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2019 IL App (4th) 160789-U

NO. 4-16-0789

FILED
May 13, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
LAWRENCE BUNKLEY,	)	No. 15CF1460
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) any error in the admission of photographs of text messages was harmless, (2) the trial court properly admitted evidence of defendant's other bad acts, and (3) defendant appropriately received an extended-term sentence for driving while license suspended.

¶ 2 In April 2016, a jury found defendant, Lawrence Bunkley, guilty of (1) unlawful delivery of a controlled substance within 1000 feet of a church (cocaine) (720 ILCS 570/407(b)(2) (West 2016)) (count I), a Class 1 felony; (2) unlawful delivery of a controlled substance (cocaine) (720 ILCS 570/401(d)(i) (West 2016)) (count II), a Class 2 felony; (3) unlawful delivery of a controlled substance within 1000 feet of a church (heroin) (720 ILCS 570/407(b)(2) (West 2016)) (count III), a Class 1 felony; (4) unlawful delivery of a controlled substance (heroin) (720 ILCS 570/401(d)(i) (West 2016)) (count IV), a Class 2 felony; (5) endangering the life or health of a child (720 ILCS 5/12C-5(a)(1) (West 2016)) (count V), a

Class A misdemeanor; and (6) driving while license revoked or suspended-subsequent offense (625 ILCS 5/6-303(a) (West 2016)) (count VI), a Class 4 felony.

¶ 3 At sentencing, the trial court merged count II with count I and count IV with count III. The court sentenced defendant to 11 years in prison on count I and count III, a 364-day sentence on count V to merge into the felony disposition, and a 4-year extended-term sentence on count VI, all to run concurrently.

¶ 4 Defendant appeals, arguing the trial court (1) erred in admitting photographs of prejudicial text messages where the State failed to lay an adequate foundation for admission and the text messages contained inadmissible hearsay, (2) erred in admitting evidence of other bad acts and in giving a prejudicial limiting instruction, and (3) improperly sentenced defendant to an extended term on his driving-while-license-suspended conviction where it was not the highest class felony of which he was convicted. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2015, the State charged defendant with (1) unlawful delivery of a controlled substance within 1000 feet of a church (cocaine) (720 ILCS 570/407(b)(2) (West 2016)) (count I), a Class 1 felony; (2) unlawful delivery of a controlled substance (cocaine) (720 ILCS 570/401(d)(i) (West 2016)) (count II), a Class 2 felony; (3) unlawful delivery of a controlled substance within 1000 feet of a church (heroin) (720 ILCS 570/407(b)(2) (West 2016)) (count III), a Class 1 felony; (4) unlawful delivery of a controlled substance (heroin) (720 ILCS 570/401(d)(i) (West 2016)) (count IV), a Class 2 felony; (5) endangering the life or health of a child (720 ILCS 5/12C-5(a)(1) (West 2016)) (count V), a Class A misdemeanor; and (6) driving while license revoked or suspended-subsequent offense (625 ILCS 5/6-303(a) (West 2016)) (count VI), a Class 4 felony. The charges all stemmed from December 15, 2015, when

defendant engaged in a controlled buy with a Bloomington Police Department confidential source at a gas station in Bloomington, Illinois. The State proceeded to trial on all six counts.

¶ 7 A. Motion *in Limine*

¶ 8 In April 2016, prior to the start of trial, defendant filed a motion *in limine* asking the trial court to bar any reference to his other crimes or bad acts where such evidence would be more prejudicial than probative and would deny defendant a fair trial. Specifically, defendant referenced a video-recorded statement he made to police after his arrest where he indicated that he previously drove codefendant Jamie Peck around in Lincoln, Illinois, and Springfield, Illinois. "The direct or indirect implication is that [d]efendant drove Ms. Peck around as part of her alleged drug deliveries."

¶ 9 At the hearing on the motion *in limine*, defense counsel alleged that he expected Peck to also testify concerning how she knew defendant from other dates and situations. The State asserted that defendant's statement to police and Peck's anticipated testimony at trial established the basis of defendant's and Peck's relationship. Specifically, the State argued the evidence was admissible under Illinois Rule of Evidence 404(b) (eff. Jan. 1 2011) to prove intent and absence of mistake. The trial court concluded the motion *in limine* only included defendant's video-recorded statement and found the evidence admissible to show identity and intent.

