

No. 1-10-3621

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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. 08CR13144
)	
GERALD WARREN,)	The Honorable
)	Angela Munari Petrone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concur in the judgment.

Held: Trial court affirmed where, on review, no plain error was found in the admission at trial of other-crimes evidence.

¶ 1 ORDER

¶ 2 After a jury trial, defendant Gerald Warren was found guilty of theft and identity theft. Defendant was sentenced to 6 months in jail, all of which was credited to him as served during pretrial incarceration, 30 months of felony probation, and 80 hours of community service. Defendant was also ordered to pay \$4,880 in restitution to Best Buy Travel. On appeal, defendant contends that he was prejudiced when the court improperly admitted other-crimes

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evidence. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Defendant was charged with identity theft for knowingly using Thomas Mikulski's identifying information to fraudulently obtain a Capital One credit card, and with theft for using that fraudulently-obtained credit card to purchase airline tickets from a travel agency, Best Buy Travel.

¶ 5 Prior to trial, the State filed a motion to allow proof of other crimes. The defense objected to the admission of this other-crimes evidence. In its motion and subsequent pleading, the State alleged that defendant had committed similar crimes to those for which he was being tried. Specifically, the State indicated that the identity theft count was based on defendant having opened a Capital One Visa credit card account in the name of Mikulski, his student, without permission, and that the theft count was based on defendant charging three airline tickets to China for himself, Mikulski, and Xavier Turnage. Defendant ran a martial arts school and the tickets were for a trip in June 2007 that was arranged through the school.

¶ 6 Through its motion, the State sought leave to introduce evidence at trial that defendant had committed two other identity theft crimes, one charged and the other not charged. First, the State alleged that, in May 2007, defendant opened an American Express credit card account in Mikulski's name, ordering additional cards on the account for himself and Turnage; defendant informed Mikulski that he had acquired credit cards through the school for the use of defendant, Mikulski, and Turnage in order to cover emergency costs on the China trip. Defendant used the

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card during the China trip and in the United States. Second, the State sought to introduce evidence that, in 2000, defendant opened an Advanta credit card account in the name of another student, Christopher Vanasco, and then used the credit card for purchases. The State asked that this evidence be allowed in at trial because its relevance outweighed its prejudicial effect, and said that it would be used not to show defendant's propensity to commit crime, but to "clearly and effectively show that defendant follows a *modus operandi*, had the requisite intent to commit the charged fraudulent acts, and was not mistaken while committing the offenses and that he is the offender." The State also urged that defendant's uncharged crime of opening the credit card account and using it during the China trip and for personal goods purchased near his home was "relevant and probative to show intent and absence of mistake. It establishes a pattern of the defendant covering the crime he is charged with by attempting to elicit complicity in the use of the card by the actual victim of the crime."

¶ 7 The court granted the motion after hearing arguments from the parties, and allowed the evidence in to prove absence of mistake, intent, and identity. The court stated:

"THE COURT: I do find that the similarities are striking.

And the reason that I am going to allow the State's motion for proof of other crimes is I believe it does go squarely to the issue of absence of mistake or innocent frame of mind, intent, and identity of the defendant. The acts are very, very, very similar. They are all opened through the same relationship with the defendant. They all are coming from students, the allegations, that the defendant

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who originally legally gave information but did not give information to open other accounts or charges.

They are almost identical, but I will allow them for the purposes only of intent, identity, and absence of innocent frame of mind or mistake."

¶ 8 The following evidence was adduced at trial. Defendant ran a martial arts school, the Green Dragon Society Temple (the Green Dragon), in Chicago. On June 6, 2007, he went to a travel agency, Best Buy Travel, to purchase airline ticket for travel to China on June 10, 2007, for himself and two students. However, when he attempted to charge the tickets to his credit card, the charge would not go through. Nazneen Sultana, who testified that she ran the travel agency with a partner, could not recall why the card would not go through. Defendant left the travel agency. The following day, defendant telephoned the travel agency, spoke with Sultana, and charged the tickets to a Capital One Visa card. The purchase was for three tickets to China, one each for himself, Mikulski, and Turnage. Each ticket cost \$1,660. In September 2007, the travel agency received notice from the airline that the Capital One visa card was denied. Thereafter, the agency was charged back the \$4,980 total cost of the tickets.

