THIRD DIVISION
November 1, 2017

No. 1-15-0145

**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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 13 CR 19523 |
| | ) | |
| KEVIN LONG, | ) | The Honorable |
| | ) | Clayton J. Crane, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 Held: Where challenges to defendant's indictment fail and the State properly found defendant guilty beyond a reasonable doubt, and other-crimes evidence was properly admitted at trial, defendant's conviction is affirmed.

¶ 2 Following a jury trial, defendant Kevin Long was convicted of unlawful use or possession of a weapon by a felon for carrying a briefcase containing four knives into the Daley

Center in Chicago, Illinois. He was sentenced to nine years' incarceration to be served concurrently with a 13-year sentence on a conviction for unlawful use or possession of a weapon by a felon in case number 10 CR 6092. On appeal, defendant contends his conviction should be reversed because (1) his indictment was defective; (2) the State failed to prove his guilt beyond a reasonable doubt; and (3) the court abused its discretion by allowing other-crimes evidence and evidence of other bad acts in at trial. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 At trial, Cook County Sheriff Deputy Dalibor Jevtic testified that he was working at a security checkpoint in the Daley Center at approximately 3:20 p.m. on March 16, 2010, when defendant placed a soft-sided briefcase on the conveyor belt that then passed through the magnetometer. Deputy Jevtic then saw on the magnetometer screen that the briefcase contained four knives. He searched the briefcase and found four knives in packaging, along with a receipt for their purchase earlier that day. Deputy Jevtic called for his supervisor, who then arrested defendant.

¶ 5 Assistant State's Attorney (ASA) Michael Crowe testified that he was the prosecutor on another case, case number 08 CR 16521, in which defendant was charged with intimidation and harassment of a witness named Joseph McCaffrey. He explained that the victim in that case, McCaffrey, was an attorney representing defendant's neighbors. Defendant had filed federal lawsuits against these neighbors and the neighbors had filed countersuits in state court against defendant in the Daley Center. ASA Crowe described defendant's relationship with McCaffrey as "contentious" and "bad," explaining that defendant blamed McCaffrey "as the ring leader of a group of neighbors who were trying to jam him up." Defendant said it "wouldn't be over until he [defendant] was dead." In August 2008, defendant was found guilty of intimidation and

harassment of a witness and sentenced to 42 months' incarceration. A certified statement of defendant's conviction was entered into evidence in the instant cause.

¶ 6 Illinois Department of Corrections officer Sean Furlow testified that he is assigned to the Stateville Correctional Center Intelligence and Investigations Unit. As part of his job, he sometimes monitors recorded inmate telephone calls, and he specifically monitored telephone calls between defendant and his mother while defendant was in jail. Furlow identified a compact disc with recordings of telephone calls made by defendant to his mother in Arizona. Excerpts from those calls, placed in 2009, were played in court for the jury. This recording is included in the record on appeal. In some of these recorded excerpts, defendant is shouting and sounds angry. He instructed his mother to tell his ex-wife not to say anything about the bags of knives he left at their home. Defendant referred to attorney McCaffrey in derogatory terms, saying McCaffrey had been harassing him for nine years and was trying to destroy him. Defendant told his mother that "lives are at stake" and he has "nothing to lose." Defendant asked his mother to call his parole officer for him, but warned her not to tell the officer about knives in his house, saying, "If you're going to call her, I don't want you talking about anything that's in the house like knives or anything* * * because then they'll go through with the search warrant." He told her not to tell the parole officer about the bags of knives in his house that were "brand new" and "in the packages."

¶ 7 Attorney McCaffrey also testified for the State that he was the attorney representing defendant's neighbors after defendant filed lawsuits against them in federal court. McCaffrey filed counter lawsuits on the neighbors' behalf. In 2008, McCaffrey walked out into a Daley Center hallway after having testified in a hearing on one of the neighbor's cases when he encountered defendant. According to McCaffrey, defendant told him, "I know that you have a

daughter. I have my eye on her. I'm coming to get her to take her away from you." McCaffrey was "surprised" and asked defendant what he had just said. Then, defendant again told McCaffrey, "I know that you have a nine-year-old daughter. I have my eye on her. I'm going to come take her away from you and kill her." McCaffrey notified law enforcement and, subsequently, testified against defendant in a case arising from those threats. Defendant was convicted in that case of witness intimidation. McCaffrey testified that, on March 16, 2010, the day defendant was discovered bringing knives into the Daley Center, McCaffrey was practicing law in the Daley Center and had six cases on the call that week. It appears that a representative from McCaffrey's law firm, rather than McCaffrey himself, was present in the Daley Center at the time defendant attempted to bring the knives in. Over a defense objection, McCaffrey testified that defendant had threatened him on "numerous occasions" in the past, including threats of both "personal bodily harm" and "professional reputation."

¶ 8 Cook County Circuit Court Judge Kathy Flanagan testified that she is a judge in the law division in the Circuit Court of Cook County, and her courtroom is located in the Daley Center. Defendant had a case in her courtroom for a number of years, but she eventually recused herself after defendant left "disturbing" messages on her private voicemail. In those messages, defendant talked about his pending case and complained that he was not being treated fairly. He also left a voicemail in which he claimed he knew where Judge Flanagan lived and that she lived with her elderly parents. He said he was "not going to take any action against [her elderly parents] even though he didn't like the way [Judge Flanagan] was doing his case for him." Additionally, defendant accessed the staff-only area of her chambers. She described her interactions with defendant in her courtroom and in the chambers area as "very unpleasant." Judge Flanagan was

scheduled to work at the Daley Center every day the week defendant brought the knives in to the Daley Center.

