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¶ 2 Following a jury trial, defendant Kelvin King was found guilty of home invasion and armed robbery and was sentenced to two concurrent terms of 30 years imprisonment. On appeal, defendant contends that the trial court improperly admitted evidence of other crimes he allegedly committed on the night of the incident and hearsay testimony regarding his nickname and his use of an alias. For the reasons that follow, we reverse and remand.

¶ 3 BACKGROUND

¶ 4 Defendant and codefendant, Darrick Walker, were charged with home invasion and armed robbery in connection with events that took place on August 20, 2008. Walker pleaded guilty to those charges and then testified for the defense at defendant's trial. Prior to trial, the State filed a motion asking the trial court to allow evidence of an armed robbery and police chase involving defendant that occurred shortly after the incident at issue. The State asserted that the evidence was relevant to defendant's *modus operandi* and identity and was necessary to provide a continuing narrative of the events that took place on the night of the incident. The court granted the State's motion, finding that the probative value of the evidence substantially outweighed its prejudicial effect and that the evidence was relevant to defendant's *modus operandi* and identity and explained a continuing course of events that resulted in defendant's arrest.

¶ 5 At trial, Keith Marshall testified that between 2:30 and 3:00 a.m. on August 20, 2008, he was asleep in a ground level room at the Deluxe Motel in South Holland with April Hampton when Hampton woke him up because a man was entering the room through a window. After entering the room through the window, the man opened the door to the room and let a shorter man inside. Marshall observed the taller man's face from six to eight feet away and identified

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him in court as defendant. The men had guns and told Marshall to put his head down or they would shoot him. Marshall initially complied, but later looked up and saw the two men going through the room and saw a gun in defendant's back pocket. Marshall reached for the gun, but defendant saw him and said he should shoot him. Defendant asked Marshall where the "stuff" was at, but Marshall did not know what he was talking about, and defendant then stood behind Marshall and went through his pockets, but did not find anything. The men took some of Marshall's belongings, including the keys to his car, a black 1999 Pontiac Bonneville, and took turns trying to start the car. The shorter man eventually started the car and drove away with defendant. Later that day, Marshall viewed a lineup at a police station and identified defendant and another man as the two men who had robbed him.

¶ 6 On cross-examination, Marshall stated that the only light in the motel room during the robbery was the light emitted by the television; that he described defendant to the police as a young, dark-skinned black male with a low haircut; and that he never provided the police with a description of defendant's face. Marshall also stated that he told the police that one of the men who robbed him was wearing a dark shirt and that defendant was the only person in the lineup he viewed that was wearing a dark shirt. The record includes photographs of the lineup viewed by Marshall which show that defendant was wearing black pants and a black shirt and that the other five men in the lineup were all wearing white or light gray shirts. Marshall further stated that he was currently a defendant in a criminal case involving the possession of narcotics and that he did not expect any leniency from the State regarding his drug case in exchange for his cooperation in this case.

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¶ 7 Carlos Wright testified that around 4 a.m. on August 20, 2008, he parked his car in front of an apartment building on Patricia Place in Calumet City while he was dropping off his friend, Shentora Horne, at her home. Wright and Horne exited the vehicle, and Wright went to the back of his car to get something from the trunk while Horne walked toward the building. Wright saw defendant and a shorter man standing in a nearby gangway. Defendant and the other man were both wearing all black clothes, except that while defendant was wearing a black hoodie, the other man was wearing a black hoodie with white writing on it. Wright explained that he was able to see defendant's face because there were streetlights in the area. Defendant held up Horne with a gun and told her to be quiet. The other man attacked and fought with Wright and ripped a chain and bracelet off him as they struggled. Defendant said "forget this" and ran away, and the other man ran after him. The police arrived shortly after the robbery and took Wright to Riverdale 10 or 15 minutes later, where he viewed two individuals and identified defendant as the man who held up Horne with a gun.