¶ 9 Sultana's business partner, Huma Malik, testified that defendant came into the travel agency on June 2, 2008, to talk about the tickets. Defendant told Malik he did not mean to cheat the agency and that he would take responsibility for the debt. He made a \$100 cash payment toward his \$4,980 debt, and he assured her that he was going to "start paying the rest of the money." Malik never saw him again. Defendant did not make further payments.

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¶ 10 Mikulski testified that he was a former student at the Green Dragon. When he first became a member of the school in 2005, he filled out an application, providing his social security number, driver's licence number, telephone numbers, and date of birth. In June 2007, Mikulski went to China with defendant and Turnage on a two-week trip arranged through the school. Mikulski testified that he trusted defendant and that they had a good relationship at school. Mikulski testified that defendant informed him the cost of the trip was approximately \$1,500, inclusive of airfare, room and board, and martial arts training in China. He paid defendant \$1,500 in cash a few weeks prior to the trip. Although he understood in advance that expenses in China were covered by the \$1,500 he had given defendant, once in China, Mikulski spent his personal money on trains and "everything else." He used his debit card for these transactions.

¶ 11 Mikulski testified that, along with his debit card, he had one other card "that was through" defendant. He explained:

"[WITNESS MIKULSKI:] I had one other card that was through [defendant]. It was an American Express card. It was sent directly to my house. And when I inquired about why I would need a card, and I have my own, I wasn't hurting for money at that time. He just said he's opening an account in the school's name and giving a card to one for him, one for me, and one for Mr. Turnage, just in case we run into trouble in China, we are out of money or whatever, we would have something to fall back on to get us home safely. So I had no reason not to believe him. I liked him and

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trusted him. And he's like, he just said that you will be receiving the card at your house. Let him know when I received it."

¶ 12 Thereafter, Mikulski received the American Express card at his home address. After he informed defendant that he had received it, defendant told him that the cards for himself and for Turnage had not yet arrived. Defendant asked Mikulski to call American Express to request that they send the other two cards to Mikulski's home address. Mikulski did so.

¶ 13 After his conversation with American Express, two American Express cards arrived at Mikulski's address: one with defendant's name on it and the other with Turnage's name on it. When he asked defendant why the American Express cards had his address if they were the school's cards, defendant assured him that the cards were the school's and that the school would take care of everything. Mikulski then gave Turnage's card to Turnage and defendant's card to defendant.

¶ 14 The three men went to China together. Mikulski did not need to use the American Express card while he was in China until the last few days of the trip when defendant left for home a few days early and the last hotel room they were supposed to stay in had not been booked. Mikulski used the card to charge the room at a cost of \$105 to \$120 per night. Mikulski never received a credit card statement from American Express and he returned the card to defendant upon his return because he believed it was a school account.

¶ 15 While they were in China, defendant promoted Mikulski to junior instructor rank. This promotion meant that Mikulski would start teaching at the school on Friday nights. He began teaching on the first Friday after he returned from China. That evening, he was the only person

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there when he arrived at the school,. He opened the school and collected the mail from the mail slot. When he put the mail in defendant's desk, he noticed that the letter on top was a Capital One letter with Mikulski's name on it, but with the address and title of the school. He opened the letter and saw that it was a statement from a "maxed out" credit card for approximately \$5,000. Mikulski testified that the three airline tickets to China were reflected on that statement.

¶ 16 Mikulski then telephoned Capital One and reported that the account with the school's address was not his account. He told them he never gave anyone authority to open a Capital One Visa account in his name or to use his social security number or date of birth to open a credit account in his name. Capital One began an investigation. He filled out a fraud form for Capital One and also filed a police report regarding the American Express card.