¶ 9 Parole Officer Penny Wosar testified that defendant was assigned to her as a parolee in 2009. Wosar met with him on November 15, 2009, and reviewed a mandatory supervised release agreement and the "rules of parole." One document they reviewed together was the "Project Safe Neighborhood" form, the gist of which was that he was not to "possess any weapons or guns." Wosar testified that she considered brass knuckles, knives, batons, and knuckle knives to be dangerous weapons. On cross examination, she admitted that the paperwork did not define a dangerous weapon, but only stated that defendant was prohibited from possessing a "gun or other dangerous weapon."

¶ 10 United States District Court for the Northern District of Illinois Clerk of Court Thomas Bruton testified that, as a clerk of the court, he is responsible for keeping records such as case files, filings by parties on a case, and orders by judges. Bruton published to the jury an executive committee order regarding defendant by which defendant was not allowed access to the court building because of specific troubling history. For example, the order described defendant having filed suit against various individuals including judges of the court in which, even after being instructed not to do so, he included personal identifying information about the defendants including their social security numbers. The order also recounted instances of defendant defying library rules in the Dirksen Building, as well as accessing restricted areas of the Dirksen Building. By that executive order, defendant was enjoined from entering the Dirksen Building unless he first obtained leave to do so and, if he did obtain leave to enter the building, he would then be escorted by a United States Marshal while there.

¶ 11 Gary Miller, who was defendant's cell mate at Cook County jail, testified that he and defendant were friendly with one another and discussed "pretty much anything." According to Miller, defendant said he was arrested for bringing knives into the Daley Center, and that he purchased those knives and brought them to the Daley Center as a test to "see what he could get away with." Defendant said security would not do anything or might just make him remove the knives from the building or throw them away, since the knives were still in their packaging. According to Miller, defendant told him attorney McCaffrey was responsible for all of his legal troubles, that he intended to rape McCaffrey's daughter and kill McCaffrey's whole family. Miller also said defendant told him he "wanted to play with his knives" with a female Cook County judge, whose name he did not mention. On cross-examination, Miller denied he had told another inmate that he planned to make up stories about defendant in order to get him in trouble. At the time he testified, Miller remained incarcerated in Cook County Jail awaiting trial on a charge of retail theft. He was previously convicted of failure to register as a sex offender.

¶ 12 Cook County Sheriff's lieutenant Jerry Dillon testified that, in 2010, he was working as a sheriff assigned to the Judicial Security Unit and General Investigations Unit. He was assigned to defendant's case on March 16, 2010, when defendant attempted to bring knives into the Daley Center. As part of the investigation, Lieutenant Dillon monitored defendant's recorded telephone calls from Cook County Jail. In one of those telephone calls, made on March 19, 2010, defendant told his mother he had bags and bags of knives in his apartment. After monitoring this telephone call, Lieutenant Dillon obtained a search warrant for defendant's apartment where approximately 1,600 "knife-type" weapons were discovered and recovered. Lieutenant Dillon identified photographs, which also appear in the record on appeal, of the 1,600 recovered knives. Of those,

Lieutenant Dillon testified there were 7 switchblades, several brass knuckles, 20 collapsible batons, and a gun.

¶ 13 Lieutenant Dillon testified that, between March 16, 2010, the day the knives were recovered at the Daley Center, and December of 2013, he continued to work on cases pertaining to defendant. Specifically, once he found the 1,600 knives at defendant's apartment, the investigators elected to proceed on that case and put the Daley Center case on hold, agreeing that "when a case is criminally prosecuted and a defendant has two cases pending at the same time you can't do them both at the same time * * * [a]nd we do what's called an election where we elect on which case we want to prosecute first."[1] Lieutenant Dillon, then, did not interview Judge Flanagan or Attorney McCaffrey in March of 2010. He agreed that "a recurring theme in [the many monitored phonecalls made by defendant] was his intense dislike for Mr. McCaffrey."

¶ 14 The State rested. Defendant made a motion for a directed verdict, which was denied. Defendant did not present evidence on his own behalf.

¶ 15 In October 2014, after closing arguments and jury instructions, defendant was found guilty on all four counts of unlawful possession of a weapon by a felon. Each of the four counts

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[1] The case to which Lieutenant Dillon was referring, No. 10 CR 6092, resulted in a conviction for 47 counts of unlawful use or possession of a weapon by a felon after Chicago police officers recovered the nearly 1,600 weapons from a storage unit at defendant's condominium building. *People v. Kevin Long*, 2017 IL App (1st) 150510-U (unpublished order under Supreme Court Rule 23). The trial court in that cause merged all of the counts into one count and sentenced defendant to 13 years' imprisonment to be served concurrently with his 9-year sentence for unlawful possession of a weapon in the instant cause. *People v. Kevin Long*, 2017 IL App (1st) 150510-U (unpublished order under Supreme Court Rule 23). Defendant appealed that conviction, arguing that the court erred in denying his motion to quash and suppress the evidence discovered because the search warrant lacked probable cause. *People v. Kevin Long*, 2017 IL App (1st) 150510-U (unpublished order under Supreme Court Rule 23). The warrant was based on information gleaned from monitoring defendant's telephone calls from Cook County Jail. The Fourth Division of this court affirmed. *People v. Kevin Long*, 2017 IL App (1st) 150510-U (unpublished order under Supreme Court Rule 23).

pertained to a different weapon: a Winchester knife, a buck knife, a CRKT knife, and a Kershaw knife. Defendant was sentenced to nine years' incarceration to be served concurrently with a 13-year sentence on a conviction for unlawful use or possession of a weapon by a felon in case number 10 CR 6092.

