NOTICE
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2011 IL App (4th) 110062-U

Filed 11/3/11

No. 4-11-0062

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	) Appeal from
v.	) Circuit Court of
MICHAEL C. KNUTH, Defendant-Appellant.	) Logan County
	) No. 09CF129
	)
	) Honorable
	) Thomas M. Harris, Jr.,
	) Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the defendant's conviction and sentence, concluding that (1) the evidence presented was sufficient to convict the defendant of attempt (first degree murder) and (2) the trial court's erroneous admission of other-crimes evidence was harmless.

¶ 2 In July 2009, the State charged defendant, Michael C. Knuth, with (1) attempt (first degree murder) (720 ILCS 5/8-4(c)(1)(A), 9-1(a)(1) (West 2008)) and (2) aggravated discharge of a firearm (720 ILCS 5/24-1.2(b) (West 2008)), based on a July 20, 2009, incident involving Lincoln Police Chief Stuart Erlenbush. The State also charged defendant with possession of a weapon by a felon (720 ILCS 5/24-1.1(e) (West 2008)).

¶ 3 Shortly thereafter, the State charged defendant with an additional count of attempt (first degree murder), alleging that on July 20, 2009, defendant took a substantial step toward committing the offense of first degree murder by discharging a firearm at Megan Danielson.

(The trial court later instructed the jury as to the lesser-included offense of aggravated discharge of a firearm as to Danielson.)

¶ 4 Following a September 2010 trial, a jury convicted defendant of (1) attempt (first degree murder) as to Erlenbush, (2) aggravated discharge of a firearm as to Danielson, and (3) possession of a weapon by a felon. The trial court later sentenced defendant to consecutive prison terms of 45 years, 10 years, and 5 years, respectively.

¶ 5 Defendant appeals, arguing that (1) the State failed to prove him guilty beyond a reasonable doubt of attempt (first degree murder) and (2) the trial court abused its discretion by admitting certain other-crimes evidence. We affirm.

¶ 6 I. BACKGROUND

¶ 7 A. The State's Charges and the Parties' Respective Motions *in Limine*

¶ 8 In July 2009, the State charged defendant with (1) attempt (first degree murder) and (2) aggravated discharge of a firearm, based on a July 20, 2009, incident involving Erlenbush. The State also charged defendant with possession of a weapon by a felon (720 ILCS 5/24-1.1(e) (West 2008)). Thereafter, the State charged defendant with an additional count of attempt (first degree murder), alleging that on July 20, 2009, defendant took a substantial step toward committing the offense of first degree murder by discharging a firearm at Danielson.

¶ 9 In September 2009, defendant filed a motion *in limine*, seeking to prohibit the State from introducing evidence of other crimes unrelated to the State's charges. In October 2009, the State filed a motion *in limine* seeking, in pertinent part, to introduce evidence of defendant's July 2009 (1) robbery of a cellular phone and (2) theft of a firearm. The State contended this evidence was admissible pursuant to the continuing-narrative exception to the

general rule against the admission of other-crimes evidence. The trial court later granted the State's motion *in limine*, allowing the State to introduce the aforementioned other-crimes evidence subject to a limiting instruction to the jury.

¶ 10 B. The Evidence Presented at Defendant's Jury Trial

¶ 11 Immediately prior to the State's calling Nathan Tafoya, the alleged victim of the cellular-phone robbery, the trial court gave the jury the following limiting jury instruction:

> "Evidence will be received during the testimony of this next witness that the Defendant has been involved in conduct other than charged in the information.
>
> This evidence will be received on the issue of defendant's conduct as part of a narrative of events to explain the aspect of the offenses charged in the information and may be considered by you only for that limited purpose.
>
> It is for you to determine whether the defendant was involved in that conduct and, if so, what weight should be given to this evidence regarding a continuing narrative of events to explain the aspects of the events charged in the information."