¶ 17 After discovering the statement and reporting it, he put his key to the school in an envelope and dropped it through the mail slot after he locked the school. He never returned to the school.

¶ 18 Christine Kulagowski, an investigator for American Express, testified that the American Express application in the name of Mikulski was an internet application that required his social security number and date of birth. The credit card statements were sent to Mikulski at the school. There were two other named card holders on the account: defendant and Turnage. The only activity on the account by Mikulski was a charge in China for a hotel, totaling \$206. There was no evidence that Turnage ever used the card. The other activity on the account was on the card issued to defendant, and the losses associated with that card totaled \$2,833. There were numerous charges on the card issued to defendant ranging from a charge at a dry cleaners to a

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charge at a Chicago Target. One of the charges on defendant's card was for BMW of Orland Park for \$580.38. Janine Crabb, the controller at BMW of Orland Park, testified that those charges were for a repair to a BMW registered to defendant. The State presented evidence that the car that was repaired was registered to defendant and Delores Bannister.

¶ 19 Pursuant to the State's other-crimes motion, Christopher Vanasco testified that he was the victim of identity theft when someone opened a credit card account in his name in 2000. The trial court admonished the jury that they should consider Vanasco's testimony for the limited purpose of defendant's identity, absence of mistake, and to determine whether defendant was involved in the charged conduct:

"THE COURT: Ladies and gentlemen, evidence is about to be received that the defendant has been involved in conduct other than that charged in the indictment. This evidence will be received on the issues of the defendant's identification, intent, and absence of mistake. It may be considered by you only for that limited purpose.

It will be for you to determine whether the defendant was involved in this conduct and, if so, what weight should be given to this evidence on the issues of identification, intent, and absence of mistake."

Vanasco testified that he was a member of the Green Dragon Society from 1998-2000. When he applied to the school, he submitted paperwork with his name, address, social security number,

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and date of birth. Defendant was running the school and was the head instructor. Vanasco developed a close relationship with defendant.

¶ 20 Vanasco quit the school in 2000 or 2001, and had no further contact with defendant. In September 2002, however, he was notified that a collection agency was filing a lawsuit against him. During this process, he learned that an Advanta Bank credit card had been opened in his name. Vanasco testified that he had never applied for an Advanta card, nor had he given permission to anyone else to apply for one. Upon examination of the Advanta credit bill, he saw that the bill was addressed to Beautiful Temple and had a balance due of \$3,248. Vanasco spoke to the Advanta fraud department and received copies of the statements that were addressed to an unknown address. He also received copies of checks that had been used to make payments on the credit card. He submitted these items to law enforcement along with an affidavit of identity theft. He believed defendant was to blame because the application was filled out with Vanasco's correct date of birth and social security number, which was information he had provided defendant.

¶ 21 Sean Patrick Dowling testified that he was employed by Advanta Bank as a recovery manager from 2002 until 2009. He testified that Advanta received an application on July 21, 2000, that included Vanasco's name, social security number, and date of birth. Dowling reviewed the account information, testifying that Advanta received a \$100 money order payment from defendant's address, the same address that appeared on the application for the card. There was a charge to the Green Dragon Society for \$1,200. Another payment of \$200 was made with a check in which the account holder of the check was defendant of the Green Dragon Society.

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Defendant's signature appeared on this check. In sum, nine checks were paid to the Advanta account from either the Green Dragon Society or defendant. In 2002, when the account became five months past due, it was sent to a third party collection agency.

¶ 22 The State rested its case. Defendant made a motion for a directed verdict, which was denied.