¶ 16 Defendant appeals.

¶ 17 II. ANALYSIS

¶ 18 i. The Statute of Limitations

¶ 19 On appeal, defendant first contends that his conviction must be reversed because his re-indictment[2] was faulty. The alleged conduct at issue occurred on March 16, 2010, and the prosecution proceeded with its case against defendant here based on an indictment filed on October 11, 2013, nearly three years and seven months later. The charge of unlawful use or possession of weapons by a felon is subject to a three-year statute of limitations. Defendant contends that the indictment was fatally flawed because it was filed after the expiration of the statute of limitations and the State did not allege any circumstances that would have invoked an extension of time, and at trial did not prove the statutory exception that would toll the limitations period.

¶ 20 Citing section 3-7(c) of the Code of Criminal Procedure of 1963 (Code), defendant acknowledges that there is a "potential exception" to the three-year statute of limitations, quoting: "The period within which a prosecution must be commenced does not include any period in which * * * [a] prosecution is pending against the defendant for the same conduct[.]" 720 ILCS 5/3-7(c) (2010). However, argues defendant, "no evidence as to the pendency of another prosecution against the defendant for the same conduct was presented at the trial.

[2] For purposes of clarity, we will refer to defendant's re-indictment as "indictment" from here on.

Consequently, the judgment must be reversed." Defendant acknowledges that, had he brought such a motion, "the State could have remedied the flaw in the indictment by alleging pursuant to 720 ILCS 5/3-7(c) [] that a prosecution had been pending against him for the same conduct under another indictment number." Defendant does not allege that he was prejudiced in the preparation of his defense in any way.

¶ 21 A statute of limitations "is by definition an arbitrary period after which all claims will be cut off." *Barragan v. Casco Design Corp*., 216 Ill. 2d 435, 448 (2005). Limitations periods for offenses serve a number of purposes, including: minimizing the danger of punishment for conduct that occurred in the distant past; encouraging the State to be diligent in its investigation; and providing the trier of fact with evidence that is fresh and not distorted or diluted by the passage of time. *People v. Macon*, 396 Ill. App. 3d 451, 456 (2009) (The purposes of providing limitations periods for offenses are to minimize the danger of punishment for conduct that occurred in the distant past, to encourage the State to be diligent in its investigation, and to provide the trier of fact with evidence that is fresh and not distorted or diluted by the passage of time.); *People v. Shinaul*, 2017 IL 120162, ¶ 17 ("The criminal statute of limitations serves two primary purposes: to avoid the use of stale evidence and to provide an incentive for swift governmental action in criminal cases"). "Limitations are 'designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.' " *Shinaul*, 2017 IL 120162, ¶ 17 (quoting *Toussie v. United States*, 397 U.S. 112, 114-15, 90 S.Ct. 858, 25 L.Ed.2d 156 (1970)). "[T]he application of the limitations statute is an affirmative defense that can be waived." *People v. Wells*, 2017 IL App (1st) 152758, ¶ 24 (citing *People v. Williams*, 79 Ill. App. 3d 806, 808 (1979).

¶ 22 Illinois' general statute of limitations provides:

> "(b) Unless the statute describing the offense provides otherwise, or the period of limitation is extended by Section 3-6, a prosecution for any offense not designated in subsection (a) or (a-5) must be commenced within 3 years after the commission of the offense if it is a felony, or within one year and 6 months after its commission if it is a misdemeanor." 720 ILCS 5/3-5(b) (West 2010).

A limitations period can be extended in certain very specific situations. *People v. Chenoweth*, 2015 IL 116898, ¶ 23; *Macon*, 396 Ill. App. 3d at 458. Certain periods can be excluded from the limitations period, including the period when "a prosecution is pending against the defendant for the same conduct." 720 ILCS 5/3-7 (a) (3) (West 2010). The statute, however, is not self-executing and, thus, the State bears the burden of proving that a particular exception applies by alleging on the face of the indictment the specific exception that applies and the facts establishing that exception. *Macon*¸ 396 Ill. App. 3d at 458. When the State seeks to avail itself of an extended limitations period, "the facts upon which [the] extension of the limitations period is sought are material allegations to the criminal charge which must not only be proved but must be pleaded as well." *People v. Coleman*, 245 Ill. App. 3d 592, 596 (1993).

¶ 23 However, that rule does not apply in every case. To the contrary, "the State has the burden of pleading and proving any element extending * * * the limitation period *if* the defendant challenges the timeliness of the charges in a *pretrial motion to dismiss*." *People v. Gray*, 396 Ill. App. 3d 216, 226 (2009) (only "if" the defendant first challenges the timeliness of the charges in a pretrial motion to dismiss does the State *then* have the burden of pleading and proving any extension or toll of the limitations period); see also *People v. Wasson*, 211 Ill. App. 3d 264, 275 (1991). When a defendant files a motion to dismiss the indictment due to an alleged

defect, the State then has the opportunity to amend the indictment to comply with one of the section 3-6 exceptions. *Wasson*, 211 Ill. App. 3d at 275 (citing *People v. Thompson*, 66 Ill. App. 3d 141 (1978)); *Gray*, 396 Ill. App. 3d at 224 (dismissal for failure to properly plead gives the State the option to amend or refile the charges).