¶ 12 Thereafter, Tafoya testified that on July 20, 2009, at about 12:15 a.m., he was walking with 14-year-old Austin Moore toward Moore's home when he heard someone from behind yell, "Hey!" Tafoya turned around and saw two men, one of whom was defendant. Moore approached the two men, spoke briefly with them, and all three walked to where Tafoya was standing. Defendant, whom Tafoya had seen before, asked him whether he "had anything

*** on [him]." Tafoya responded that he had a cellular phone. Defendant ordered Tafoya to give it to him. When Tafoya hesitated, the second man hit Tafoya, causing him to fall to the ground. While on the ground, Tafoya gave his phone to the second man, who then proceeded to kick him in the ribs. At the same time, defendant kicked Tafoya in the head. Moore helped Tafoya to his feet and they both ran to Moore's home.

¶ 13 Anne Sanders testified that on July 20, 2009, at about 7 p.m., she drove to her home with her friend, Danielson. After parking in front of her house, Sanders noticed defendant–whom she had known for five years–drinking beer as he leaned against a parked truck. Sanders went into her home for a short time while Danielson remained in the passenger seat of Sanders' four-door sports utility vehicle (SUV). After Sanders returned to the driver's seat of her SUV, defendant approached and began speaking to her about a tattoo. Shortly thereafter, defendant's demeanor changed and he "acted" as though he was mad. Defendant then told Sanders and Danielson, "[E]xcuse me bitches, give me your money." After Sanders responded that she did not have any money, defendant walked around the SUV to the rear passenger door and sat "halfway in and halfway out" in the seat behind Danielson with the door open. Defendant again demanded money from Sanders and Danielson.

¶ 14 Sanders thought defendant was joking but realized he was serious when she turned to look at defendant and saw that he was pointing a handgun at her. Sanders immediately shifted the SUV into reverse and applied the gas, which caused defendant to fall out of the SUV. Defendant walked to the passenger side door–where Danielson remained seated–pointed a handgun at Danielson and pulled the trigger. The gun did not fire. Defendant then walked backward, while still facing the SUV. Sanders exited the SUV and started running toward a

neighbor's home. As she did, she saw defendant lift his gun up and fire a shot at the passenger side of her SUV that impacted the roof. Defendant then ran down the street. Sanders kept running until she reached her neighbor's home, where she called the police. Sanders noted that on the day of the shooting, (1) defendant seemed drunk and (2) she had never before seen defendant act in that manner.

¶ 15 Danielson testified that on the afternoon of July 20, 2009, she was a passenger in a SUV driven by Sanders. After arriving at Sanders' home, Danielson saw defendant–whom she considered a friend–leaning up against a truck about 10 feet away. Sanders exited the SUV and went into her home. As Sanders was leaving her home, she spoke briefly with defendant but Danielson could not hear their conversation. Sanders returned to the driver's seat of her SUV and defendant entered the SUV through the rear passenger door. Danielson then heard defendant demand money from Sanders. When Sanders responded that she did not have any money, Danielson saw defendant brandish a handgun and insert a magazine. Defendant again demanded money from Sanders. Sanders pleaded with defendant to stop threatening her.

¶ 16 Defendant exited the car and stood approximately five inches outside the front passenger side door, where Danielson was sitting. Danielson stated that defendant then raised his gun, aimed it at her face, and pulled the trigger, but the gun did not fire. Defendant started to walk away. Danielson opened the passenger side door and told defendant, "[Y]ou dummy. There is not even bullets in that gun." Defendant–who was now about 10 feet away from the SUV–raised the gun in their direction and fired a shot. Sanders, startled, shifted the SUV into reverse and attempted to leave, but she hit the car parked behind her. As defendant ran away, Danielson used her cell phone to call the police.

¶ 17 John Newlun testified that on July 20, 2009, at about 7:45 p.m., he was in the front room of his house with his wife, Teresa Newlun, when he heard a knock on his kitchen door. John answered and observed a man–whom he had never seen before–leaning up against the washer and dryer of his laundry room, which was just inside the open back door of his home. Defendant introduced himself and asked John if he could come in and sit down. John replied, "No," but offered defendant a seat on a lawn chair located just outside his back door. John noted that defendant seemed, "confused" and "bewildered." Defendant declined John's offer, but asked whether John would give him a ride to Third street. John agreed.