¶ 23 Defendant testified at trial that he is a Kung Fu high master. He traveled to China in 2007 with Mikulski and Turnage. He explained that he had an agreement with Mikulski regarding this trip, that Mikulski would open a credit card account with American Express and they would then have three itemized cards to make it easier for him to collect bills. When defendant attempted to purchase airline tickets through Best Buy Travel, he learned his corporate credit card for the school was over the limit. He then telephoned Mikulski, who gave him a Capital One credit card to use. They charged the tickets over the telephone and Mikulski was with him when they called. Defendant testified that he is involved with Beautiful Temple in Orland Park, and that he runs the Green Dragon Society. Defendant denied that Mikulski gave him \$1500 to pay for the trip to China. Defendant testified that he did not have any paperwork or application papers for Mikulski. He explained that the application process could have just been overlooked and never completed, in which case there had never been paperwork for Mikulski, or that the paperwork had been stolen during a series of break-ins at the school. Defendant explained that the school was broken into on many separate occasions, all of which occurred when he was outside of the school.

¶ 24 Defendant denied signing the Advanta credit card application or signing checks on the

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account. He explained that many individuals had access to the school, and that others from the Green Dragon Society had access to his checks. He estimated that, in 2007, there were 14 or 15 keys held by different "officers" of the Green Dragon Society. Mikulski was one of these officers. When considering the time from 1998 to 2007, he estimated that 40 to 50 people had keys. On cross-examination, defendant acknowledged that one of the checks paid to Advanta Business Cards had a signature on it that looks like his signature. He also admitted that he used the American Express card to pay for the repairs to his BMW, as well as at a dry cleaner, a shoe store, a grocery store, a Target, movie theaters, and a gas station.

¶ 25 Darren Steele testified that he had been a member of the Green Dragon Society since 1974. He knew of two break-ins that occurred at the school, one in 2003 and another in 2007.

¶ 26 Xavier Turnage testified that the arrangement for the China trip was that each person would pay for their airfare and for their expenses in China, including hotels. The exception to this arrangement was that defendant agreed to pay Turnage's airfare. Turnage, defendant, and Mikulski had a conversation at the school sometime between January and April 2007 during which they discussed using a business credit card on the trip. Each person was to get a credit card for business expenses in China. Turnage did not receive his card; the first time he saw the American Express card with his name on it was at trial. He also testified that there were three break-ins at the school. He never spoke to the police regarding the break-ins.

¶ 27 The defense rested. Before the jury deliberated, the court gave them instructions regarding the other-crimes evidence:

"THE COURT: Evidence has been received that the

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Defendant has been involved in conduct other than that charged in the indictment.

This evidence has been received on the issue of the Defendant's identification, intent and absence of mistake and may be considered by you only for that limited purpose.

It is for you to determine whether the Defendant was involved in that conduct and, if so, what weight should be given to this evidence on the issue of identification, intent and absence of mistake."

The court also admonished the jury:

"THE COURT: Any evidence that was received for a limited purpose should not be considered by you for any other purpose."

¶ 28 The jury returned a verdict finding defendant guilty of identity theft and theft. The trial court denied defendant's motion for a new trial. It merged the identity theft count with the theft count, gave credit to defendant for time served, and sentenced defendant to 30 months of probation, 80 hours of community service, and ordered him to pay \$4,880 to Best Buy Travel in restitution.

¶ 29 Defendant appeals.

¶ 30

ANALYSIS

¶ 31 Defendant contends that the trial court erred when it allowed proof of defendant's other crimes to be admitted into evidence. Specifically, defendant argues that the evidence showing he had previously opened credit card accounts in the names of his students was not properly admitted at trial under the identity, intent, or absence of mistake exceptions to the prohibition against other-crimes evidence rule. Defendant also argues that he was prejudiced by this error because the probative value of this evidence was outweighed by its prejudicial effect. For the following reasons, we disagree.