¶ 24 A charging instrument may be amended at any time to correct a formal defect. See *People v. Alston*, 302 Ill. App. 3d 207, 210 (1999); see also 725 ILCS 5/111-5 (West 2010). Amendment, even on the day of trial, is proper and permissible as long as the change is not substantive, that is, it is not material and does not alter the nature or elements of the offense originally charged. See *Alston*, 302 Ill. App. 3d at 210; see also *Gray*, 396 Ill. App. 3d at 223 (citing *People v. Martin*, 266 Ill. App. 3d 369, 373 (1994)). This is especially true where the defendant is not surprised or prejudiced by the change, or if he was already aware of the actual charge. See *Gray*, 396 Ill. App. 3d at 223 (citing *Martin*, 266 Ill. App. 3d at 373); *Alston*, 302 Ill. App. 3d at 210-11. So long as the charging instrument gives the defendant adequate notice of the subsequent charges, his ability to prepare for trial on those subsequent charges is not hindered in any way. See *People v. Mays*, 2012 IL App (4th) 090840, ¶ 45; accord *People v. Gutierrez*, 402 Ill. App. 3d 866, 890 (2010) (citing *People v. Likar*, 329 Ill. App. 3d 654, 660 (2002).

¶ 25 Here, the offense occurred on March 16, 2010, and defendant was initially charged by indictment under case number 10 CR 5702. In September 2013, defendant filed a "motion to dismiss indictment for failure to state an offense" as to case number 10 CR 5702. By that motion, defendant challenged the original indictment, specifically arguing that it was lacking in specificity. Nowhere in that motion did defendant mention or even allude to a timing issue. The State obtained a superseding indictment charging defendant with the same offenses on October 11, 2013, under case number 13 CR 19523. It dismissed the initial indictment that same day.

¶ 26 Defendant did not challenge the timeliness or sufficiency of the indictment in his pretrial motion to dismiss. Pursuant to *Gray* and *Wasson*, the State consequently did not have the burden to plead and prove any element that extended or tolled the statute of limitations. See *Gray*, 396 Ill. App. 3d at 226-27; *Wasson*, 211 Ill. App. 3d at 275. Accordingly, in light of *Gray* and *Wasson*, as well as defendant's failure to file a pretrial motion to dismiss based on statute of limitations grounds, the fact that the indictment did not explicitly allege that an extended limitations period applied is not fatal to the State's case.

¶ 27 The cases upon which defendant relies are factually distinguishable from the instant cause and are, therefore, inapposite to the case at bar. In *People v. Morris*, 135 Ill. 2d 540, 542 (1990), the defendant filed two timely pretrial motions to dismiss the indictment that included challenges to the statute of limitations; he did not wait until appeal to challenge the sufficiency of the indictment. *Morris*, 135 Ill. 2d at 542. Also in *People v. Strait*, 72 Ill. 2d 503, 505-06 (1978), the defendant filed a timely pretrial motion to dismiss based on the statute of limitations, thus putting the State on notice and affording it opportunity to amend the charging instrument. *Strait*, 72 Ill. 2d at 504. In *People v. Ross*, 2015 IL App (2d) 140139, ¶ 2, the indictment alleged that the limitations period was tolled while a separate case was pending. *Ross*, 2015 IL App (2d) 140139, ¶ 2. In contrast, here, the indictment did not allege that the limitations period was tolled, and defendant did not challenge the indictment based on timeliness grounds before or at trial. Thus, as noted above, pursuant to *Gray* and *Wasson*, the State did not have the burden to plead and prove any element that extended or tolled the statute of limitations. See *Gray*, 396 Ill. App. 3d at 226-27; *Wasson*, 211 Ill. App. 3d at 275.

¶ 28 Defendant's reliance on *People v. Lutter*, 2015 IL App (2d) 140139, is equally unpersuasive. Defendant maintains on appeal that *Lutter*, rather than *Gray*, should guide our

analysis here. In *Lutter*, the our sister court in the Second District, in a divided opinion, reversed the defendant's conviction after finding the State failed to prove that the statute of limitations was tolled by a prior pending prosecution. *Lutter*¸ 2015 IL App (2d) 140139, ¶¶ 8, 30. We note that, unlike the case at bar, the *Lutter* indictment "vaguely alleged facts that would arguably toll the limitations period." *Lutter*, 2015 IL App (2d) 140139, ¶ 8. To the extent that *Lutter* conflicts with the reasoned analyses in *Gray* and *Wasson*, as well as our analysis herein, we decline to follow it.

¶ 29 Defendant points out that, when the superseding indictment was filed in this case, defendant himself orally questioned whether the late filing violated the statute of limitations. Specifically, defendant, although represented by counsel, personally asked the court:

> "THE DEFENDANT: Judge, statute of limitations, of course, they would be filing motion on? This is ridiculous as usual."

