor. Defendant took the knife from Sylvia and continued hitting and kicking Hunter. Jason hit Hunter in the head with a beer bottle. Sylvia left the room, and when she returned, she noticed that Hunter was spitting up blood and had a cut across his forehead. Jason patted Hunter down and took his wallet. Sylvia heard defendant say that he "should have killed" Hunter.

¶ 19 The group left Jamie's house around 4 or 5 a.m. and drove to the house of defendant's mother in Sheridan. There, the group placed their soiled clothes in a white garbage bag. When the group left the house, defendant threw the garbage bag in a rural wooded area. The group then drove to Yorkville and Aurora where they stayed in a Motel 6.

¶ 20 Sylvia stated that she had been charged with obstructing justice, and she had reached a plea agreement with the State in exchange for her testimony in the instant case.

¶ 21 Jannelle Debernardi testified that on May 2, 2011, at approximately 1:30 a.m., she and Hunter drove to Jamie's house to deliver some cocaine. Around 2 a.m., Debernardi dropped Hunter off at the Turnberry apartments, and she went to her cousin's house. Around 4 a.m., Debernardi drove Hunter back to Jamie's house to sell more cocaine. Debernardi parked the car in the driveway, and Hunter went in the house. About 15 to 20 minutes later, three men and two

women came out of the house. Debernardi identified one of the women as Jamie. Jamie told Debernardi that she needed to take Hunter to the hospital. Debernardi went in the house and saw Hunter lying on a bed covered in blood. Hunter spoke but could not walk. Debernardi and Jamie tried to help Hunter to the car, but Hunter was unable to get in. Debernardi called for an ambulance, and Hunter's speech grew worse until he was unable to respond.

¶ 22 Debernardi said she had lied to the police about Hunter's cocaine deliveries. Debernardi also had prior convictions for misdemeanor retail theft, possession of cannabis with intent to deliver, and she had been charged with possession of a stolen motor vehicle. In exchange for her testimony in the instant case, the State had offered Debernardi a plea agreement in the motor vehicle theft case.

¶ 23 Rolando Perez testified that on May 1, 2011, at 10:30 p.m., he exited La Villita after purchasing cigarettes and went to his car. An individual stopped Perez from closing his car door and asked for a light for his cigarette. Perez turned to look for a lighter, and the man struck him on the head. Perez saw two other men who started to hit him. Perez offered the men his money and tried to escape through the passenger door. One of the men stabbed Perez in the back, and the three men ran off when security guards came out of La Villita. Perez was stabbed a total of 14 times and spent three days in the hospital.

¶ 24 Fernando Mata testified that Sylvia Enriquez was his former girlfriend. Around 11 p.m. on May 1, 2011, Sylvia knocked on Mata's front door. When Mata opened the door, defendant and two other men forced their way in. Mata initially fought with defendant and then released his pit bulls into the house. Mata went to a neighbor's house where he called the police, and Sylvia, defendant, and the two men left.

¶ 25 The State also offered testimony from several police officers who participated in the investigation. The officers' testimony established that police arrived at Jamie's house at approximately 4:44 a.m. on May 2, 2011, on the report of a stabbing. At the scene, an officer saw Hunter lying on the ground near a car in the driveway. Hunter mumbled incoherently and was bleeding from his face. Approximately 10 minutes after Hunter was transported to the hospital, a doctor informed the police that Hunter had died.

¶ 26 During the investigation, a police officer retrieved a knife from the rooftop of Jamie's house. The State introduced the knife into evidence. Police found a white garbage bag in a wooded area near the home of defendant's mother. The white garbage bag contained men's and women's clothing. Police also found a wallet that contained cards that bore Hunter's name near the white garbage bag.

¶ 27 Forensic pathologist Scott Denton testified that he reviewed Hunter's autopsy results. Denton said Hunter had received multiple blunt impact traumas to his head, which caused brain swelling. Hunter also had multiple incised or cut wounds that caused blood to drain from his body, which deprived Hunter's brain of oxygen. Denton concluded that Hunter's death was caused by blunt trauma to the head and multiple incised wounds. Denton stated that the knife the State had introduced into evidence was consistent with the cause of Hunter's incised wounds.

