No. 1-09-0995

THIRD DIVISION
March 23, 2011

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 1816
	)	
MAURICIO FRANCO,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

O R D E R

Held: Where the trial court did not err in admitting defendant's prior offense for consideration as *modus operandi*, or violate Illinois Supreme Court Rule 431(b), the trial court's judgment was affirmed.

Following a jury trial, Mauricio Franco, the defendant, was convicted of unauthorized possession of implements to make identification (ID) cards and manufacturing a fraudulent ID card. He was sentenced to concurrent prison terms of 3½ years. On appeal, defendant contends that the trial court erred in admitting his prior offense of manufacturing false identification for consideration

as *modus operandi*. Defendant also contends that the trial court violated Illinois Supreme Court Rule 431(b)(eff. May 1, 2007) during jury selection. We affirm.

This case involves a police operation called "True Identity" which was executed on December 30, 2006. The unit assigned to this operation was directed to locate the place where ID cards were being manufactured and sold. Police obtained a search warrant for the ground level apartment at 3813 West 46th Street in Chicago. Following the execution of that warrant, police recovered documents and machinery that could be used for the production of ID cards. Ruben Ortega and Omar Juarez were named as codefendants with defendant in this case, but are not involved in this appeal.

Prior to trial, the State filed a motion to use proof of other crimes as evidence. In the motion, the State sought to introduce evidence that on February 26, 2005, defendant was discovered inside 3449 West 61st Street operating a computer for the purpose of making fraudulent ID cards. Ruben Ortega was also arrested in this matter. Defendant pled guilty and received 18 months' probation. At the hearing on the State's motion, the State argued that the events of February 26, 2005, were similar to the case at bar. In both cases, the same co-offender, Ruben Ortega, was involved, and, not only were the crimes similar, but the same method in making the ID cards were used, *i.e.*, various ID cards, computers, seals, printers, typewriters, and labels. Defendant argued, however, that the only thing that tied the instant case to the prior case was that defendant was charged with the same crime. The trial court admitted the evidence from February 2005 for the limited purpose of *modus operandi*, criminal intent, and absence of an innocent state of mind.

During jury selection, the trial court admonished the venire of the four principles in Rule 431(b) and subsequently stated:

> "Now, earlier I touched on some principles of law that apply to all criminal cases. One of those is the presumption of innocence that cloaks the defendant. What this mean[s] is the defendant need not prove his innocence. That he need not call any witnesses or present any evidence on his behalf. That he need not testify and if he chooses not to testify, you must not consider that in anyway at arriving at your verdicts. *** Does anybody not except [*sic*] that principle of law. Anybody. No response.
>
> Now, it's the State's burden to prove the defendant guilty beyond a reasonable doubt. That's the State's burden. Anybody not except [*sic*] that proposition. No response."

At trial, Officer Alfonso Castillo testified that on December 30, 2006, he was part of a surveillance team observing the residence at 3813 West 46th Street in Chicago. Police had a search warrant for the ground level apartment at that address. Castillo saw defendant enter the ground level apartment, and Officer James Fernandez testified that, a short time later, he saw defendant exit the rear door of the residence. Castillo then saw defendant walking toward the front of the residence, enter a vehicle, and drive away. Castillo followed defendant, and defendant was stopped by Officers Brown, Summerville, and Hurley.

After defendant was detained, he was brought back to the residence where police had executed the search warrant. Castillo entered the apartment and noticed that a room that could be a bedroom contained office equipment, including a computer monitor, computer tower, scanners, printers, numerous ID cards, and a paper cutter. These items were removed from the house,

inventoried, and entered into evidence. After defendant was taken to the police station and read his *Miranda* rights, he told Castillo that he was manufacturing documents out of that apartment for about a year, that the documents were being sold on 26th Street between Pulaski Road and Avers Avenue, and that he would type the information or do the computer work.

Officer James Hurley testified that he and Officer Brown stopped defendant after he left the residence in his vehicle. Hurley was present while police searched defendant and saw police recover a set of keys from his pocket. Police did not recover any fraudulent IDs, or any materials that could be used to make such IDs, on his person or in his car. The keys that were recovered from defendant were used to unlock the back door of the residence in question, and also opened the bedroom door of the ground floor apartment where the machinery was found.