¶ 8 Calumet City police officer James Burnett testified that around 4 a.m. on August 20, 2008, he was in a squad car with his partner on Downs Drive in Calumet City when he heard a vehicle accelerate rapidly in an alley between Downs Drive and Patricia Place. Officer Burnett observed the vehicle go through a stop sign and turned his car around to effectuate a traffic stop. Officer Burnett pursued the vehicle at a speed in excess of 80 miles per hour as he tried to catch up to it. As Officer Burnett chased the vehicle, he was notified over the radio that an armed robbery had occurred on Patricia Place, which was very close to where he had first seen the vehicle he was chasing, and he then turned on his emergency lights and sirens as he continued to

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pursue the vehicle. The pursuit eventually ended in the area of 137th Place and State Street in Riverdale when the vehicle Officer Burnett was chasing was involved in a minor accident with a parked car. When Officer Burnett arrived at the vehicle, he saw that it was empty and that the doors were left open with the keys in the ignition and observed that it was a Pontiac Bonneville. Assisting officers arrived shortly thereafter, and the officers conducted a search of the area, found defendant and Walker hiding in a stairwell leading into a basement residence, and arrested them. On cross-examination, Officer Burnett stated that he did not find any weapons or gold jewelry in the Bonneville.

¶ 9 South Holland police officer Todd Koster testified that he spoke with Marshall and Hampton around 3 a.m. on August 20, 2008, and learned that two men had taken Marshall's car keys, driver's license, cell phone, and car and learned the car's license plate number. Around 4 a.m., Officer Koster went to Riverdale, where a police chase of a black vehicle had just ended, and identified Marshall's car by its license plate number.

¶ 10 South Holland police detective David Allen testified that he processed the stolen vehicle for evidence and lifted seven fingerprints from the driver and passenger doors. Detective Allen also testified that around 4 p.m. on August 20, 2008, he presented Marshall with a lineup of six people, including defendant and Walker, from which Marshall identified defendant and Walker as the people who had invaded his motel room and stole his car.

¶ 11 Lauren Wicevic, a latent print examiner for the Illinois State Police, testified that she examined two of the lifts provided by the South Holland Police Department and compared them to fingerprint standards obtained from defendant and Walker. Wicevic also testified that one lift

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matched Walker's standard and that the other lift matched defendant's standard and opined within a reasonable degree of scientific certainty that one of the fingerprints found on the stolen vehicle was made by defendant.

¶ 12 Darrick Walker testified for the defense that he was at his house with defendant in the early morning hours of August 20, 2008, when Tony Charles, nicknamed "Tutu," arrived in a black Pontiac Bonneville. Walker and defendant entered Charles' car and drove to a friend's building in Calumet City where Walker and Charles exited the car and knocked on the door of the building. Nobody answered the door, and Walker and Charles encountered a man and a woman as they walked back to Charles' car. Walker pulled out his gun, ran toward the man and the woman, struggled with the man, threw him on the ground, and then ran back to the car with Charles. Walker drove away in Charles' car and was chased by police until everyone jumped out of the car and ran away.

¶ 13 On cross-examination, Walker stated that he was in custody for the armed robbery of Wright and Borne at the time he testified and that he had pleaded guilty to the armed robbery of Marshall and Hampton, but denied going to the Deluxe Motel on the night in question. Walker had also pleaded guilty to an armed robbery that took place in November 2005. Walker also stated that he thought Charles' car might be a "crackhead car," which is a car that has been rented from a drug addict in exchange for drugs, and that he and defendant hid in the lower staircase of a house together after they jumped out of the vehicle and ran away. Walker further stated that he spoke with the prosecutor on July 22, 2010, and that he told the prosecutor that defendant was not with him on the night of the incident and that defendant never entered Charles' car.

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¶ 14 On redirect examination, Walker testified that he told the prosecutor that defendant was not with him on the night of the incident because he "didn't want nothing to do with nothing, so [he] told them whatever to get them out of [his] face at the time." Walker also testified that he signed a written statement at a police station because the detective told him that he would be let go if he signed it.