¶ 18 John explained that because Teresa felt uneasy, she told him that she wanted to follow them in her SUV. John and defendant drove off in John's green truck, and Teresa followed. As John traveled on Decatur street, defendant asked him, "[Y]ou didn't call the cops, did you?" John responded, "No." Defendant then told John that he was "in a little bit of trouble." John drove further down the road and noticed the ejection port of a semiautomatic handgun near defendant's thigh. At that moment, John saw two marked police cars in front of his truck. Realizing that a gunfight could ensue, John (1) turned off the truck and removed the ignition key; (2) exited the car with his hands up, leaving the driver's side door open; and (3) slowly walked backward toward Teresa's SUV. John then heard officers ordering defendant to "put it down." At that point, a police officer grabbed John from behind and told him to get down. As he did, John heard about a dozen gunshots but did not see who was shooting.

¶ 19 Teresa's testimony was consistent with John's account except that Teresa added that after the officer pulled John to the ground, she saw defendant raise his right hand. Teresa then saw a muzzle flash, which she was familiar with based on her hunting background. Teresa

noted that the muzzle flash was directed at one of the police officers. Teresa acknowledged that she did not see defendant holding a handgun but instead saw only a muzzle flash coming from the inside of John's truck.

¶ 20 Lincoln police officer Michael Fruge testified that on July 20, 2009, at about 8 p.m., he received a dispatch concerning a shooting. Shortly thereafter, Fruge received a second dispatch informing him that the suspected shooter–identified as defendant–was seen in a green pickup truck traveling near the 400 block of Decatur street. Fruge noted that earlier, he had received an electronic dispatch that defendant was suspected of stealing a semiautomatic handgun earlier that morning. (Prior to Fruge's testifying about the theft of the handgun, the trial court provided the jury the aforementioned limiting instruction.)

¶ 21 Fruge proceeded to Decatur street, located the green truck, and effected a stop by blocking the truck head-on with his marked squad car. Seconds later, Erlenbush arrived and positioned his unmarked squad car at an angle facing the driver's side of the truck. Fruge (1) exited his squad car and moved toward the truck's passenger side door, where he saw defendant; (2) pointed his service revolver at defendant as he approached the truck; and (3) ordered defendant to show his hands. After repeating that command five more times, defendant raised his handgun in Erlenbush's direction. Fruge then fired nine rounds from his service revolver at defendant. (The jury was shown a video of the traffic stop from the vantage point of Fruge's squad car camera.)

¶ 22 Erlenbush's testimony was consistent with Fruge's account except he added that earlier that morning, he received information that defendant was suspected of stealing a semiautomatic handgun. (Prior to Erlenbush testifying about the theft of the handgun, the trial

court provided the jury the aforementioned limiting instruction.) In addition, Erlenbush noted that after he ordered defendant to show his hands, defendant raised his handgun at Erlenbush's head. Erlenbush instinctively ducked with such force that he fell to the ground. When he returned to his feet, Erlenbush saw defendant turning in Fruge's direction and became concerned for Fruge's life. Erlenbush then shot defendant twice. (The parties later stipulated that defendant was shot a total of nine times.) Erlenbush believed that at the time defendant pointed his handgun at him, defendant had fired a round. (The jury was also shown a video of the traffic stop from the vantage point of another officer's squad car camera.)

¶ 23 Erlenbush later returned to Decatur street, where the position of the truck defendant had been in was outlined in spray paint. Erlenbush stood as he had been on the evening of the shooting and surmised that the probable trajectory of the bullet defendant fired at him would have impacted one of two houses behind his position. (The parties stipulated that police later recovered a bullet from one of the homes Erlenbush identified.)