Officer Castillo was recalled and testified that on February 26, 2005, he was working with a surveillance team investigating an apartment at 3449 West 61st Street in Chicago. Police obtained consent to search the apartment from Ruben Ortega. Castillo arrived at a bedroom that looked like a makeshift office. Defendant was typing inside the bedroom and, when Castillo looked at the computer screen, he saw a woman's picture on an Illinois driver's license. Defendant was arrested, and the items in the room were inventoried. These inventoried items were entered into evidence in the case at bar.

Following the State's evidence, defendant objected to the admission of the inventoried items from the February 2005 investigation. The trial court overruled his objection, and admitted the other crimes evidence for the limited purpose of *modus operandi*, intent, knowledge and lack of mistake. Defendant rested without presenting any evidence.

Following closing argument, the trial court instructed the jury that the evidence presented showing that defendant was involved in an offense other than those charged in the indictment was

received on the issues of his intent,*modus operandi*, and absence of mistake, and may only be considered for that limited purpose. The jury found defendant guilty of manufacturing a fraudulent ID card. It also found defendant guilty of three counts of possession of ID card making implements, *i.e.*, holograms, blank social security cards, and a Hewlett Packard Tower Pavilion Computer.

Following the jury verdict, defendant filed a motion for a new trial maintaining that the trial court improperly allowed proof of other crimes evidence to be submitted. The trial court denied the motion, merged the three possession counts together, and sentenced defendant to concurrent prison terms of 3½ years on the remaining counts.

On appeal, defendant contends that the trial court erred in admitting evidence of his prior offense for consideration as to *modus operandi*. He specifically maintains that the similarities between the instant offense and the prior one were generalities failing to meet the high standard required for *modus operandi*.

Evidence of crimes for which defendant is not on trial is only admissible when relevant for a purpose other than to show defendant's propensity to commit a crime. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). Thus, other crimes evidence is admissible to show *modus operandi*, intent, motive, identity, or the absence of mistake. *People v. Illgen*, 145 Ill. 2d 353, 364-65 (1991). "*Modus operandi* refers to a pattern of criminal behavior so distinct that separate crimes are recognized as the work of the same person." *People v. Wassell*, 321 Ill. App. 3d 1013, 1017 (2001), quoting *People v. Denny*, 241 Ill. App. 3d 345, 358 (1993). There must be some clear connection between the other crime and the crime charged, creating a logical inference that if defendant committed those acts, he may also have committed the acts at bar. *Wassell*, 321 Ill. App. 3d at 1017. The inference is created when both crimes share peculiar and distinctive common features as to identify both crimes as the handiwork of defendant. *Wassell*, 321 Ill. App. 3d at 1017.

When other-crimes evidence is offered, the trial court must weigh its probative value against its prejudicial effect, and may exclude evidence if its prejudicial effect substantially outweighs its probative value. *Illgen*, 145 Ill. 2d at 365. The admissibility of evidence is within the sound discretion of the trial court, and its decision may not be overturned on appeal absent a clear abuse of discretion. *People v. Evans*, 373 Ill. App. 3d 948, 959 (2007).

Here, the trial court held that the evidence regarding defendant's February 2005 arrest was admissible for the limited purpose of *modus operandi*, intent, and absence of mistake. After reviewing the record, we find the trial court did not abuse its discretion.

Contrary to defendant's assertions, the trial court did not err in admitting the other crimes evidence on the basis of *modus operandi* because the record shows that there were several distinctive common features between both crimes, which created a logical inference that defendant was the offender in each case. For example, defendant and his codefendants worked together to produce false identification, they maintained a makeshift office in a location separate from their target clientele, and defendant selected the same business partner, Ruben Ortega, in both his illegal businesses. Furthermore, in the instant case, defendant admitted to doing the same type of computer work he was caught doing in the February 2005 case. Defendant also used the same type of equipment in both illegal businesses, and offered clients the same type of illegal products, *i.e.*, social security cards, Illinois and other state's driver's licenses, resident alien cards, and permanent resident cards.