¶ 15 The State called assistant State's attorney (ASA) Jason Carlstedt in rebuttal, who testified that he spoke with Walker at a police station in Calumet City on the evening of August 20, 2008, and that Walker provided him with a handwritten statement at that time. The court allowed ASA Carlstedt to publish the statement, in which Walker related that he was with someone named "Tu" on August 20, 2008, and that he and "Tu" drove to an apartment building in Calumet City. "Tu" walked to the building, then came back to the car and directed Walker's attention to a man and a woman talking near a car. "Tu," who had a gun, told Walker to act as a lookout and "Tu" ran up to the man and woman to rob them. "Tu" struggled with the man and then he and Walker ran back to their car and drove away. Walker also related that he was shown a photograph of a man he identified as "Tu," and ASA Carlstedt testified that he attached that picture to Walker's statement.

¶ 16 The State also called Calumet City police detective Casey Erickson in rebuttal, and he testified that on August 20, 2008, he was present when Walker provided ASA Carlstedt with a handwritten statement and that he learned some time thereafter that defendant was known by the nickname "Tu-ky." Detective Erickson also testified that the man in the photograph who Walker identified as "Tu" was not defendant, but a man named Kelvin King, whose picture was obtained

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from the Secretary of State based on information provided by defendant. Detective Erickson further testified that he had recently learned that defendant's real name was Johnny King, that defendant used the name of Kelvin King as an alias, and that defendant lied to the police and provided false information about his name and identity after he was arrested.

¶ 17

ANALYSIS

¶ 18 Defendant contends that his right to a fair trial was violated by the trial court's admission of evidence relating to the armed robbery of Wright because such evidence was irrelevant and suggested that defendant had a propensity for criminality. Evidence of other crimes committed by the defendant is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *People v. Chapman*, 2012 IL 111896, ¶ 19. Proper purposes include, but are not limited to, motive, intent, identity, *modus operandi*, and absence of mistake. *People v. Dabbs*, 239 Ill. 2d 277, 283 (2010). However, even when such evidence is offered for a permissible purpose, it will not be admitted if its prejudicial impact substantially outweighs its probative value. *People v. Moss*, 205 Ill. 2d 139, 156 (2001). The decision of whether to admit other crimes evidence rests within the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *People v. Wilson*, 214 Ill. 2d 127, 136 (2005).

¶ 19 The State asserts that evidence of the robbery of Wright was relevant to provide context and clarity to an otherwise complicated series of events because it explained the circumstances surrounding defendant's arrest and was intertwined in several material ways with the invasion of the Deluxe Motel and the robbery of Marshall. Evidence of other crimes is admissible to show the manner in which an investigation unfolded only if the evidence is also relevant to connect the

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defendant with the crimes for which he is being tried. *People v. Jackson*, 232 Ill. 2d 246, 268-69 (2009). Evidence is relevant "if it tends to prove a fact in controversy or render a matter in issue more or less probable." *People v. Nelson*, 235 Ill. 2d 386, 432 (2009).

¶ 20 The State, citing *People v. Young*, 118 Ill. App. 3d 803 (1983), maintains that evidence of the robbery of Wright was necessary to explain Officer Burnett's actions in pursuing defendant and to avoid confusing the jury about the course of events from the robbery at the Deluxe Motel to defendant's arrest. However, for other crimes evidence to be admissible due to its relevance to a police investigation, the investigatory procedures at issue must involve an integral part of the narrative of the arrest. *Id.* at 808. In this case, Officer Burnett testified that he initiated the chase that resulted in defendant's arrest when he saw a vehicle accelerate rapidly and go through a stop sign and that he was not notified of the robbery that occurred on Patricia Place until after he was already engaged in his pursuit of defendant. While Officer Burnett testified that he activated his emergency lights after he learned of the robbery, he also testified that he was already driving in excess of 80 miles per hour to catch up with defendant prior to learning of the robbery. As such, the evidence shows that the alleged robbery of Wright did not affect Officer Burnett's decision to engage in a high-speed chase of defendant because he made that decision prior to learning of the robbery and that the robbery only provided an explanation for Officer Burnett's activation of his emergency lights during the pursuit, which was not an integral part of the narrative of defendant's arrest.