¶ 10 B. Defendant's Jury Trial

¶ 11 Following the trial court's ruling on the motion *in limine*, the jury heard the following evidence, in relevant part.

¶ 12 1. *Carrie Robbins*

¶ 13 Carrie Robbins, a confidential source for the Bloomington Police Department, testified that on December 15, 2015, she contacted the intended target, Jamie Peck, to obtain

cocaine and heroin in a controlled buy conducted by the Bloomington Police Department. Robbins testified that Peck previously gave Robbins her phone number and she mainly communicated with Peck through text messages. After Robbins asked Peck for cocaine and heroin, Peck agreed to meet Robbins at a gas station in Bloomington. Prior to meeting Peck, Robbins met with Bloomington Police Department Detective Jared Bierbaum, who searched Robbins and gave her $200 in cash to pay for the drugs. Detective Bierbaum sat across the street from the gas station during the controlled buy.

¶ 14 Eventually, Robbins received a text message from Peck informing her that she was almost to the gas station. Shortly after receiving the text, Robbins observed a pickup truck driven by a black male and occupied by Peck and another female pull into the gas station. Robbins testified that when the pickup truck pulled into the gas station she stood next to the wall of the gas station and witnessed the black male park the truck then go inside the gas station. At that time, Robbins proceeded to walk over to the pickup truck.

¶ 15 Robbins testified she walked up to the passenger side of the truck where she made contact with Peck. She observed a child inside the pickup truck. According to Robbins, she handed Peck the $200 Detective Bierbaum gave to her. Peck counted the money then passed the money to the other female in the vehicle who also counted the money. Robbins testified that when defendant came back to the truck she believed the other female gave the $200 to him and then defendant pulled out little bags of what she believed to be cocaine and heroin. Defendant handed the little bags of drugs to Peck who in turn handed them to Robbins.

¶ 16 After Robbins exchanged the $200 for the drugs, she returned to Detective Bierbaum's vehicle parked across the street. Robbins returned with 0.7 grams of cocaine and 0.2 grams of heroin. Robbins testified that she became a confidential source for the Bloomington

Police Department because she had a drug problem but that at the time of the controlled buy she was clean.

¶ 17 2. *Jamie Peck*

¶ 18 Codefendant Peck testified that she provided Robbins with her phone number and communicated with Robbins on occasion to provide drugs. On December 15, 2015, Peck testified that Robbins contacted her by text message to obtain cocaine and heroin. When the State asked Peck about the content of that conversation, defense counsel objected on hearsay and foundation grounds. The trial court sustained the hearsay objection. The State then asked Peck to explain what she personally told Robbins during the conversation. Peck stated that she told Robbins she could not provide Robbins with defendant's phone number because he did not give her permission. Peck continued by saying that she was not able to come to Bloomington because defendant had his kids with him, so it would just be defendant. Defense counsel objected on hearsay grounds, and the court allowed the jury to consider the answer not for the truth of the matter asserted but for what Peck recalled telling Robbins.

¶ 19 Peck identified People's exhibit No. 11 as a fair and accurate depiction of a text message she sent to Robbins on December 15, 2015. When the State asked Peck to read the text message, defense counsel objected stating, "Same way, Your Honor, I'd like to make it a continuing objection that this text communication was never authenticated by Miss Robbins, and we believe that it's improper for the State to try to introduce this and essentially let this witness read her testimony." The trial court responded, "I understand. The additional foundation that's required at this time as the objection is sustained is there has not been an identification via this particular exhibit that this witness sent the text message to a number that she knew to be associated with Carrie Robbins."

Peck then testified that she recognized People's exhibit No. 11 as a text message she sent to Robbins. Peck knew she texted Robbins because she sent the message to the number Robbins provided and she previously communicated with Robbins at that number. The trial court allowed Peck to read the text message over defense counsel's continuing objection, finding the State laid a sufficient foundation.

¶ 20 Peck read: "It says, no, I'm not. It's either you want it or you don't. As simple as that. You been blowing me up and this my main guy. If you're scared, then why fuck with the shit cause what you saying sound fishy as fuck. I ain't never been on BS ever. I haven't done you wrong, none. I've only got a little shit from you once. I'm not making shit or getting shit, so, yeah." Peck testified that her "main guy" referenced in the text message referred to defendant.

