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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 CR 10403
)	
WILLIAM SANDERS,)	Honorable
)	Angela Munari Petrone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it granted the State's motion to admit certain other crimes evidence at trial.

¶ 2 After a jury trial, defendant William Sanders was convicted of armed robbery and sentenced to 18 years in prison. On appeal, defendant contends that the trial court abused its discretion when it permitted the State to introduce certain other crimes evidence at trial. We affirm.

¶ 3 Defendant was arrested and charged with, *inter alia*, armed robbery after an April 23, 2007, incident at a Wendy's restaurant.

¶ 4 Prior to trial, the State filed a motion to use proof of other crimes as evidence of *modus operandi*, intent, identity, motive, absence of mistake, or common scheme or design.

Specifically, the State wished to introduce evidence that defendant had committed similar offenses at this Wendy's restaurant the prior week and at a nearby Burger King restaurant moments before the instant offense. The State's motion further argued that because identity was at issue, evidence of *modus operandi* could be used to establish identity when such evidence was distinctive enough to earmark the crime as defendant's "work." After viewing the relevant surveillance recordings, the trial court granted the State's motion, over defendant's objection, as the prior incidents were, in the court's opinion, nearly identical to the offense in the instant case. However, the court limited the State's ability to use proof of other crimes to the issues of intent, identity, motive, and absence of mistake. Upon defendant's request, the court instructed the State to establish proof of the other crimes through the testimony of one witness per offense.

¶ 5 At a subsequent hearing, the court reconsidered its ruling and limited the proof of other crimes to the April 23, 2007, incident at Burger King. The matter then proceeded to a jury trial.

¶ 6 Michelle Conner testified that on the night in question she was working at the Wendy's located at 344 East 95th Street. Around 10 or 10:15 p.m., defendant pulled up to the drive-thru window in a burgundy minivan. He was wearing gloves, sunglasses, a gray hoody, and a black bandana on his head. Defendant then exited the van and put a gun in her face. Conner immediately tried to close the drive-thru window. However, defendant's arm was in the way. As defendant climbed through the window, Conner began to run away, knocking manager Ruth Boyd down in the process. Defendant told Boyd to get off the floor and open the register. While Boyd complied, defendant stood behind her while pointing a gun at her. Defendant then demanded that Boyd open the safe. Conner watched as Boyd took defendant to the back where the safe was located. She then went and hid in the bathroom. Conner later accompanied officers to a location where she identified defendant as the person who pointed a gun at her. At trial, Conner testified that Wendy's had a surveillance system and that she had viewed a recording,

which accurately depicted what happened that night. The recording was then published to the jury.

¶ 7 Ruth Boyd testified consistently with Conner regarding how defendant entered the restaurant, pointed a gun at her, instructed her to get up, and accompanied her to the register. Defendant continued to point the gun at her while they walked to the office. Once there, she kicked the unlocked safe open. Defendant grabbed its contents and then left through the drive-thru window.

¶ 8 The State also presented the testimony of Wendy's employees Frederick Dixon and Ricky Williams, both of whom identified defendant as the person they saw point a gun at Boyd.

¶ 9 Officer Robert Samuels testified that after receiving almost simultaneous radio calls regarding robberies at Burger King and Wendy's, he initially went to Burger King. However, upon seeing that other officers had already arrived, he proceeded to Wendy's. Once there, he learned that a traffic stop of a possible suspect had been made seven blocks away. Conner accompanied him to the location of the traffic stop and identified defendant, who was wearing a white t-shirt, as the person who had robbed the Wendy's restaurant.

¶ 10 Officer Marco Proano testified that after he and his partner heard the flash messages on the radio, they decided to "tour the area." While stopped at a red light, the officers observed a red minivan driven by defendant. They curbed the vehicle because the van and its driver matched the description given in the messages. Defendant, who was wearing a white t-shirt under a gray hoody and bulletproof vest, was removed from the van and handcuffed. A search of defendant recovered a nickel-colored revolver in an ankle holster and a little more than \$200. Proano's search of the van recovered a 9-millimeter handgun. When he later opened the van's side door, a knife with a white handle fell to the ground.

¶ 11 The court then instructed the jury that evidence would be presented that defendant had been involved in an offense other than the one charged in the instant case. The court explained that this evidence would address the issues of defendant's intent, identity, absence of mistake, or motive, and was to be considered by the jury for those limited purposes only.