¶ 21 The State also maintains that evidence of the robbery of Wright was relevant because the facts of that crime, the invasion of the Deluxe Motel, and the robbery of Marshall are intertwined

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in several material ways. The State claims that defendant used the vehicle stolen from Marshall to facilitate the robbery of Wright, that the car is the common thread that connects the robbery at the Deluxe Motel to defendant's subsequent arrest, and that exclusion of any part of the narrative regarding the car would break that thread and render evidence of the vehicle unclear. However, there is no evidence that defendant used the stolen vehicle to facilitate the robbery of Wright, as Wright testified that the two men who robbed him arrived and departed on foot and did not testify that he saw defendant enter a Pontiac Bonneville, or any vehicle, following the robbery.

The State also claims that the two robberies are closely intertwined with regard to time and place because the robbery of Marshall occurred between 2:30 and 3:00 a.m. and the robbery of Wright occurred less than six miles away around 4 a.m. However, while other crimes evidence may be relevant to place a defendant in proximity to the time and place of an offense (*People v. Lewis*, 243 Ill. App. 3d 618, 625-26 (1993)), here the evidence of the robbery of Wright does not place defendant at the Deluxe Motel at the time he allegedly robbed Marshall, but rather, places him almost six miles away about an hour later that night.

¶ 22 Also, the trial court found that evidence of the robbery of Wright was admissible because it was relevant to defendant's *modus operandi*. The term *modus operandi* "refers to a pattern of criminal behavior so distinctive that separate crimes are recognized as the handiwork of the same person." *Wilson*, 214 Ill. 2d at 140. Such evidence is used to establish the defendant's identity as the perpetrator of the charged crime by demonstrating that the defendant has committed other crimes in the same manner. *People v. Hansen*, 313 Ill. App. 3d 491, 506 (2000). Evidence of the commission of an offense by the defendant may be admissible under a theory of *modus operandi*

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"only upon a strong and persuasive showing of similarity" between that offense and the offense for which he is charged. *People v. Tate*, 87 Ill. 2d 134, 141 (1981).

¶ 23 Defendant maintains, and we agree, that the State has forfeited any claim that evidence of the robbery of Wright was properly admitted to prove identity through *modus operandi* by failing to make that argument in its appellee's brief. Ill. S. Ct. R. 341(i) (eff. July 1, 2008). Moreover, the alleged robberies of Marshall and Wright were only similar in that both crimes involved the armed robbery of a man and a woman and the criminal behavior exhibited by the two offenders was not so distinctive that the separate crimes could be recognized as the handiwork of the same people.

¶ 24 As such, evidence of the robbery of Wright was only relevant to provide an explanation for Officer Burnett's activation of his emergency lights during his pursuit of defendant and any slight probative value the evidence may have had for that purpose was substantially outweighed by its prejudicial impact, as the evidence tended to show that defendant had a criminal propensity for committing armed robbery. Therefore, we conclude that the trial court abused its discretion by admitting evidence of defendant's alleged robbery of Wright.

¶ 25 The State maintains that even if evidence of the robbery of Wright was inadmissible, any error in admitting that evidence was harmless because the other evidence of defendant's guilt was overwhelming. An erroneous evidentiary ruling will constitute harmless error if the State can establish beyond a reasonable doubt that the error did not contribute to the jury's verdict. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005).

¶ 26 Absent the evidence of the robbery of Wright, the evidence of defendant's guilt consisted

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of the eyewitness identification testimony of Marshall, the flight testimony of Officer Burnett, and the testimony of Detective Allen and Wicevic, which established that defendant's fingerprints were found on the stolen vehicle. While the State maintains that Marshall "gave unimpeached testimony identifying defendant both in court and in a lineup" as one of the people who robbed him, the record shows that the believability of Marshall's identification of defendant was diminished in a number of ways. First, Marshall testified that he was a criminal defendant in a possession of narcotics case at the time he testified, and while he also stated that he did not expect any leniency in exchange for his testimony, the jury could have inferred from the pending charges that Marshall was biased or had a motive to testify falsely in favor of the State. See *People v. Balayants*, 343 Ill. App. 3d 602, 605 (2003) (a witness may be impeached by evidence of pending charges "as it tends to show that the testimony may be influenced by bias, interest, or motive to lie"). Second, while the lineup viewed by Marshall was not impermissibly suggestive just because defendant was the only person in that lineup wearing a dark shirt (*People v. Faber*, 2012 IL App (1st) 093273, ¶ 57), that fact may have reduced the believability of his identification of defendant because Marshall did not provide the police with a description of defendant's face, Marshall told the police that one of the robbers was wearing a dark shirt, and all of the other people in the lineup were wearing white or light gray shirts. Third, as Marshall testified that the robbery occurred in the middle of the night shortly after he was awakened by Hampton, that he kept his head down during much of the robbery at the direction of the robbers, and that the room was only lit by the light from the television, the jury may have found that Marshall did not have a good opportunity to view the robbers at the time of the crime and doubted his ability to identify