¶ 24 A forensic scientist testified that ballistics testing she performed on (1) two spent casings–one recovered from the vicinity of Sanders' home and one recovered from Decatur street–and (2) the bullet recovered from the home near Decatur street, revealed, to a reasonable degree of scientific certainty, that they were all fired from the semiautomatic handgun police seized from defendant.

¶ 25 Illinois State Police Special Agent Brad Sterling testified that he investigated the two shootings that occurred on July 20, 2009. On July 27, 2009, as part of that investigation, Sterling interviewed defendant. During the interview, defendant made, in pertinent part, the following statements: (1) he did not remember shooting at Danielson and (2) after the police

surrounded the pickup truck, he "knew it was over for [him]," so he fired at the officer first. (The jury was shown a digital recording of defendant's interview.)

¶ 26 C. The Jury's Verdict and the Trial Court's Sentence

¶ 27 At the close of evidence and outside the presence of the jury, the trial court granted the State's motion to instruct the jury on the lesser-included offense of aggravated discharge of a firearm as to Danielson. Thereafter, the jury convicted defendant of (1) attempt (first degree murder) as to Erlenbush, (2) aggravated discharge of a firearm as to Danielson, and (3) possession of a weapon by a felon. The court later sentenced defendant to consecutive prison terms of 45 years, 10 years, and 5 years, respectively.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt of attempt (first degree murder) and (2) the trial court abused its discretion by admitting certain other-crimes evidence. We address defendant's arguments in turn.

¶ 31 A. Sufficiency of the Evidence

¶ 32 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of attempt (first degree murder). We disagree.

¶ 33 1. *The Statutory Definition of Attempt (First Degree Murder)*

¶ 34 a. The Offense of Attempt

¶ 35 Section 8-4(a) of the Criminal Code of 1961 provides as follows:

> "A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial

step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2008).

¶ 36 b. The Offense of First Degree Murder

¶ 37 Section 9-1(a)(1) of the Code provides as follows:

"(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another[.]" 720 ILCS 5/9-1(a)(1) (West 2008).

¶ 38 2. *The Standard of Review*

¶ 39 In *People v. Roberson*, 401 Ill. App. 3d 758, 772, 927 N.E.2d 1277, 1290 (2010), this court noted the following standard for reviewing claims challenging the sufficiency of the evidence:

"When considering a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The appellate court's function is not to retry the defendant. [Citation.] A conviction will stand unless the evidence is so unreasonable, improbable, or

unsatisfactory that it justifies a reasonable doubt of defendant's guilt." (Internal quotations omitted.)

¶ 40 Intent is a state of mind that can be established by circumstantial evidence, including the character of the assault, the use of a deadly weapon, or other matters from which the intent to kill may be inferred. *People v. Barnes*, 364 Ill. App. 3d 888, 896, 847 N.E.2d 679, 685 (2006). Intent may be inferred when the evidence presented shows that the defendant voluntarily and willingly committed an act, the natural tendency of which is to destroy another's life. *Barnes*, 364 Ill. App. 3d at 896, 847 N.E.2d at 685-86.

¶ 41 3. *Defendant's Sufficiency-of-the-Evidence Claim*

¶ 42 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of attempt (first degree murder) because the evidence presented did not prove he had the requisite intent to kill Erlenbush. Although defendant concedes that he fired his weapon, he asserts that "there is no indication that [he] fired this round when Erlenbush was in [the] line of fire." In this regard, defendant claims that the testimony provided by Fruge and Erlenbush establishes that he "never fired at Erlenbush." The evidence presented, however, belies defendant's position.