¶ 21 Peck identified People's exhibit No. 12 as an accurate depiction of a text message she sent to Robbins on December 15, 2015. She knew the text message was sent to Robbins because it was the same phone number she previously texted. When asked to read to the jury the text message that she wrote to Robbins, defense counsel objected. The trial court initially sustained the objection as to foundation, finding no relevance as to time and date of the text message. Peck then testified to the continuing nature of the text communication between her and Robbins. The court allowed Peck to read the text message over objection. Peck read: "He got your number. You thought I was bad or tone wait you going to hear it also." Peck testified this meant defendant planned to contact Robbins.

¶ 22 Peck continued communicating with Robbins over text message and Peck knew she was speaking with Robbins because Robbins responded. Peck identified People's exhibit No. 13 as an accurate depiction of a text message sent to Robbins on December 15, 2015. Peck read

the text message she sent to Robbins for the jury: "And I just fucking told you he in a pickup truck with his damn kids. I'm not riding from Lincoln to Bloomington in the back with no damn topper. He got your damn number. On my way. Where you at?" Peck stated "he" referred to defendant. Peck testified to defendant being her drug supplier.

¶ 23 The trial court admitted People's exhibit Nos. 11, 12, and 13 over defense counsel's "same noted objection." Peck testified the text messages contained timestamps of 6:18 p.m., 6:40 p.m., and 6:48 p.m. on December 15, 2015.

¶ 24 Peck testified that on December 15, 2015, defendant drove her, his girlfriend Ashley Eller, and defendant's child from Lincoln, Illinois, to the gas station in Bloomington where the controlled buy took place. When they arrived at the gas station, Peck contacted Robbins. Defendant went inside the gas station and Robbins walked up to the truck. Peck testified defendant eventually came back to the truck and retrieved the drugs from underneath his sun visor. Robbins handed Peck $200 that Peck counted then handed to Eller who counted the money then handed it to defendant. After defendant received the money, he handed the drugs to Eller, who handed them to Peck, who in turn handed the drugs to Robbins. Peck handed Robbins two different substances that she believed to be heroin and cocaine.

¶ 25 Peck testified that after they left the gas station, officers from the Bloomington Police Department pulled them over. The officers arrested the three adults in the truck. The State charged Peck in the case and she testified she hoped to receive probation based on her testimony.

¶ 26 3. *Detective Jared Bierbaum*

¶ 27 Detective Bierbaum, a vice detective with the Bloomington Police Department, testified that he set up the controlled-buy transaction through a series of text messages between

confidential source Robbins and codefendant Peck. Bierbaum saw the text messages between Robbins and Peck.

¶ 28 Detective Bierbaum testified that on December 15, 2015, he searched Robbins prior to the controlled buy and that she was not on any drugs. He previously worked with Robbins as a confidential source. Detective Bierbaum provided Robbins with $200 to buy the drugs. After the controlled buy, Detective Bierbaum took possession of the drugs and searched Robbins. The arresting officers found the same $200 Detective Bierbaum provided Robbins in defendant's pocket. Detective Bierbaum testified to the gas station being within 1000 feet of a church.

¶ 29 4. *Defendant's Video-Recorded Statement*

¶ 30 The trial court admitted, over objection, a redacted version of defendant's video-recorded statement following his arrest. In defendant's statement to police, he stated that he knew what kind of business Peck had in Bloomington on December 15, 2015, because he previously accompanied Peck on drug deliveries in Springfield and Lincoln. Defendant told police Peck owed him money for riding around and providing bodyguard-like services. Specifically, defendant stated, "I was like the fucking a[*sic*] protector."

¶ 31 5. *Jury Instruction*

¶ 32 At the jury instruction conference, defense counsel asked for a jury instruction on "conduct" rather than "offenses" when referring to prior bad acts defendant engaged in. The State requested a jury instruction limiting consideration of the prior bad acts evidence to the issues of identification, intent, knowledge, and plan. The trial court refused both instructions and gave the following instruction: "Evidence has been received that the defendant has been involved in offenses other than that charged in the indictment. This evidence has been received on the

issues of the defendant's identification and intent and may be considered by you only for the limited purpose. It is for you to determine whether the defendant was involved in those offenses and, if so, what weight should be given to this evidence on the issues of defendant's identification and intent."