¶ 12 Myrline Brantley testified that on April 23, 2007, she was working at the Burger King located at 110 East 95th Street. Around 10:15 p.m., she took a drive-thru order. A burgundy van then drove up and defendant, who had a silver gun, got out and climbed through the drive-thru window. Brantley said that he had a gun and ran to the office. She then watched, on the surveillance system, as defendant attempted to pry open a cash register with a knife that he took from the kitchen. When he was unsuccessful, defendant left by climbing back through the drive-thru window. Defendant was wearing a scarf on his head, as well as a gray hoody, sunglasses, and gloves. She later accompanied officers to a location a few blocks away where she identified defendant as the person who tried to rob the restaurant. She also identified the burgundy van that defendant drove up to the drive-thru window. There was a knife on the ground next to the van. Brantley indicated that this knife was from the Burger King kitchen. The surveillance recording was then published to the jury.

¶ 13 Defendant testified that he finished his shift as an armed security guard around 10 p.m. on the night in question. He was driving his mother's red minivan and wearing a green t-shirt under a gray sweater jacket. Defendant characterized the bulletproof vest, revolver, and 9-millimeter handgun as work-related items. He denied being at either Burger King or Wendy's that night and also denied robbing or attempting to rob these restaurants.

¶ 14 Ultimately, defendant was convicted of armed robbery and sentenced to 18 years in prison.

¶ 15 On appeal, defendant contends that he was denied a fair trial by the admission of certain other crimes evidence.

¶ 16 Although evidence of other crimes is not admissible to show a defendant's propensity to commit crime (*People v. Lindgren*, 79 Ill. 2d 129, 137 (1980)), when evidence of another crime is relevant, that evidence may be introduced for any purpose other than to show the defendant's propensity to commit criminal acts (*People v. Illgen*, 145 Ill. 2d 353, 365 (1991)). See also *People v. Wilson*, 214 Ill. 2d 127, 135 (2005) ("evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes"). Other crimes evidence is admissible when relevant to establish *modus operandi*, intent, identity, motive or absence of mistake. *Illgen*, 145 Ill. 2d at 364-65. Evidence of other crimes is also admissible when it is "part of a continuing narrative of the event giving rise to the offense," is intertwined with the charged event or explains a part of the crime that would otherwise be implausible. *People v. Outlaw*, 388 Ill. App. 3d 1072, 1086-87 (2009); see also *People v. Hale*, 2012 IL App (1st) 103537, ¶ 14 (evidence of another crime may be admitted when, *inter alia*, the other crime sets the stage for the charged offense).

¶ 17 However, even when evidence of other crimes is relevant, it must not become the focal point of the trial of the charged offense. *Hale*, 2012 IL App (1st) 103537, ¶ 24. In other words, the trial court must prevent a "mini-trial" on the issue of the uncharged offense. *People v. Boand*, 362 Ill. App. 3d 106, 125 (2005). When deciding whether to admit evidence of other crimes, the trial court must weigh the probative value of the evidence against its prejudicial effect, and such evidence must be excluded when its prejudicial effect "substantially outweighs" its probative value. *Illgen*, 145 Ill. 2d at 365. The determination of whether the probative value of other crimes evidence outweighs its prejudicial effect rests within the sound discretion of the trial court

(*Hale*, 2012 IL App (1st) 103537, ¶ 24), and the court's ruling will not be disturbed absent an abuse of that discretion (*People v. Ward*, 2011 IL 108690, ¶ 21).

¶ 18 Here, defendant contends that the trial court abused its discretion when it admitted evidence of the attempted robbery at Burger King because that evidence was more prejudicial than probative. He further argues that a "mini-trial" was created by the introduction of details from that offense because the State violated the trial court's order to limit testimony regarding the Burger King incident.

¶ 19 The State, however, contends that evidence regarding the nearly identical incident at Burger King, which occurred a few blocks away minutes before the charged offense, was properly admitted because it was part of the continuing narrative of the events in question. Therefore, it was relevant to, and probative of, issues of identity, intent, motive, and absence of mistake.

¶ 20 Initially, this court rejects defendant's contention that a mini-trial on the uncharged offense was created. Here, the record reflects that the State complied with the trial court's order that the other crimes evidence be presented through the testimony of one witness. At trial, Burger King employee Brantley identified defendant as the man who pointed a gun at her, climbed through the drive-thru window, and attempted to open a cash register with a knife. Although defendant is correct that Samuels and Proano both testified that they received radio calls indicating that armed robberies had occurred at both restaurants, neither officer testified regarding the incident at the Burger King. Rather, each officer used the first radio call, that is, the one relating to Burger King, to explain why he was in the area and the course of the investigation. See *People v. Munoz*, 398 Ill. App. 3d 455, 487 (2010) (an officer may recount the steps taken in an investigation and may describe the events leading up to a defendant's arrest when such testimony is necessary to fully explain the State's case). Therefore, as the record

reflects that the State complied with the trial court's instruction to present evidence of other crimes through the testimony of one witness, this court rejects defendant's claim.