Defendant appears to argue on appeal that this comment should have functioned as a pretrial motion of sorts challenging the statute of limitations regarding the indictment. Defendant acknowledges on appeal, though, that "No formal motion to dismiss the indictment was ever filed by his attorneys." As this court has noted, "An accused has either the right to have counsel represent him or the right to represent himself; however, a defendant has no right to both self-representation and the assistance of counsel." *People v. Wallace*, 331 Ill. App. 3d 822, 839 (2002) (quoting *People v. Pondexter*, 214 Ill. App. 3d 79, 87-88 (1991)). The court had no responsibility to entertain the *pro se* comment offered by defendant, who elected to be represented by counsel, and whose counsel was present in court during the hearing at issue. See *Wallace*, 331 Ill. App. 3d at 839 ("[I]f a defendant retains counsel, that counsel has control over the day-to-day conduct of the defense. He has the responsibility to determine when and whether to object, what witnesses to call and what defense to develop.").

¶ 30 We conclude that the State was not required to invoke an exception to the statute of limitations under the circumstances of this case, where defendant did not move to dismiss or launch any other pretrial challenge regarding the timeliness of the indictment, did not place the State on notice of any statute of limitations problem, and did not allow the State an opportunity to correct the alleged defect.

¶ 31 ii. Specificity

¶ 32 Next, defendant contends that his conviction must be reversed where the indictment for unlawful possession of a weapon by a felon was fatally defective for its lack of specificity. Specifically, defendant maintains on appeal that the State failed to identify the intended victims, which, defendant argues, is requisite to a proper charging instrument. We disagree.

¶ 33 A defendant has a fundamental right to be informed of the "nature and cause" of the charges against him or her. *People v. Espinoza*, 2015 IL 118218, ¶ 15; *People v. Meyers*, 158 Ill. 2d 46, 51 (1994). In Illinois, this fundamental right is given substance by statute and incorporated into section 111-3 of the Code , which provides, in pertinent part:

"(a) A charge shall be in writing and allege the commission of an offense by:

(1) Stating the name of the offense;

(2) Citing the statutory provision alleged to have been violated;

(3) Setting forth the nature and elements of the offense charged;

(4) Stating the date and county of the offense as definitely as can be done; and

(5) Stating the name of the accused, if known." 725 ILCS 5/111-3(a) (West 2010).

¶ 34 " 'T]he purpose of requiring specificity [in the charging instrument] is to provide notice to the defendant of precisely what the State will attempt to prove (and therefore to allow the

defendant an opportunity to prepare a defense).' " *Gray*, 396 Ill. App. 3d at 225 (citing *Morris*, 135 Ill. 2d at 547). The relevant inquiry is not whether a charging instrument could have described an offense with more particularity, but whether there is sufficient particularity to allow the defendant to prepare a defense. *Meyers*, 158 Ill. 2d at 54. Because a failure to properly charge an offense implicates due process concerns, such a defect may be attacked at any time. *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). We review a challenge to the sufficiency of a charging instrument *de novo*. *People v. Rowell*, 228 Ill. 2d 79, 92 (2008).

¶ 35 The timing of the challenge to the indictment "determines whether a defendant must show that he was prejudiced by the defect in the charging instrument." *Espinoza*, 2015 IL 118218, ¶ 23. If an indictment or information is attacked prior to trial, the State must strictly comply with the pleading requirements set forth in the Code of Criminal Procedure. *Rowell*, 229 Ill. 2d at 93. When that indictment attacked in a pretrial motion is not in strict compliance with the pleading requirements, "the proper remedy is dismissal." *Rowell*, 229 Ill. 2d at 93. When a defendant attacks his indictment for the first time in a posttrial motion, the defendant must then show that the defect in the indictment prejudiced his ability to prepare a defense. *Rowell*, 229 Ill. 2d at 93. However, when an indictment is attacked for the first time *during trial*, as is the case here, the relevant question is whether defendant was prejudiced by the defect. *People v. Cuadrado*, 214 Ill. 2d 79, 91 (2005) ("When the sufficiency of a criminal indictment is challenged during trial the court must determine whether the defendant was prejudiced by the defect. If defendant has not been prejudiced, the indictment may stand. If prejudice is established, however, the indictment must be dismissed.").

¶ 36 In the case at bar, defendant admits he did not file his motion attacking the sufficiency of the indictment prior to the start of the trial. Instead, he waited until trial had started, after jury

selection and after opening arguments, and immediately before the first witness testified to challenge the specificity of the indictment. Therefore, the sufficiency of the indictment was challenged *during trial*, and we must determine whether defendant was prejudiced, that is, whether he was sufficiently apprised of the charges against him so as to be able to prepare a defense. See, *e.g.*, *Cuadrado*, 214 Ill. 2d at 91.

¶ 37 Count 1 of Indictment 13 CR 19523 reads:

"Kevin Long

Committed the offense of UNLAWFUL USE OR POSSESSION OF A WEAPON BY A FELON

In that HE, KNOWINGLY POSSESSED ON OR ABOUT HIS PERSON ANY WEAPON PROHIBITED BY SECTION 24-1 OF THIS ACT, TO WIT: A DANGEROUS KNIFE, WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER, AFTER HAVING BEEN PREIVOUSLY CONVICTED OF THE FELONY OFFENSE OF INTIMIDATION, UNDER CASE NUMBER 08CR16521,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 24-1.1 (a) OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND contrary to the Statute and against the peace and dignity of the same people of the State of Illinois."

Count 2 of Indictment 13 CR 19523 reads:

"Kevin Long

Committed the offense of UNLAWFUL USE OR POSSESSION OF A WEAPON BY A FELON

In that HE, KNOWINGLY POSSESSED ON OR ABOUT HIS PERSON ANY WEAPON PROHIBITED BY SECTION 24-1 OF THIS ACT, TO WIT: A DANGEROUS KNIFE, WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER, AFTER HAVING BEEN PREIVOUSLY CONVICTED OF THE FELONY OFFENSE OF INTIMIDATION, UNDER CASE NUMBER 08CR16521,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 24-1.1 (a) OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND contrary to the Statute and against the peace and dignity of the same people of the State of Illinois."