¶ 33 6. *Jury's Verdict*

¶ 34 The jury found defendant guilty on all six counts.

¶ 35 C. Posttrial Proceedings

¶ 36 In defendant's posttrial motion, he asserted that the trial court erred in overruling defendant's objection to hearsay statements by Robbins received through text message and overruling defendant's objection to People's exhibit Nos. 11, 12, and 13, on the grounds of foundation, authentication, and relevance. The court denied his motion.

¶ 37 At sentencing, the trial court merged count II with count I and count IV with count III. The court sentenced defendant to 11 years in prison on count I and count III, a 364-day sentence on count V to merge into the felony disposition, and a 4-year extended-term sentence on count VI, all to run concurrently.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, defendant argues the trial court (1) erred in admitting photographs of prejudicial text messages where the State failed to lay an adequate foundation for admission and the text messages contained inadmissible hearsay, (2) erred in admitting evidence of other bad acts and in giving a prejudicial limiting instruction, and (3) improperly sentenced defendant to an extended term on his driving-while-license-suspended conviction where it was not the highest class felony of which he was convicted. For the following reasons, we affirm.

¶ 41 A. Documentary Evidence of Codefendant's Text Messages

¶ 42 Defendant argues the trial court erred in admitting photographs of prejudicial text messages where the State failed to lay an adequate foundation for admission and the text messages contained inadmissible hearsay. The State disagrees and argues the court properly admitted the documentary evidence of Peck's text messages to Robbins.

¶ 43 "The admission of evidence is within the sound discretion of a trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion." *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). Under the abuse of discretion standard, "[t]he reviewing court owes some deference to the trial court's ability to evaluate the impact of the evidence on the jury." *People v. Donoho*, 204 Ill. 2d 159, 186, 788 N.E.2d 707, 723 (2003). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000). Reasonable minds can disagree about whether certain evidence is admissible without requiring a reversal of a trial court's evidentiary ruling. *Donoho*, 204 Ill. 2d at 186.

¶ 44 1. *Foundation*

¶ 45 When establishing a proper foundation for admissibility, "text messages are treated like any other form of documentary evidence." *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 36, 25 N.E.3d 1189. "A proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated." *Id.* To authenticate a document, the proponent must present evidence that the document is what the proponent claims it to be. *Id.*; Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). "The proponent need only prove a rational

basis upon which the fact finder may conclude that the document did in fact belong to or was authored by the party alleged." *Watkins*, 2015 IL App (3d) 120882, ¶ 36.

¶ 46 A text message "may be authenticated by either direct or circumstantial evidence." *Id.* ¶ 37. Circumstantial evidence of authenticity includes such factors as "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Ill. R. Evid. 901(b)(4) (eff. Jan. 1, 2011). Therefore, documentary evidence may be authenticated by its contents if it is shown to contain information that would only be known by the alleged author of the document or, at the very least, by a small group of people including the alleged author. *People v. Downin*, 357 Ill. App. 3d 193, 203, 828 N.E.2d 341, 350 (2005).

¶ 47 "The trial court, serving a limited screening function, must then determine whether the evidence of authentication, viewed in the light most favorable to the proponent, is sufficient for a reasonable juror to conclude that authentication of the particular item of evidence is more probably true than not." *Watkins*, 2015 IL App (3d) 120882, ¶ 36. "If the trial court, after serving its screening function, allows the evidence to be admitted, the issue of authorship of the document is then ultimately up to the jury to determine." *Id.*

¶ 48 Defendant argues the State failed to lay an adequate foundation for the admission of People's exhibits Nos. 11, 12, and 13, depicting photographs of Peck's text messages to Robbins. We disagree and find the State presented sufficient evidence to authenticate the text messages.

¶ 49 During her testimony, Peck identified People's exhibits Nos. 11, 12, and 13 as accurate depictions of the text messages she sent to Robbins on December 15, 2015. She testified to authoring and personally sending the text messages to a phone number she knew to be

Robbins because she previously communicated with Robbins at that number. She expressed the continuing nature of the text messages by testifying to the time stamps of the text messages she sent on the day of the controlled buy.