¶ 28 Forensic biologist Katherine Sullivan testified that DNA from blood stains on the kitchen table, refrigerator, kitchen faucet and kitchen floor of Jamie's house matched the DNA of Hunter. DNA profiles taken from the clothing discovered in a white plastic bag matched the DNA standards provided by Jason, Joshua, and Hunter. The DNA profile of Sylvia also could not be excluded from some of the samples recovered from the items found inside of the bag.

¶ 29 Forensic DNA analyst Jessica York testified that she analyzed the knife recovered from Jamie's house. The knife handle contained a mixture of DNA. York was unable to exclude Hunter and defendant from the mixture, but she was able to exclude Jamie, Sylvia, Jason, and Joshua. A major DNA profile obtained from a blood stain on the knife blade was consistent with Hunter's DNA, and a minor DNA profile on the knife blade was consistent with defendant's DNA.

¶ 30 Defendant testified that in May 2011, he was working at Imperial Marble, and he made \$11.75 per hour. On May 1, 2011, Jamie invited defendant and Sylvia to her house in Ottawa for a cookout. At Jamie's house, defendant and Sylvia drank beer and socialized with Jamie, Joshua and Jason. A few hours later, defendant, Sylvia, Joshua, and Jason went to Aurora to get some money. The group drove toward Aurora in a Pontiac. After stopping briefly in Sheridan, the group went to La Flama De Oro in Aurora where defendant sold some marijuana to an unnamed individual. Afterward, the group switched vehicles with the mother of Joshua's child because her vehicle had more room, a better sound system, and the engine light had come on in the Pontiac.

¶ 31 The group drove the SUV to La Villita. Jason and defendant went into the liquor store and Sylvia went into the bar. Defendant became jealous when he called Sylvia's cell phone and she did not answer. Defendant left Sylvia at the bar and drove to his aunt's house. At his aunt's house, defendant, Joshua, and Jason smoked marijuana and drank alcoholic beverages. About 20 minutes later, Sylvia arrived, and the group drove to another location to purchase cocaine. The group consumed the cocaine and got back in the Pontiac that they had driven from Ottawa.

¶ 32 Sylvia contacted Mata about some money that she was owed, and defendant told Sylvia that if Mata would not give her the money, he would try to get it for her. The group went to

Mata's house to get the money. At the house, defendant tried to grab Mata, but he ran away. Defendant chased Mata until Mata let his pit bull into the house.

¶ 33 Around 1 a.m., the group returned to Jamie's house in Ottawa. Thereafter, Hunter came to the house to deliver cocaine, which Jamie purchased with defendant's money. Defendant had recently gotten paid, and Jamie and Joshua used \$120 of defendant's money to purchase cocaine from Hunter. The group consumed the cocaine, and defendant recalled that the quality was not good, but he was not upset. The group decided to purchase more cocaine, and Jamie contacted Hunter for a second delivery. Between 3 and 4 a.m., Hunter returned to Jamie's house. At the time, defendant was in the back bedroom, and Jamie and Joshua conducted the deal in the kitchen. Defendant heard an argument, and he walked to the kitchen. Defendant saw that Hunter was wielding a knife, and Hunter said "[g]ive me that shit." Defendant tried to wrestle the knife from Hunter, and Jason joined in the fight. During the altercation, defendant received a cut to his thumb. Hunter ran toward the bedroom, and defendant and Jason attempted to keep him from entering the room where Jamie's children were sleeping. Defendant and Jason forced Hunter into the back bedroom where Hunter fell to the ground. The struggle lasted for six or seven minutes, and at the end, Hunter released the knife. Defendant helped Hunter onto the bed and asked Hunter "[w]hy the hell are you trying to rob us?" Defendant tried to call 911, but Hunter said he did not want an ambulance. At that point, defendant became scared and told Jamie to call 911. Sylvia gave defendant the knife, and as he went outside, defendant threw the knife on the roof. Jason took Hunter's identification card and told Debernardi that if Hunter came after them, he would retaliate.

¶ 34 Defendant, Joshua, Jason, and Sylvia left Jamie's house and drove to the house of defendant's mother in Sheridan. There, defendant changed clothes and gave Joshua, Jason, and Sylvia a change of clothes. The group then went to a motel in Aurora.