Count 3 of Indictment 13 CR 19523 reads:

"Kevin Long

Committed the offense of UNLAWFUL USE OR POSSESSION OF A WEAPON BY A FELON

In that HE, KNOWINGLY POSSESSED ON OR ABOUT HIS PERSON ANY WEAPON PROHIBITED BY SECTION 24-1 OF THIS ACT, TO WIT: A DANGEROUS KNIFE, WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER, AFTER HAVING BEEN PREIVOUSLY CONVICTED OF THE FELONY OFFENSE OF INTIMIDATION, UNDER CASE NUMBER 08CR16521,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 24-1.1 (a) OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND contrary to the Statute and against the peace and dignity of the same people of the State of Illinois."

And Count 4 of Indictment 13 CR 19523 reads:

"Kevin Long

Committed the offense of UNLAWFUL USE OR POSSESSION OF A WEAPON BY A FELON

In that HE, KNOWINGLY POSSESSED ON OR ABOUT HIS PERSON ANY WEAPON PROHIBITED BY SECTION 24-1 OF THIS ACT, TO WIT: A DANGEROUS KNIFE, WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER, AFTER HAVING BEEN PREIVOUSLY CONVICTED OF THE FELONY OFFENSE OF INTIMIDATION, UNDER CASE NUMBER 08CR16521,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 24-1.1 (a) OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND contrary to the Statute and against the peace and dignity of the same people of the State of Illinois."

¶ 38 A person commits the offense of unlawful use or possession of weapons by a felon when, in pertinent part, he "possess[es] on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1 (West 2010).

¶ 39 As noted above, section 111-3 of the Code requires that a charge be in writing and that it "allege the commission of an offense" by stating the name and statutory provision of the offense, the nature and elements of the offense, the date and county when and where the offense occurred, and the name of the accused." 725 ILCS 5/111-3(a) (West 2010). Here, the name of the offense is stated, the elements of the offense charged are set forth, the date of the offense and the county of the offense are specified, and the name of the accused is specified. The indictment, therefore,

strictly complies with the pleading requirements of section 111-3 of the Code. See 725 ILCS 5/111-3(a) (West 2010).

¶ 40 Beyond strict compliance, however, we also find that defendant has not shown he was prejudiced in the preparation of his defense. See, *e.g.*, *Cuadrado*, 214 Ill. 2d at 91 ("When the sufficiency of a criminal indictment is challenged during trial the court must determine whether the defendant was prejudiced by the defect. If defendant has not been prejudiced, the indictment may stand. If prejudice is established, however, the indictment must be dismissed.").

¶ 41 First, we note that the Court listened to argument from counsel regarding the motion before denying the motion, stating:

> "THE COURT: This case has gone on for four years. The information provided to the defendant in this case has been voluminous. As concerns the issue of specificity of the charging document, I find it conforms with the statute."

¶ 42 Second, we disagree with defendant's assertion that the intended victim of this particular crime, that is, unlawful use or possession of a weapon by a felon, must be indicated with specificity in the charging instrument. Rather, the criminal act here was defendant, a convicted felon, carrying and possessing dangerous knives with the intent to unlawfully use them against others. Defendant, relying on *People v. Espinoza*, 2015 IL 118218, argues that the identity of the intended victims in the case at bar was an essential, necessary allegation. In the cases consolidated under *Espinoza*, one defendant was charged with domestic battery and the other was charged with endangering the life and health of a child, both "crimes on which the impact is focused upon an individual" and therefore "the identity of the victims was an essential allegation of the charging instruments." *Espinoza*, 2015 IL 118218, ¶ 20. Conversely, here, contrary to defendant's assertion, danger to a specific person is not the essence of the offense of unlawful

possession of a weapon by a felon. Instead, defendant's act, as a convicted felon, of bringing four dangerous knives into the Daley Center was the essence of the crime, rather than a focus on a particular individual victim.

¶ 43 Nonetheless, although the identity of the intended victim was not requisite to the crime, testimony at trial established the identities of the purported targets. Judge Kathy Flanagan testified that defendant had left "disturbing" messages on her personal voicemail, including vague threats in which he stated he knew she lived with her elderly parents but did not intend to take any action against tem even though he was not happy with the way Judge Flanagan was handling his case. Additionally, defendant's cellmate, Gary Miller, testified defendant told him he planned to sneak knives into the Daley Center to test the system and see what he could get away with. According to Miller, defendant told him attorney McCaffrey was responsible for all of his legal troubles, that he intended to rape McCaffrey's daughter and kill McCaffrey's whole family. Miller also said defendant told him he "wanted to play with his knives" with a female Cook County judge. Attorney McCaffrey also testified that defendant had threatened him on numerous occasions. Additionally, according to McCaffrey, defendant told him, "I know that you have a daughter. I have my eye on her. I'm coming to get her to take her away from you" and "I know that you have a nine-year-old daughter. I have my eye on her. I'm going to come take her away from you and kill her."

¶ 44 In sum, the indictment in this case that resulted in defendant's conviction was not defective and defendant was not prejudiced in his preparation of a defense.