¶ 50 While defendant argues our case is analogous to *Watkins*, we find *Watkins* distinguishable. In *Watkins*, 2015 IL App (3d) 120882, ¶ 38, the appellate court found the State failed to lay an adequate foundation to authenticate photographs of text messages supposedly sent by the defendant. The State tried to show that the defendant used a cell phone found in a drawer with drugs, thus connecting the defendant and the drugs. *Id.* ¶ 34. However, no evidence suggested the defendant sent or received text messages other than a reference to the first name of the defendant in the text messages. *Id.* ¶ 38. A police officer testified to the true and accurate depiction of the text messages, but the officer lacked personal knowledge of the text messages. *Id.*

¶ 51 Here, Peck testified to the authenticity of the text messages where she sent the text messages to a phone number she knew to belong to Robbins because she previously communicated with Robbins at that number. Our case more closely aligns with *People v. Ziemba*, 2018 IL App (2d) 170048, ¶ 53, 100 N.E.3d 635, where an undercover police officer who personally sent and received text messages testified to the accuracy of the transcript of the conversation.

¶ 52 Even though Peck did not take the photographs of the text messages, this failed to preclude her from identifying the texts as her own. See Ill. R. Evid. 901(b)(1) (eff. Jan. 11, 2011) (testimony of witness with knowledge that document is what it is claimed to be is sufficient authentication). Notably, Peck testified only to text messages she personally sent to Robbins.

¶ 53 Furthermore, Robbins and Bierbaum testified that the drug deal took place on December 15, 2015, after being set up through a series of text messages between Peck and Robbins. The fact that the controlled buy actually occurred infers that Robbins received, read, and acted upon the text messages. We find Peck's testimony, in conjunction with the other circumstantial evidence, provided a rational basis upon which the jury could conclude that Peck authored and sent the text messages to Robbins. Therefore, we conclude the trial court did not error in admitting the documentary evidence of Peck's text messages.

¶ 54 2. *Hearsay*

¶ 55 Defendant also asserts the contents of the text messages contained impermissible hearsay. The State argues defendant forfeited any challenge to the admission of the text messages on hearsay grounds because he failed to object with specificity at trial or in his posttrial motion. We find defendant did not forfeit his hearsay argument where he properly objected at trial and included his hearsay objection in a posttrial motion. However, assuming *arguendo* that the trial court improperly allowed the text messages into evidence, we find any error harmless.

¶ 56 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). "The admission of hearsay evidence is harmless error where there is no reasonable probability that the jury would have acquitted defendant absent the hearsay testimony." *People v. Shorty*, 408 Ill. App. 3d 504, 512, 946 N.E.2d 474, 482 (2011). In this matter, the evidence overwhelmingly established defendant's guilt. Not only did defendant appear at the location for the drug buy, he exited his vehicle, made eye contact with Robbins, and then nodded his head toward the truck from which Robbins ultimately purchased the drugs. Although defendant claimed to be there only to provide protection, he admitted being aware that the purpose of the trip was to sell drugs. The evidence strongly suggested the drug

transaction took place after defendant returned to the truck. Following defendant's return to the truck, Robbins stayed at the truck for a period of time and then returned to Officer Bierbaum in possession of the drugs she purchased. Notably, both Robbins and Peck indicated defendant eventually returned to the truck and personally retrieved the drugs sold to Robbins. Moreover, the police found the buy money in defendant's possession. Finally, when interviewed defendant told various stories in an attempt to explain why police found all of the buy money in his possession. Thus, even excluding the text messages, there is no reasonable probability that the jury would have acquitted defendant.

¶ 57 B. Other Bad Acts

¶ 58 Defendant next argues the trial court erred in admitting evidence of other bad acts and in giving a prejudicial limiting instruction. The State argues the court did not err in admitting evidence of defendant's other bad acts where defendant's statement to police was admissible to prove identity and intent. We agree with the State.

¶ 59 Evidence of other offenses is admissible if relevant for any purpose other than to show a mere propensity on the part of the defendant to commit the crime. *People v. Batinich*, 196 Ill. App. 3d 1078, 1083, 554 N.E.2d 613, 618 (1990). Permissible purposes for other-crimes evidence include motive, intent, identity, lack of mistake, and *modus operandi*. *People v. Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119. Other-crimes evidence is admissible if it is part of a continuing narrative of the event giving rise to the offense, is intertwined with the charged offense, or explains an aspect of the charge that would otherwise be implausible or inexplicable. *People v. Slater*, 393 Ill. App. 3d 977, 992-93, 924 N.E.2d 1039, 1052 (2009).