¶ 35 The court instructed the jury, in relevant part, that evidence that defendant had been involved in other uncharged offenses had been provided on the issues of defendant's intent, motive, lack of mistake and design, and should be considered only for that limited purpose.

¶ 36 The jury found defendant guilty of first degree murder, and the court sentenced defendant to 45 years' imprisonment. Defendant appeals.

¶ 37 ANALYSIS

¶ 38 I. Reasonable Doubt Statement

¶ 39 Defendant argued in his appellant's brief that the trial court violated his rights to due process and a fair trial when the court explained that it was for the jurors to determine the meaning of reasonable doubt. In his reply brief, defendant conceded that the trial court's statement, "[i]f as a group you decide there's reasonable doubt, *** [t]here's reasonable doubt" was not error because the court's statement "correctly informed the jurors that it was for them to define reasonable doubt." See *People v. Downs*, 2015 IL 117934, ¶ 24. After reviewing the trial record and *Downs*, we accept defendant's concession.

¶ 40 II. Illinois Supreme Court Rule 431(b) Compliance

¶ 41 Defendant argues that the trial court failed to strictly comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Specifically, the court did not ask each juror if he or she understood and accepted the four principles enumerated in the rule. Defendant acknowledges that he failed to preserve this issue, but he argues that it is subject to review under the first prong of the plain-error doctrine because the evidence was closely balanced. Defendant does not argue

that the error is reversible under the second prong of the plain-error doctrine. The State concedes that the trial court did not comply with Rule 431(b), but it argues that this error is not plain error. We agree that the court erred, but conclude that the error is not reversible under the first prong of the plain-error doctrine.

¶ 42 The plain-error rule bypasses a defendant's forfeiture and allows a reviewing court to consider an unpreserved claim of error. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). The first step of plain-error review is to determine whether the trial court erred. *Id.* at 613. Upon a review of the record, we accept the State's concession that the trial court erred in failing to strictly comply with Rule 431(b). Specifically, the trial court failed to ask each juror if he or she "understood" and "accepted" the four principals stated in Rule 431(b). *Id.* at 607.

¶ 43 Having accepted the State's concession of error, we must determine whether the error is reversible under the first prong of the plain-error doctrine. Plain error, under the first prong, requires reversal where a clear or obvious error occurred and "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). A reviewing court "must undertake a commonsense analysis of all the evidence in context when reviewing a claim under the first prong of the plain error doctrine." *People v. Belknap*, 2014 IL 117094, ¶ 50.

¶ 44 The evidence in this case was not close. Joshua and Sylvia testified that they heard defendant and Jason propose a plan to rob Hunter after he provided the group with poor quality cocaine. When Hunter returned to the house, Joshua and Sylvia saw defendant and Jason attack Hunter in the kitchen. Hunter made an offensive swing with his knife and then attempted to run from the fight as defendant and Jason continued to hit him. Defendant and Jason pursued Hunter down the hallway and to the back bedroom where Hunter fell onto the floor. In the back

bedroom, Joshua and Sylvia watched defendant hit Hunter. Joshua saw defendant cut Hunter's face and jump on Hunter's head with both feet. Both witnesses said that Hunter tried to block the blows from defendant and Jason.

¶ 45 The only testimonial evidence that was not consistent with the testimony of Joshua and Sylvia was provided by defendant. Defendant testified that Jamie contacted Hunter to purchase more cocaine, and when Hunter arrived, he attempted to rob the group. In response, defendant tried to wrestle the knife from Hunter, and the brawl traveled down the hallway and into the back bedroom where defendant helped Hunter onto the bed. At that time, defendant asked Hunter why he tried to rob the group and if he needed an ambulance. We find that defendant's self-serving testimony is insufficient to render the evidence close. See *People v. Young*, 2013 IL App (2d) 120167, ¶ 31 (finding that the evidence was not close, in part, because defendant's testimony was self-serving).

¶ 46 Defendant argues that the evidence was close, in part, because Joshua and Sylvia testified as part of their plea agreement for their involvement in the instant case. The agreements, therefore, allegedly impinged Joshua's and Sylvia's credibility. We note that the credibility of a witness is a question for the jury. *Belknap* 2014 IL 117094, ¶ 55. We will reverse such determinations only when the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of criminal culpability. *People v. Sanders*, 191 Ill. App. 3d 483, 485 (1989).