¶ 45 iii. Reasonable Doubt

¶ 46 Next, defendant contends the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that, where each of the four knives in question was a "small folding knife intended for personal utility and still in its factory-sealed blister package," the State failed to prove these knives were "dangerous." We disagree.

¶ 47 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 48 To prove defendant committed the crime of unlawful use or possession of a weapon by a felon, the State had to show that defendant knowingly possessed on or about his person any weapon prohibited under section 24-1 of [720 ILCS 5/24-1.1] or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction. 720 ILCS 5/24-1.1 (West 2010). Section 24-1, in turn, delineates numerous prohibited weapons, including "a dagger, dirk, billy, dangerous knife, razor, stiletto, broken bottle or other piece of glass, stun gun or taser or any other dangerous or deadly weapon or instrument of like character[.]"720 ILCS 5/24-1(a)(2) (West 2010). For our purposes, the section prohibits a "dangerous knife" or "any other dangerous or deadly weapon or instrument of like

character." 720 ILCS 5/24-1(a)(2) (West 2010). Our courts have further described a knife as a "blade-type" weapon, or "weapons or instruments that are sharp and have the ability to cut or stab." *People v. Davis*, 199 Ill. 2d 130, 138-39 (2002). In *People v. Thorne*, this court divided dangerous weapons into four categories, including "objects that are dangerous *per se*, such as knives and loaded guns." *Thorne*, 352 Ill. App. 3d 1062, 1070-71 (2004). "In determining whether an instrument was a dangerous weapon, the supreme court has stated that ' "when the character of the weapon is doubtful or the question depends upon the manner of its use it is a question for the jury [fact finder] to determine from a description of the weapon, from the manner of its use and the circumstances of the case." ' " *People v. Charles*, 217 Ill. App. 3d 509, 537 (quoting *People v. Phillips*, 181 Ill. App. 3d 144, 150 (1989) (quoting *People v. Robinson*, 73 Ill. 2d 192, 202 (1978))).

¶ 49 Here, after hearing all the evidence presented at trial, the jury found defendant guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon. At trial, the evidence included a certified copy of defendant's 2008 felony conviction for intimidation as well as photographs of the four knives at issue. Testimony was presented regarding defendant's threats and intimidation toward a judge whose courtroom was located in the Daley Center, as well as direct threats against Attorney McCaffrey who practices law in the Daley Center. Additionally, defendant's cellmate testified to defendant's wish to "play with the knives" with a female judge at the Daley Center and to physically hurt Attorney McCaffrey and his family. The jury had opportunity to see and assess the four knives in question. As noted, it is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable conclusions therefrom. *Campbell*, 146 Ill. 2d at 375. A reasonable jury could find that the knives

in question were "dangerous knives" for purposes of the unlawful use or possession of a weapon charge in this cause.

¶ 50 We note here that we find defendant's argument regarding the packaging of these four knives which he attempted to smuggle into the Daley Center to be somewhat disingenuous. Defendant describes the plastic packaging in detail, explaining that plastic blister-pack packaging is intended to be difficult to open and concluding, incredulously: "That relative inaccessibility discounts any conclusion that there was an intent to use [the knives] at the time of possession." Surely defendant, had he successfully smuggled the four knives through security, could have managed to find a way to open the plastic packaging on the knives. To argue otherwise strains credulity.

¶ 51 Because a reasonable jury could have found defendant guilty beyond a reasonable doubt of unlawful possession of a weapon by a felon, we affirm defendant's conviction.

¶ 52 iv. Other Crimes and Bad Acts

¶ 53 Finally, defendant contends the trial court abused its discretion by allowing evidence of other crimes to be admitted into evidence at trial. Specifically, defendant argues that the evidence showing his previous bad acts and other crimes was not properly admitted at trial under the exception to the prohibition against other-crimes evidence rule. Defendant also argues he was prejudiced by this error because the probative value of this evidence was outweighed by its prejudicial effect. Defendant maintains that the following evidence was unnecessary and created an unfair "trial within a trial": (1) ASA Crowe, the prosecutor for the previous intimidation case, testified about defendant's intimidation and threatening behavior toward Attorney McCaffrey when McCaffrey's testimony alone would have been sufficient; (2) a Department of Corrections

investigator introduced the telephone call excerpts from telephone calls between defendant and his mother in which defendant "strongly expressed his dislike for McCaffrey"; (3) a parole agent recounted that she provided defendant a "Safe Neighborhoods" form stating he was not to possess any weapons; (4) a federal court clerk read the jury a detailed four-page order barring defendant from the Dirksen Federal building based on "highly inappropriate conduct;" and (5) a county deputy sheriff described the discovery of approximately 1,600 knives and knife-like weapons and a gun inside defendant's apartment days after defendant's arrest in this case. He also introduced more jail telephone calls in which defendant expressed his dislike for McCaffrey.

¶ 54 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 other purpose 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. *Wilson*, 214 Ill. 2d at 135-36; *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 *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).

¶ 55 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).

¶ 56 In the instant case, prior to trial, the State filed a motion to allow proof of other crimes, asking the court to admit other-crimes evidence for the limited purposes of showing "intent, motive, knowledge, continuing narrative, absence of mistake, dislike of victims and the course of the investigation." Pleadings for and against the admission of other crimes evidence were filed by both sides, and arguments were held on two separate days. Eventually, after hearing arguments, the court considered each challenged witness and the purported other crimes evidence. It noted that it was weighing the probative value versus the potential prejudice and acknowledged that, while the parties seemed to concede that defendant attempted to enter the Daley Center with four knives, the question the State needed to prove was defendant's intent. The court allowed certain evidence in, limited other evidence, and excluded still other evidence.