¶ 60 Where other-crimes evidence is offered for a permissible purpose, such evidence will not be admitted if its prejudicial impact outweighs its probative value. *Chapman*, 2012 IL

111896, ¶ 19; Ill. R. Evid. 403 (eff. Jan 1, 2011). The admissibility of other-crimes evidence is within the sound discretion of the trial court and should not be disturbed absent a clear abuse of discretion. *Chapman*, 2012 IL 111896, ¶ 19.

¶ 61 The trial court found evidence of defendant's other bad acts admissible to show identity and intent. This case is analogous to *People v. Lopez*, 10 Ill. 2d 237, 239-40, 139 N.E.2d 724, 725 (1957), where the court found that the testimony—regarding three previous occasions when the defendant sold narcotics to the same purchaser—was material to the defendant's identification and not rendered inadmissible because it also brought to the jury's attention evidence of three prior offenses.

¶ 62 Here, the prior interactions between Peck and defendant where defendant accompanied Peck on drug deliveries in Springfield and Lincoln set the background for the controlled buy in this case. Specifically, defendant's prior bad acts gave the jury a more accurate picture of how Peck and defendant knew each other. Peck and defendant's relationship consisted of defendant being a drug source and driving Peck around to drop off drugs. This relationship explained how Peck easily identified defendant as the individual who drove her to Bloomington and participated in the controlled buy. The prior interactions between defendant and Peck strengthened the identification of defendant in the controlled buy and removed any doubt that defendant's conduct during the controlled buy was inadvertent or innocent. See *People v. Cole*, 29 Ill. 2d 501, 504, 194 N.E.2d 269, 271 (1963).

¶ 63 The evidence of defendant's prior bad acts also established his intent to deliver the cocaine and heroin. After his arrest, defendant told police he knew what kind of business Peck planned to tend to in Bloomington. Based on that knowledge, he still agreed to drive Peck to Bloomington while also bringing along his child. Defendant drove to Bloomington on a

suspended license all while knowing the intended plan—to deliver drugs—once they arrived at the gas station. Therefore, any argument on defendant's part claiming a lack of knowledge and intent is unpersuasive. Defendant's prior involvement with drug deliveries is relevant to establish defendant's intent. See *People v. Davis*, 248 Ill. App. 3d 886, 892, 617 N.E.2d 1381, 1385-86 (1993) (Evidence of the defendant's prior sales was relevant to refute the defendant's claims that he had nothing to do with the drug deal.).

¶ 64 Furthermore, we find the probative value of the other-crimes evidence substantially outweighed the prejudicial impact. While defendant's statements to police implied his knowledge of the prior drug deliveries, the evidence related to the prior incidents was not that defendant was the supplier of the drugs but that he rode around with Peck to provide her protection. The State did not use defendant's prior bad acts to argue defendant's propensity to commit the crimes but to show his identity and intent. While the evidence against defendant was circumstantial, it was overwhelming. Both Peck and Robbins testified to defendant handing the cocaine and heroin to Robbins via Peck. Also, the arresting officers found the $200 given to Robbins to complete the controlled buy in defendant's pocket upon arrest.

¶ 65 We also find the evidence supporting defendant's conviction for endangering the life or health of a child overwhelming. Both Peck and Robbins testified to defendant's child being in the truck during the controlled buy. Therefore, the jury's reliance on the other-crimes evidence was not crucial in convicting defendant.

¶ 66 The trial court took care to minimize the prejudice to defendant by giving the jury a limiting instruction. A limiting instruction reduces any prejudice created by admitting other-crimes evidence. *People v. Hayes*, 319 Ill. App. 3d 810, 820, 745 N.E.2d 31, 41 (2001). The instruction prevented the jury from considering the evidence as evidence of defendant's

propensity to commit a crime. Nothing in the record implies the jury considered the other-crimes evidence for anything other than its valid and limited purpose.

¶ 67 It is within the trial court's discretion to determine which instruction it submits to the jury. *People v. Johnson*, 236 Ill. App. 3d 125, 137, 603 N.E.2d 624, 632 (1992). Absent a clear abuse of discretion, a court's determination of the form in which an instruction is given will not be disturbed on review. *People v. Leaks*, 179 Ill. App. 3d 231, 241, 534 N.E.2d 491, 496 (1989).