¶ 43 In this case, the jury considered evidence that shows (1) upon exiting his car and drawing his weapon, Erlenbush approached the truck defendant was in, demanding that defendant show his hands; (2) instead of immediately complying with Erlenbush's commands, defendant brandished a handgun and pointed it directly at Erlenbush's head, (3) after the police surrounded the truck defendant was in, he "knew it was over for [him]," so he fired at Erlenbush first; and (4) the location of the bullet later recovered and identified as having been fired from

the handgun defendant possessed, was consistent with the testimony provided by Erlenbush, Fruge, and Teresa. Thus, given that the evidence showed defendant discharged a firearm in the direction of Erlenbush, we reject defendant's argument that the State's evidence was insufficient for a jury to find him guilty of attempted murder. See *People v. Johnson*, 368 Ill. App. 3d 1146, 1157, 859 N.E.2d 290, 301 (2006) (citing *People v. Valentin*, 347 Ill. App. 3d 946, 951, 808 N.E.2d 1056, 1061 (2004) (to convict a defendant of attempt (first degree murder), the State must prove beyond a reasonable doubt that the defendant, with the specific intent to kill, commits any act that constitutes a substantial step toward the commission of murder)).

¶ 44 B. Other-Crimes Evidence

¶ 45 Defendant also argues that the trial court abused its discretion by admitting certain other-crimes evidence. Although we agree with defendant, we conclude that defendant was not prejudiced by the admission of such evidence.

¶ 46 1. *The Continuing-Narrative Exception to Other-Crimes Evidence and the Standard of Review*

¶ 47 "Other-crimes evidence" encompasses misconduct or criminal acts that occur either before or after the allegedly criminal conduct for which the defendant is standing trial. *Johnson*, 368 Ill. App. 3d at 1154, 859 N.E.2d at 298. Such other-crimes evidence is inadmissible for the purpose of showing defendant's propensity to commit crime. *People v. Thompson*, 359 Ill. App. 3d 947, 951, 835 N.E.2d 933, 936 (2005). However, "[t]his court has specifically recognized evidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged." *Id.* Thus, other-crimes evidence is admissible as a part of a continuing narrative if such evidence explains certain aspects of the crime that would otherwise be implausible or

inexplicable. *People v. Slater*, 393 Ill. App. 3d 977, 992-93, 924 N.E.2d 1039, 1052 (2009); see also *People v. Adkins*, 239 Ill. 2d 1, 30-31, 940 N.E.2d 11, 28-29 (2010) (where the supreme court, in discussing the continuing-narrative exception to the general rule against the admissibility of other-crimes evidence, referred to this court's decision in *Slater*).

¶ 48 "The admissibility of other-crimes evidence is left to the trial court's discretion, and we will not disturb that decision absent a clear abuse of discretion." *People v. Carter*, 362 Ill. App. 3d 1180, 1188, 841 N.E.2d 1052, 1059 (2005). An abuse of discretion occurs when the court's decision is arbitrary or unreasonable or when no reasonable person would take the view adopted by the court. *Id.*

¶ 49 2. *Defendant's Claim Regarding the Admission of Other-Crimes Evidence*

¶ 50 In this case, the other-crimes evidence defendant claims the trial court erroneously admitted concerns the July 20, 2009, robbery and battery of Tafoya. In particular, defendant contends that his encounter with Tafoya and Moore was wholly unrelated to the State's charges and could only serve to show a propensity to commit crimes. In response, the State claims that Tafoya's testimony was necessary to the jury's understanding of the "series of events that led to defendant's possession of a handgun, and ultimately to the shootings that occurred with that handgun." We reject the State's contention and view it as completely without merit.

¶ 51 In *Johnson*, this court provided guidance concerning the appropriate application of the continuing-narrative exception to the general rule against the admission of other-crimes evidence. In that case, the defendant was charged with two counts of attempt (first degree murder) of a couple as they were in their apartment. *Johnson*, 368 Ill. App. 3d at 1149-50, 859 N.E.2d at 295. The State later filed a motion *in limine*, seeking to introduce other-crimes

evidence regarding (1) other shootings that defendant committed in retaliation for the death of his friend on the same day as the shooting involving the couple and (2) the gang affiliation of defendant, his deceased friend, and others. *Johnson*, 368 Ill. App. 3d at 1150, 859 N.E.2d at 295. The trial court granted the State's motion, finding that the other-crimes evidence was "inextricably connected to the issues" of the case. *Id*.