¶ 47 In this case, Joshua's and Sylvia's testimonies were corroborated by the physical evidence. DNA testing revealed that the blood stains observed throughout the house were contributed by Hunter. DNA analysis also connected Hunter and defendant to the knife that was found on the roof. The forensic pathologist, Scott Denton, testified that this knife was consistent with Hunter's incised wounds. A bag of clothes was found in a white garbage bag near the house

of defendant's mother, and DNA analysis of the clothes contained within the bag connected the clothes to Jason, Joshua, and Hunter. A wallet that appeared to belong to Hunter was found in the wooded area near the bag of clothes.

¶ 48 Viewing all of the evidence in a commonsense manner in the context of the totality of the circumstances, we conclude that the evidence was not closely balanced. Therefore, the Rule 431(b) error is not reversible under the first prong of the plain-error doctrine.

¶ 49 III. Other Bad Acts Evidence

¶ 50 Defendant argues that he was denied a fair trial where the State was allowed to present other bad acts evidence that was not relevant to the charged offenses and was highly prejudicial. The State argues that the trial court properly admitted evidence of defendant's other bad acts to show motive and intent. We find that the trial court did not abuse its discretion when it admitted evidence of defendant's prior bad acts because defendant's prior acts were admissible to show motive or intent.

¶ 51 Generally, evidence of a defendant's other offenses, crimes or bad acts are inadmissible to show a defendant's disposition or propensity to commit crimes. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991). However, such evidence may be admitted, where relevant, to prove *modus operandi*, intent, identity, motive or absence of mistake. *Id.* To be admissible, "there must be a clear connection between the other crime or crimes and the one charged which creates a logical inference that if a particular defendant committed one of the acts, he also committed the other or others." *People v. Smith*, 236 Ill. App. 3d 1060, 1063 (1992). "While there must be a strong and persuasive showing of similarity between the crimes, it is not necessary that the crimes be identical." *Id.*

¶ 52 Where the State seeks to admit evidence of other crimes, the trial court must weigh the evidence's probative value against its prejudicial effect. *Illgen*, 145 Ill. 2d at 365. The court may exclude evidence if its prejudicial effect substantially outweighs its probative value. *Id.* The admissibility of evidence lies within the sound discretion of the trial court. *Id.* at 364. A trial court's decision to admit evidence of a defendant's prior bad acts will only be overturned on appeal where the court abused its discretion. *Id.*

¶ 53 In this case, the State filed a motion prior to trial to admit evidence that defendant had been involved in an armed robbery in Aurora, where Perez was stabbed multiple times, and other attempted robberies that involved the use of force. The State intended to use the evidence to show motive, design or plan, knowledge, intent, identity, and absence of mistake.

¶ 54 Evidence of defendant's participation in the armed robbery and stabbing of Perez in Aurora and attempted robbery of Mata in Montgomery were relevant to establish defendant's motive and intent. Evidence of defendant's prior bad acts each involved a plan to commit potentially violent robberies, which were similar to the charged offense.

¶ 55 Defendant contends that the charged offense was dissimilar to the prior bad acts because the charged offense was not an armed robbery. However, the evidence readily established that the planned retribution against Hunter included elements of robbery. Specifically, Jason suggested that the group rob defendant because he had provided poor quality cocaine, and after Hunter was severely beaten, Jason took Hunter's wallet. The charged offense need not be exactly the same for the evidence to be probative. See *Smith*, 236 Ill. App. 3d at 1063. In this case, defendant's prior bad acts were committed on the same night, consisted of similar conduct, and exhibited a common goal of acquiring money, and therefore, the trial court did not abuse its

discretion in granting the State's motion to use the prior bad acts evidence to show defendant's motive and intent.

¶ 56

IV. Cumulative Effect

¶ 57

Defendant argues that the cumulative effect of his claimed errors deprived him of a fair trial and denied his right to due process of law. While we acknowledge that the trial court erred in failing to strictly comply with Rule 431(b), we have already held that this error does not warrant a new trial under the plain-error doctrine. Defendant has failed to establish the existence of any other error. Thus, we reject defendant's claim of cumulative error.

¶ 58

CONCLUSION

¶ 59

For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 60

Affirmed.