¶ 68 Defendant argues the trial court erred in allowing the word "offenses" rather than "conduct" in the limiting jury instruction. Specifically, defendant argues the term "offenses" implies defendant was or should have been charged with a crime. However, defendant fails to cite any authority to support his argument. See *People v. Williams*, 384 Ill. App. 3d 327, 340, 892 N.E.2d 620, 632 (2008) (Defendant cites no authority for the argument that the jury instructions must apportion the acts.). We are not persuaded by defendant's argument that the use of "offenses" over "conduct" increased the harm caused by admitting evidence that defendant previously sold drugs with Peck.

¶ 69 We find the trial court did not abuse its discretion in admitting evidence of defendant's other bad acts or in giving a limiting instruction to the jury. Therefore, we affirm the court's judgment.

¶ 70 C. Extended-Term Sentencing

¶ 71 Lastly, defendant argues the trial court erred in imposing an extended-term sentence for the Class 4 felony of driving while license suspended. Defendant contends the extended-term sentence violates the prohibition against imposing an extended-term sentence on a

lesser class felony offense given defendant's two Class 1 felony unlawful delivery of a controlled substance within 1000 feet of a church convictions.

¶ 72 While the State argues defendant forfeited his claim because he failed to challenge his sentence in the trial court, after *People v. Castleberry*, 2015 IL 116916, ¶ 19, 43 N.E.3d 932, the State acknowledges a defendant can forfeit a claim but still have his sentence reviewed if he satisfies the requirements of the plain-error analysis. See *People v. White*, 2016 IL App (2d) 140479, ¶ 41, 59 N.E.3d 156. However, the State argues no clear error occurred. We agree with the State.

¶ 73 The first step of the plain-error analysis is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007). "In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010).

¶ 74 "A defendant convicted of multiple offenses of differing classes may be sentenced to an extended-term sentence pursuant to section 5-8-2(a) of the Unified Code of Corrections (730 ILCS 5/5-8-2(a) West 2012)) only on those offenses within the most serious class." *People v. Palen,* 2016 IL App (4th) 140228, ¶ 76, 64 N.E.3d 181. However, an exception allowing the imposition of extended-term sentences on differing class offenses exists if the offenses arise from unrelated courses of conduct. *Id.* To determine whether offenses arise from unrelated courses of conduct, we consider whether there was a substantial change in the nature of the criminal objective. *People v. Bell*, 196 Ill. 2d 343, 347, 751 N.E.2d 1143, 1145 (2001). In the event of a change in the nature of the criminal objective, an unrelated course of conduct exists and makes way for extended-term sentencing. *Id.* Finally, because the trial court had broad

discretion in imposing a sentence, we will not overturn defendant's sentence absent an abuse of discretion. *Id.*

¶ 75 Here, defendant argues the offenses of unlawful delivery of a controlled substance and driving while license suspended arose from the same course of conduct where defendant allegedly drove to the gas station—on a suspended license—with the intent to sell drugs to Robbins in exchange for money. See *People v. Jophlin*, 2018 IL App (4th) 150802, 99 N.E.3d 597 (The appellate court found sufficient evidence that the defendant previously drove on a highway prior to arriving at the gas station to support his conviction for driving on a revoked license.). Defendant argues but for him driving to the gas station in Bloomington, the delivery of drugs would not have taken place. Furthermore, defendant testified he delivered the drugs to Robbins out of his vehicle.

¶ 76 Defendant is correct that he drove to the gas station to deliver drugs to Robbins, but he offers no argument as to how driving with a suspended license and unlawful delivery of a controlled substance represent the same criminal objective. While the delivery of the cocaine and heroin may not have occurred if defendant did not drive to Bloomington, the fact that his license had been suspended did not have a causal relationship to the unlawful delivery of the controlled substances. See *People v. Tillery,* 141 Ill. App. 3d 610, 615-16, 490 N.E.2d 967, 971 (1986) (The appellate court affirmed finding consecutive sentences proper for driving under a suspended license and reckless homicide where the offenses were not committed as part of the same course of conduct.). Accordingly, we find defendant failed to establish that his actions were part of the same course of conduct.

¶ 77 We find the trial court did not err when it sentenced defendant to a four-year extended term on his driving-while-license-suspended conviction. Accordingly, we affirm the court's judgment.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 80 Affirmed.