¶ 52 On appeal, this court affirmed the trial court's decision, concluding, in pertinent part, that the other-crimes evidence was properly admitted under the continuing-narrative exception to the general rule against other-crimes evidence because without that evidence, the defendant's bursting into the couple's apartment–who were total strangers to defendant–and shooting them for no apparent reason was inexplicable. *Johnson*, 368 Ill. App. 3d at 1156, 859 N.E.2d at 299. Specifically, the State sought admission of the other-crimes evidence to show that the defendant mistakenly entered the couple's apartment–believing it to be the apartment of a rival gang member he was looking for–intending to exact revenge for his friend's death. *Johnson*, 368 Ill. App. 3d at 1159, 859 N.E.2d at 300.

¶ 53 In this case, the State posits that without Tafoya's testimony, the jury would not know (1) how and why defendant possessed a stolen handgun and (2) why police considered defendant armed. We note that although the State is entitled to present evidence to explain the circumstances surrounding the initial involvement of the police, that evidence is subject to limitations. Indeed, in *People v. Cameron*, 189 Ill. App. 3d 998, 546 N.E.2d 259 (1989), this court wrote the following:

> " 'In criminal cases, an arresting or investigating officer should not be put in the false position of seeming just to have

> happened upon the scene; he should be allowed some explanation of his presence and conduct. His testimony that he acted "upon information received," or words to that effect, should be sufficient. Nevertheless, cases abound in which the officer is allowed to relate historical aspects of the case, replete with hearsay statements in the form of complaints and reports, on the ground that he was entitled to give the information upon which he acted. The need for the evidence is slight, the likelihood of misuse great.' " *Cameron*, 189 Ill. App. 3d at 1004, 546 N.E.2d at 263 (quoting Kenneth S. Brown, *et al.*, McCormick on Evidence § 249, at 734 (Edward W. Cleary ed., 3d ed.1984)).

See also *People v. Shorty*, 408 Ill. App. 3d 504, 510-11, 946 N.E.2d 474, 480-81 (2011) (quoting *Cameron* approvingly).

¶ 54 Here, the record shows that the officers' belief that defendant was armed with a handgun was established by the trial court's admission of other-crimes evidence concerning defendant's theft of a semiautomatic weapon, which we note defendant does not contest on appeal. The awareness of the police that defendant was armed and dangerous was also established by the evidence of Danielson's call to the police, less than an hour before the police roadblock that caused John to stop the truck he was driving in which defendant was a passenger. Under these circumstances, the State's claim that the mugging of Tafoya was admissible as a continuing-narrative exception to the normal rule against the admissibility of other-crimes evidence is totally without merit, and the trial court should have rejected it. There is *literally* no

aspect of the crimes charged against defendant that otherwise would be "implausible or perhaps even inexplicable" absent evidence of defendant's mugging of Tafoya in the early morning hours of July 20, 2009. *Carter*, 362 Ill. App. 3d at 1190, 841 N.E.2d at 1060. That mugging was entirely separate, distinct, and unrelated to the circumstances of how defendant found himself, approximately 19 hours later, discharging a weapon while at Sanders' residence and subsequently shooting at Erlenbush. Accordingly, we conclude that allowing the jury to consider this other-crimes evidence was error. Our conclusion, however, does not require reversal.

¶ 55 To warrant reversal, the improper admission of other-crimes evidence must be so prejudicial as to deny the defendant a fair trial. See *People v. Ingram*, 389 Ill. App. 3d 897, 902, 907 N.E.2d 110, 116 (2009) (the erroneously admitted other-crimes evidence must have been a material factor in the defendant's conviction such that without the evidence the verdict likely would have been different). Here, that standard has not been met. The other-crimes evidence concerning defendant's mugging of Tafoya notwithstanding, the evidence the State presented to support defendant's conviction for attempt (first degree murder) was absolutely overwhelming. Thus, under the extraordinary circumstances of this case, we conclude that the erroneous admission of the mugging of Tafoya was not a material factor in defendant's convictions and the guilty verdicts would have been the same even if that evidence had been kept out.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 58 Affirmed.