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defendant as one of the robbers on that basis. See *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989) (in assessing identification testimony, the trier of fact may consider "the opportunity the victim had to view the criminal at the time of the crime").

¶ 27 In addition, if not for the evidence of defendant's alleged robbery of Wright, the defense likely would not have called Walker as a witness to testify that defendant did not take part in that robbery. If Walker did not testify, then the State would not have been able to call ASA Carlstedt and Detective Erickson in rebuttal to present evidence of Walker's handwritten statement, which was inconsistent with his trial testimony, and Detective Erickson would not have testified that defendant used the name of Kelvin King as an alias and that he lied to police and provided them with false information after he was arrested. As evidence of defendant's use of an assumed name may prove his consciousness of guilt (*People v. Harris*, 225 Ill. 2d 1, 23 (2007)), the evidence of the robbery of Wright further prejudiced defendant because it led to the presentation of evidence that he lied to police regarding his identity following his arrest.

¶ 28 In light of the entirety of the evidence presented at trial, we conclude that the admission of evidence of defendant's alleged robbery of Wright does not constitute harmless error. While the State established through the testimony of Officer Burnett, Detective Allen, and Wicevic that defendant was in the stolen vehicle as it was being pursued by Officer Burnett and that defendant fled and hid with Walker after exiting the vehicle, the jury had reasons to question the testimony of Marshall identifying defendant as one of the two men who robbed him. In addition, were it not for the admission of the challenged evidence, Detective Erickson would not have testified in rebuttal that defendant concealed his identity following his arrest by providing the police with an

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alias and false information. As such, although the State has presented some significant evidence of defendant's guilt, that evidence is not so overwhelming that we can say beyond a reasonable doubt that evidence of the alleged robbery of Wright did not contribute to the jury's verdict.

¶ 29 Having concluded that the trial court committed reversible error by admitting evidence of defendant's alleged robbery of Wright, we need not consider defendant's additional claim that the court committed error by admitting hearsay testimony from Detective Erickson when he testified that defendant was known by the nickname "Tu-ky" and that defendant's real name was Johnny King, as it is uncertain such testimony will be presented on retrial. In addition, because the evidence, when taken in the light most favorable to the State, is sufficient to support a finding of guilt beyond a reasonable doubt, defendant faces no risk of double jeopardy and, therefore, may be retried. *People v. Cruz*, 162 Ill. 2d 314, 374 (1994).

¶ 30 CONCLUSION

¶ 31 Accordingly, we reverse defendant's convictions and sentences and remand for a new trial.

¶ 32 Reversed and remanded.

¶ 33 JUSTICE CONNORS, concurring in part and dissenting in part.

¶ 34 I agree with my colleagues that it was error for the trial court to admit evidence regarding defendant's alleged robbery of Wright. I believe that the error was harmless beyond a reasonable doubt, however, so I must respectfully dissent.

¶ 35 The improper other-crimes evidence was certainly more prejudicial than probative, but in

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this case the remaining evidence against defendant was so overwhelming that any prejudicial effect was minimal and could not have affected the result of the trial. Although some aspects of Marshall's identification of defendant could reasonably be questioned, as the majority points out, other evidence against defendant in this case cannot be. There is no dispute that when defendant was arrested by Officer Burnett, he was found hiding near the victim's stolen vehicle, and subsequent investigation revealed that defendant's fingerprints were present in the vehicle. When these undisputed facts are considered along with the victim's identification of defendant as one of his assailants, there can be little uncertainty whether defendant committed the crime.

¶ 36 This same evidence will be presented upon retrial, and I do not doubt that the result will be the same. Under these circumstances, I do not believe that a retrial is warranted.