¶ 32 Initially, defendant admits that, although he objected to the proof of other-crimes evidence at trial, he failed to properly preserve the issue by including it in his posttrial motion. See *People v. Lewis*, 234 Ill. 2d 32, 40 (2009) ("Both a contemporaneous objection and a written posttrial motion are required to preserve an issue for review"). Defendant argues that we should address this issue under the closely-balanced prong of the plain error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) ("[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court"); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). In order to preserve an issue for appeal, a party must first make an objection to the alleged error at trial, and then raise it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988); see also *People v. Allen*, 222 Ill. 2d 340, 352 (2006) (noting that "even constitutional errors can be forfeited"). The plain error doctrine is a narrow and limited exception to the general rule of forfeiture (*People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29

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(citing *Herron*, 215 Ill.2d at 177)), and it "allows a reviewing court to consider unpreserved error when (1) 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, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *Herron*, 215 Ill.2d at 186-87). Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Bowman*, 2012 IL App (1st) 102010 at ¶ 29 (citing *People v. Lewis*, 234 Ill.2d 32, 43 (2009)). "The first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43. If an error is deemed to have occurred, we turn to the prongs of the plain error analysis.

¶ 33 Other-crimes evidence encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial. *People v. Spyres*, 359 Ill. App. 3d 1108, 1112 (2005). Evidence of a defendant's other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127, 135-36 (2005). Our supreme court has explained that other-crimes evidence is admissible to show motive, intent, identity, absence of mistake, and the existence of a common plan or design. *Id.*; *People v. Dabbs*, 239 Ill. 2d 277, 283 (2010). Further, evidence of other crimes may be admitted where it is part of a continuing narrative of the events in question, is intertwined with the event charged, or explains an aspect of the crime charged that would otherwise be implausible. *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005); see also

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People v. Hale, 2012 IL App (1st) 103537, ¶ 14. Evidence is relevant if it tends to make the existence of a fact of consequence more or less probable. *People v. Munoz*, 398 Ill. App. 3d 455, 481 (2010). It is also relevant to show the circumstances or context leading up to the defendant's arrest for the crime. *People v. Kimbrough*, 138 Ill. App. 3d 481, 484-85 (1985).

¶ 34 Even when such evidence is offered for a permissible purpose, the evidence will not be admitted unless its probative value outweighs its prejudicial impact. *People v. Moss*, 205 Ill. 2d 139, 156 (2001). It is within the sound discretion of the trial court to determine the admissibility of other-crimes evidence, and its decision will not be disturbed absent a clear abuse of discretion. *Wilson*, 214 Ill. 2d at 136. As a court of review, we will find an abuse of discretion "only where the trial court's decision is arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court." *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). A reviewing court "owes deference to the [circuit] court's ability to evaluate the impact of the evidence on the jury." *People v. Donoho*, 204 Ill. 2d 159, 186 (2003).

¶ 35 In the instant case, defendant was charged with identity theft, in that he knowingly used the personal identifying information of Thomas Mikulski, including his name, social security number, and date of birth, to fraudulently obtain credit, money, goods, services, or other property that exceeded three hundred dollars; and theft, in that defendant knowingly obtained by deception control over airline tickets of Best Buy Travel, intending to deprive them of the use or benefit of the property.

¶ 36 The trial court ruled that the State could present other-crimes evidence of prior identity theft offenses in which defendant had opened credit card accounts in the names of his students.

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From our review of the record, it is clear that the proof of other crimes evidence was offered not to demonstrate defendant's propensity to commit crime, but rather to establish identity, intent, and absence of mistake.

¶ 37 Prior to trial, the State filed a motion to admit proof of defendant's other crimes, asking the court to admit the other-crimes testimony for a limited purpose. The court heard arguments on the motion. The State argued that the other crimes were admissible because they were similar in nature to the present case. Defendant argued that the other crimes were inadmissible because they were an "attack" against defendant's character and because they were unrelated to the instant offense. The court granted the State's motion, noting:

"THE COURT: I do find that the similarities are striking.

And the reason that I am going to allow the State's motion for proof of other crimes is I believe it goes squarely to the issue of absence of mistake or innocent frame of mind, intent, and identity of the defendant."

¶ 38 At trial, the State presented evidence showing defendant had used Mikulski's identifying information to obtain a Capital One Visa credit card. Mikulski testified that he filled out an application when he joined defendant's martial arts school, the Green Dragon Society, that included identifying information such as his name, social security number, and date of birth. The credit card was then used to purchase tickets for a school trip to China. The credit card statement was mailed to the school. Mikulski discovered the credit card statement at the school.