In reaching this conclusion, we find, *People v. Howard*, 303 Ill. App. 3d 726 (1999), *People v. Willer*, 281 Ill. App. 3d 939 (1996), and *People v. Woltz*, 228 Ill. App. 3d 670 (1992), relied on by defendant, distinguishable from the case at bar. In each of these cases, the reviewing court found that the other crimes evidence was erroneously admitted at trial because there was no showing of a distinctive pattern of criminal behavior so as to establish *modus operandi*. *Howard*, 303 Ill. App.

3d at 731-32 (two armed robberies lacked sufficient similarities where guns and foul language are commonly used in such crimes); *Willer*, 281 Ill. App. 3d at 952-53 (the evidence necessary to establish the elements of each charge involving the children was different); *Woltz*, 228 Ill. App. 3d at 676 (neither the criminal acts, nor the circumstances under which they took place, showed sufficient similarities as to establish *modus operandi*). Here, however, the two separate crimes were sufficiently similar.

Even assuming, *arguendo*, that the trial court erred in admitting the evidence of prior crimes for *modus operandi*, the error was harmless based on the overwhelming evidence of defendant's guilt. See *People v. Evans*, 209 Ill. 2d 194, 220 (2004) (the erroneous admission of other crimes evidence is not reversible error if defendant was not prejudiced or denied a fair trial by the admission of the evidence). Here, defendant was seen entering and leaving the apartment where the fraudulent ID card manufacturing operations occurred, he confessed to performing "computer work" for the illegal business, and all of the equipment necessary to keep the fraudulent ID business operating was found in the apartment where defendant said he was manufacturing false ID cards for the last year. Various ID cards were recovered from the apartment, along with photos, holograms, seals, lamination supplies, and adhesives. When taken together, the evidence against defendant was overwhelming, and defendant cannot show that he was denied a fair trial or prejudiced by the admission of other crimes evidence. Accordingly, any error resulting from the admission of the evidence was harmless.

Defendant also contends a new trial is warranted by the trial court's failure to comply with Supreme Court Rule 431(b). He specifically maintains that the trial court "did not ask a single question concerning the prospective jurors' acceptance of the fourth *Zehr* principle *** [and] failed to ask any question at all concerning the prospective jurors' understanding of the principles."

Rule 431(b) (eff. May 1, 2007) requires the trial court to ask potential jurors if they understand and accept the following principles: (1) the defendant is presumed innocent of the charges against him; (2) before a defendant is convicted, the State must prove his guilt beyond a reasonable doubt; (3) the defendant is not required to offer any evidence on his own behalf; and (4) the defendant's failure to testify cannot be held against him. See *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). The trial court is required to ask potential jurors if they understand and accept each principle and provide an opportunity to respond to each concept. Ill. S. Ct. R. 431(b) (eff. May 1, 2007); *People v. Calabrese*, 398 Ill. App. 3d 98, 120 (2010). The issue of whether the trial court violated Rule 431(b) is reviewed *de novo*. *People v. Thompson*, 238 Ill. 2d 598, 606 (2010).

In the instant case, we find that the trial court complied with Rule 431(b). The record shows that the trial court admonished the venire of all four principles, and then questioned them regarding their acceptance and understanding of those principles. The trial court reiterated to the jury that defendant was presumed innocent, that he was not required to offer any evidence on his own behalf, and that his failure to testify could not be held against him. The court asked, "[d]oes anybody not except [*sic*] that principle of law," and received no response. The trial court also reiterated that it was the State's burden to prove defendant guilty beyond a reasonable doubt, asked the jury if they could not accept that principle, and again failed to receive a response. Because the trial court adequately ascertained, through its *voir dire*, that the prospective jurors understood and accepted the four principles, it complied with Rule 431(b).

In reaching this conclusion, we are not persuaded by defendant's argument that the trial court failed to fulfill its obligations under Rule 431(b) because it did not ask the potential jurors if they "accepted" the fourth principle. As discussed above, the record directly refutes that argument because the trial court grouped principles 1, 3, and 4 together before asking the venire if they could

not accept those principles of law. Furthermore, we are not persuaded by defendant's contention that the trial court failed to ask the potential jurors if they "understood" the four principles. Defendant seems to assert that the trial court had to specifically use the word "understand" in order to satisfy the requirements of Rule 431(b).