¶ 21 Turning now to the merits of defendant's appeal, the trial court did not abuse its discretion when it permitted the State to introduce evidence of the attempted robbery at Burger King when the earlier incident was nearly identical to the charged offense and was close to the charged offense both geographically and temporally. At trial, defendant denied being at either Burger King or Wendy's that night and argued that the police had arrested the wrong man. Thus, identity was an issue at trial.

¶ 22 When "similarities between the two crimes [are] *** so striking that the crimes appear distinctively identical and can be earmarked as the crime of one person," that evidence can be probative to the issue of identification. *People v. Matthews*, 137 Ill. App. 3d 870, 876 (1985). Here, the two incidents unfolded in a nearly identical manner. In each case, the perpetrator placed an order at a restaurant drive-thru, and, upon reaching the window to pay, exited a red or burgundy minivan, pointed a gun at the employee, and entered the restaurant through the drive-thru window. In each instance, the male perpetrator wore a head scarf, sunglasses, gloves, and gray hoody. The incidents took place within minutes of each other and each of the witnesses identified defendant as the man who climbed through the drive-thru window. Accordingly, the almost identical incident at Burger King immediately prior to the offense at issue in the instant case was relevant to, and probative of, the issue of identity. See *People v. Bartall*, 98 Ill. 2d 294, 310 (1983) (the similarities between the other crime and the charged crime increases the relevance of the other crimes evidence and ensures that this evidence is not being used only to establish that the defendant is predisposed to commit crimes). Ultimately, considering the circumstances and the sequence of events in its entirety, the trial court did not abuse its discretion when it permitted the State to introduce evidence of the attempted robbery at Burger King as

proof of *modus operandi* which went to the contested issue of identity. *Matthews*, 137 Ill. App. 3d at 876.

¶ 23 Defendant, on the other hand, contends that because the only potentially relevant purpose for which the trial court could have considered the other crimes evidence was identity, the trial court abused its discretion when it permitted the introduction of other crimes evidence to show intent, motive, and absence of mistake.

¶ 24 However, because we have already found, as discussed above, that the other crimes evidence was properly admitted evidence of *modus operandi*, which went to the contested issue of identity, this court need not address whether the evidence was admissible as proof of intent, motive, and absence of mistake. See *People v. Spyles*, 359 Ill. App. 3d 1108, 1113-14 (2005) (other crimes evidence that is admissible for one reason is not affected by its inadmissibility for another reason); see also *People v. Heard*, 187 Ill. 2d 36, 59-60 (1999) (rejecting the defendant's argument that because he denied involvement in the crime, the identity of the perpetrator, not the motive and intent of the perpetrator, was the issue when, although the evidence readily demonstrated that the shooter intended to kill the victims, the State had to prove that the defendant was the shooter, *i.e.*, use the other-crimes evidence to prove the defendant's motive and intent, thus providing further proof of defendant's identity as the shooter). This court is unpersuaded by defendant's reliance on *People v. Lenley*, 345 Ill. App. 3d 399, 409, 411-12 (2003), as in that case the trial court listed four purposes for which the jury could consider the defendant's participation in other crimes; however, on appeal, the court determined that the evidence was not admissible for any of those reasons. Here, unlike *Lenley*, the other crimes evidence was properly admitted evidence of *modus operandi* which went to the contested issue of identity.

¶ 25 Defendant finally argues, relying on *People v. Howard*, 303 Ill. App. 3d 726 (1999), that due to the strength of the State's case, he was prejudiced by introduction of the other crimes evidence. In *Howard*, the court determined that other crimes evidence was not admissible as proof of *modus operandi* when the similarities between the "other" crime and the crime at issue were not so great as to earmark the other crime as the defendant's work. *Howard*, 303 Ill. App. 3d at 731-32. The court further found that the probative value of other crimes evidence was limited in that case due to the nature of the evidence against the defendant, that is, the strength of the State's case eliminated the need for other crimes evidence. *Howard*, 303 Ill. App. 3d at 732. However, in this case, unlike *Howard*, the other crimes evidence was properly admitted. This court also rejects defendant's contention, unsupported by authority, that the State has an obligation to refrain from seeking the admission of other crimes evidence when it has a "strong" case against a defendant.

¶ 26 Accordingly, for the reasons stated above, we affirm the judgment of the circuit court of Cook County

¶ 27 Affirmed.