¶ 39 The other-crimes evidence introduced by the State showed that, after another former

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student at defendant's school, Vanasco, filled out the student application form, a credit card had been issued in his name, as well. Defendant had used this credit card and made payments on it. Also, other-crimes evidence was introduced that defendant opened an American Express account in Mikulski's name, using Mikulski's social security number and date of birth. Defendant represented to Mikulski that it was a school credit card account, and defendant used the card for his own purposes.

¶ 40 The court properly admonished the jury regarding the other-crimes evidence. For example, when Vanasco testified that he was the victim of identity theft, the trial court admonished the jury that they should consider Vanasco's testimony for the limited purpose of defendant's identity, absence of mistake, and to determine whether defendant was involved in the charged conduct:

"THE COURT: Ladies and gentlemen, evidence is about to be received that the defendant has been involved in conduct other than that charged in the indictment. This evidence will be received on the issues of the defendant's identification, intent, and absence of mistake. It may be considered by you only for that limited purpose.

It will be for you to determine whether the defendant was involved in this conduct and, if so, what weight should be given to this evidence on the issues of identification, intent, and absence of mistake."

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Then, before the jury deliberated, the court gave them instructions regarding how the other-crimes evidence should be considered:

"THE COURT: Evidence has been received that the Defendant has been involved in conduct other than that charged in the indictment.

This evidence has been received on the issue of the Defendant's identification, intent and absence of mistake and may be considered by you only for that limited purpose.

It is for you to determine whether the Defendant was involved in that conduct and, if so, what weight should be given to this evidence on the issue of identification, intent and absence of mistake."

The court also admonished the jury:

"THE COURT: Any evidence that was received for a limited purpose should not be considered by you for any other purpose."

In addition, the court admonished the jury in regards to the presumption of innocence:

"THE COURT: The Defendant is presumed innocent of the charges against him. This presumption remains with the Defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in

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this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The Defendant is not required to prove his innocence."

¶ 41 We find no error here, where the jury was properly admonished and the other-crimes evidence was used specifically for the purpose of showing defendant's identity, intent, and absence of mistake. The record shows that the other-crimes acts and the crime for which defendant was tried in the instant case were very similar. They all originated through the same teacher-student relationship with defendant and the victims. In each case, the student provided defendant with identifying information through a school application, but did not give defendant permission to open credit accounts with this information. Nonetheless, in each situation, the student's information was used to fraudulently obtain a credit card which was then used by defendant.

¶ 42 Defendant's insistence that the other-crimes evidence should not have come in under the identity exception because identity was not at issue in the theft charge is unpersuasive. First, we note that defendant intimated throughout the entire case that he was not responsible for the crime of identity theft. He and the defense witnesses testified that the school offices had been broken into, raising the possibility that the thief had taken the applications and then used the personal identifying information to fraudulently obtain credit cards in the victims' names.

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¶ 43 The other-crimes evidence was also properly admitted to show defendant's intent and absence of mistake. In order to prove defendant guilty of theft and identity theft, the State was required to show that defendant knowingly took Mikulski's identity and knowingly deprived Best Buy Travel of the airline tickets to China. Defendant admitted that he charged the airline tickets to Mikulski's credit card, but denied that he did so without permission. As such, defendant's physical actions were undisputed, but his state of mind was at issue. Accordingly, it was appropriate for the court to allow evidence of similar bad acts to show defendant's intent and absence of mistake. See *Illgen*, 145 Ill. 2d at 366 ("Evidence that the defendant physically abused the victim on numerous occasions prior to her death was relevant to show the defendant's intent and motive"); *Wilson*, 214 Ill. 2d at 136 ("Other crimes evidence may also be permissibly used to show, by similar acts or incidents, that the act in question was not performed inadvertently, accidentally, involuntarily, or without guilty knowledge"); *People v. Harris*, 297 Ill. App. 3d 1073, 1086 (1998) (other crimes evidence was relevant to prove defendant's criminal intent where defendant used consent as a defense). Therefore, even if this other-crimes evidence was not properly admitted under the identity exception, the inclusion in the jury's limiting instruction of a proper exception (intent and absence of mistake) requires us to confirm defendant's conviction. See *People v. Norwood*, 362 Ill. App. 3d 1121, 1134 (2005).