Contrary to defendant's contentions, we find that the trial court adequately ascertained that the prospective jurors understood and accepted the Rule 431(b) principles. We further find that *People v. Raymond*, No. 1-08-2891 (Aug. 13, 2010), *People v. Ingram*, 401 Ill. App. 3d 382 (2010), and *People v. Vargas*, 396 Ill. App. 3d 465 (2009), are instructive in showing that Rule 431(b) does not set out principles in the form of questions to be asked *in haec verba*, and does not provide magic words to ensure the court's compliance.

In all three cases, the court addressed each of the four Rule 431(b) principles with the venire. However, the defendants in *Raymond*, *Ingram*, and *Vargas*, argued that the trial court failed to satisfy the rule's requirement that each juror be questioned as to his or her understanding and acceptance of the four principles. In *Raymond*, the trial court asked the venire, "Anybody who could not or would not do that for any reason?" or "[I]s there anybody who would hold that against him?" *Raymond*, No. 1-08-2891, slip op. at 42. In *Ingram*, the trial court asked the prospective jurors whether they had any "difficulty or quarrel" with each of the four principles. *Ingram*, 401 Ill. App. 3d at 391-92. In *Vargas*, the trial court questioned the venire as to whether it agreed with the principles and stated, "If you will not promise me that, please raise your hand." *Vargas*, 396 Ill. App. 3d at 472. In each case, we found that although the court did not use the precise language of Rule 431(b), the words it did use clearly indicated to the prospective jurors that the court was asking them whether they understood and accepted the principles enumerated in the rule. *Raymond*, No. 1-08-

2891, slip op. at 42-43; *Ingram*, 401 Ill. App. 3d at 393; *Vargas*, 396 Ill. App. 3d at 472-73; see also *People v. Digby*, No. 1-09-0902, slip op. at 7 (Nov. 24, 2010).

In this case, similarly to *Raymond*, *Ingram*, and *Vargas*, although the trial court did not specifically use the word "understand" after inquiring into the venire's acceptance of these principles, the trial court's *voir dire* complied with the dictates of Rule 431(b) because it asked the prospective jurors to respond if they did not accept any of the four principles. We cannot say that the court's method of ascertaining the venire's understanding and acceptance of these principles constituted non-compliance with Rule 431(b), which "does not identify or dictate a particular methodology for establishing the understanding or acceptance of the venire as to those principles." *Vargas*, 396 Ill. App. 3d at 472.

Moreover, even if we were to find that the court violated Rule 431(b), defendant would fare no better. Defendant forfeited this issue by failing to object at trial and by failing to raise the issue in a post-trial motion. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). The *Thompson* court held that a violation of Rule 431(b) is not structural error requiring automatic reversal. *Thompson*, 238 Ill. 2d at 611. Nor does it satisfy the first prong of the plain error doctrine because the evidence here was not closely balanced (*Piatkowski*, 225 Ill. 2d at 564-65), or the second prong, which allows review of errors that affect the fairness of the trial and challenge the integrity of the judicial process. *Thompson*, 238 Ill. 2d at 614-15. Instead, the supreme court recognized that "the failure to conduct Rule 431(b) questioning does not necessarily result in a biased jury ***." *Thompson*, 238 Ill. 2d at 614. "Although the [2007] amendment to the rule serves to promote the selection of an impartial jury by making the questioning mandatory, Rule 431(b) questioning is only one method of helping to ensure the selection of an impartial jury." *Thompson*, 238 Ill. 2d at 614. The *Thompson* court went on to find that, despite the fact that the trial court violated Rule 431(b) by completely failing

to question the jurors on one of the principles and not asking whether they accepted another, defendant was unable to show that the violation "resulted in a biased jury." *Thompson*, 238 Ill. 2d at 615. Accordingly, the court refused to excuse defendant's forfeiture of the issue.

The same result would maintain here, where the alleged noncompliance with the rule did not rise to the level of the defects considered in *Thompson*. As stated above, we find that the court's questioning complied with Rule 431(b), and there is no indication in the record that its failure to use the precise verbiage of the rule resulted in a biased jury. Under these circumstances, defendant's claim is forfeited.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.