¶ 57 Defendant was charged with unlawful use or possession of a dangerous weapon by a felon, in that he, as a convicted felon, knowingly possessed a dangerous knife with intent to use it against another. In opening arguments at trial, defense counsel told the jury that defendant had purchased the knives the day he brought them to the Daley Center, that the receipt was still

inside the briefcase, and the four knives were even still packaged in their original packaging. He asked, "[D]id he simply forget the [knives] that he bought that day while running errands in his briefcase?" Where defendant argued that he *mistakenly* brought the knives into the Daley Center after purchasing them that day, the State had to prove beyond a reasonable doubt that defendant *knowingly* brought the knives into the Daley Center and that he *intended* to use those knives unlawfully against another. The evidence admitted at trial was necessary to prove defendant's intent, knowledge, the continuing narrative, the course of the investigation, and an absence of mistake or accident.

¶ 58 Other-crimes evidence admitted at trial included Judge Flanagan's testimony regarding defendant's disconcerting voicemails and other inappropriate behavior, Attorney McCaffrey's testimony regarding defendant's direct threats to both himself and his family, recordings of defendant's angry telephone calls in which he talked about McCaffrey, a prosecutor discussing the previous threats to McCaffrey, a parole agent describing the form she reviewed with defendant that stated he was not to possess weapons, a federal court clerk reading an order barring defendant from the Dirksen Federal building due to inappropriate conduct, and a deputy sheriff recounting the discovery of more knives and other weapons inside defendant's apartment.

¶ 59 The other-crimes evidence introduced by the State showed that defendant did not mistakenly bring the knives into the Daley Center, but, rather, intended to bring them in to cause harm to other individuals. Viewed in isolation, the jury could believe that defendant had purchased the knives earlier in the day and had simply forgotten he had them in his briefcase when he went to the Daley Center. However, when viewed in the context of a person who had been banned from the federal courthouse for his harassing behavior, who had ongoing feuds with numerous individuals, who had a personal vendetta against an attorney who regularly practiced

in the Daley Center and whom defendant blamed for all of his troubles and whom defendant had previously threatened, and a person who harassed the sitting judge on the case involving his neighbors until she recused herself from his case, then defendant's intent to bring the knives into the Daley Center becomes clear. The evidence admitted was relevant and necessary to establish there was no mistake made, and that defendant knowingly possessed four dangerous knives in his briefcase that he intended to smuggle through security in the Daley Center and use unlawfully against another.

¶ 60 The court properly admonished the jury regarding the other-crimes evidence, stating:

> "THE COURT: Evidence has been received that the defendant has been involved in an offense other than that charged in the indictment. This evidence has been received on the issues of the defendant's intent, motive, design or knowledge and may be considered by you only for that limited purposes. It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issues of intent, motive, design and knowledge."

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 to be innocent of the charges against him. That presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in 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."

¶ 61 Then, before the jury deliberated, the court provided them a written instruction regarding how the other-crimes evidence should be considered:

"Evidence has been received that the defendant has been involved in an offense other than that charged in the indictment.

This evidence has been received on the issues of the defendant's intent, motive, design and knowledge and may be considered by you only for that limited purpose.

It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issues of intent, motive, design, and knowledge."

¶ 62 We find no error here, there the jury was properly admonished regarding other-crimes evidence. The evidence shows that the other-crimes acts were necessary to show that defendant did not, in fact, inadvertently and mistakenly bring the knives into the Daley Center but did so intentionally with the goal of harming another. From our review of the record, it is clear that the other-crimes evidence and evidence of prior bad acts of defendant were offered not to demonstrate defendant's propensity to commit crime, but rather to establish defendant's intent, knowledge, the continuing narrative, the course of the investigation, and an absence of mistake or accident. The trial court did not abuse its discretion by allowing admission of evidence that demonstrated a continuing narrative which gave rise to the offense, was intertwined with the offense, and which was explanatory to defendant's intent.

¶ 63 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 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 necessary facts and not to show defendant's propensity to commit crime. See *Wilson*, 214 Ill. 2d at 135-36 (Evidence of a defendant's other crimes is admissible if relevant for any other purpose than to show a defendant's propensity to commit crimes). Moreover, the evidence against defendant, notwithstanding the other-crimes evidence, was strong. It showed that defendant, a felon on parole, was stopped in the Daley Center going through security with four dangerous knives in his briefcase. Deputy Sheriff Jevtic testified that, after seeing the knives via the magnetometer screen, he searched defendant's briefcase and found the four knives. Defendant's cellmate at Cook County Jail, Gary Miller, testified that defendant told him he brought the knives into the Daley Center as a test to "see what he could get away with" and that he expected security might just make him remove the knives from the building or throw them away since the knives were still in their packaging. Miller also testified that defendant told him Attorney McCaffrey was responsible for all of his legal troubles, that he intended to rape McCaffrey's daughter and kill McCaffrey's family. Additionally, Miller testified that defendant told him he "wanted to play with his knives" with a female Cook County judge. 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.

¶ 64 Having thoroughly reviewed the record on appeal, we find no error in the admission of this other-crimes evidence.

¶ 65 III. CONCLUSION

¶ 66 For all of the foregoing reasons, the decision of the Circuit Court of Cook County is affirmed.

¶ 67 Affirmed.