¶ 44 Moreover, we note that a reviewing court may affirm a trial court's decision on any basis in the record, "regardless of whether the trial court considered that basis or whether its decision is actually supported by the bases it did consider." *Moody v. Federal Exp. Corp.*, 368 Ill. App. 3d 838, 841 (2006); *Bell v. Louisville & Nashville R.R. Co.*, 106 Ill. 2d 135, 148 (1985). The court

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could have properly admitted it to show proof of defendant's *modus operandi* under the "continuing narrative" provision. See *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005) (evidence of other crimes may be admitted where it is part of a continuing narrative of the events in question, is intertwined with the event charged, or explains an aspect of the crime charged that would otherwise be implausible); see also *Hale*, 2012 IL App (1st) 103537, ¶ 14. Defendant, who owned a martial arts school, knowingly used the personal identifying information of Mikulski that included his name, social security number and date of birth, and then fraudulently obtained a Capital One credit card. In addition, defendant knowingly obtained by deception airline tickets from Best Buy Travel. The State presented evidence that defendant had done so by using Mikulski's identifying information to obtain a credit card. In this evidence, Mikulski testified that he filled out an application to join defendant's school in which he included his name, social security number and date of birth. The other-crimes evidence that was introduced included testimony showing that another former student had filled out an application form to the school, after which a credit card had been issued in his name, and defendant had used the credit card and made payments on it. Additional evidence was introduced that defendant also opened an American Express card in Mikulski's name with his social security number and date of birth, and used it for his own purposes. This other-crimes evidence was relevant as part of the continuing narrative of defendant's identity theft and subsequent theft, in which he used a fraudulently-obtained credit card to purchase the airline tickets in question.

¶ 45 Additionally, the court did not err in determining that the probative value of this evidence was not outweighed by its prejudicial effect. "Whether the probative value of other-crimes

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evidence is outweighed by its prejudicial impact is a determination left to the trial court's discretion, and we will not disturb that decision absent a clear abuse of discretion." *Spyres*, 359 Ill. App. 3d at 1114. The challenged testimony here was on-point and limited to establishing the necessary facts to show the similarities of the crimes. In conjunction with that testimony, the court gave the jury a limiting instruction regarding the other-crimes evidence. Moreover, the evidence against defendant, notwithstanding the other-crimes evidence, was strong. It showed that defendant ran a school at which he collected personal identifying information from incoming students. One of those students, Mikulski, gave defendant personal identifying information. Soon after, unbeknownst to Mikulski, a Capital One credit card account was opened in his name without his permission. Mikulski discovered this account when he found a credit card statement with his name on it, but addressed to the school. He discovered that defendant had charged three airline tickets to China on the credit card. Further, defendant went to Best Buy Travel, took responsibility for the rejected credit card charge, and made a \$100 payment on the account. The trial court was in the best position to weigh the prejudicial impact of this evidence versus its probative value. *Donoho*, 204 Ill. 2d at 186 (A reviewing court "owes deference to the [circuit] court's ability to evaluate the impact of the evidence on the jury"). Reviewing this decision under the appropriate standard of deference, we conclude that the trial court did not abuse its discretion.

¶ 46 Having thoroughly reviewed the record on appeal, we have found no error in the admission of this other-crimes evidence. Moreover, we have found, as discussed previously, that the evidence was not closely balanced. Accordingly, defendant cannot establish plain error here. See *Durr*, 215 Ill. 2d at 299.

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¶ 47

CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.