

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).

2014 IL App (4th) 130814-U

NO. 4-13-0814

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 25, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Macon County
RODERICK D. DICKERSON,)	No. 11CF1330
Defendant-Appellee.)	
)	Honorable
)	James R. Coryell,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by denying the State's motion to admit other-crimes evidence for the purpose of showing identity because the State failed to tie defendant to the .40-caliber shell casings from the other crime, which were the link between the other crime and charged offenses.

¶ 2 In October 2011, the State charged defendant, Roderick D. Dickerson, by information with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2010)) and three counts of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)). In May 2013, the State filed a motion to admit other-crimes evidence, which sought to introduce evidence defendant committed an earlier shooting near where the charged offenses occurred and with the same gun. After an August 2013 hearing, the Macon County circuit court denied the State's motion. The State filed a motion to reconsider, and the court denied it as well.

The State then filed a certificate of impairment and an appeal under Illinois Supreme Court Rule 604(a) (eff. Feb. 6, 2013).

¶ 3 On appeal, the State asserts the trial court erred by excluding other-crimes evidence that linked defendant to the murder weapon used in the charged offenses. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The seven charges in this case relate to a September 3, 2011, shooting spree that resulted in the death of Mishyra Wheeler and injuries to three other individuals (hereinafter the September 2011 shooting). The State's May 2013 motion to admit evidence sought the admission of evidence showing defendant committed another shooting on August 24, 2011 (hereinafter the August 2011 shooting), in the same area as the September 2011 shooting and with the same weapon. The State asserted the desired evidence was admissible to show defendant's identity, possession of the firearm, knowledge, intent, and design as to the charged offenses.

¶ 6 In August 2013, the trial court held an evidentiary hearing on the State's motion to admit evidence. At the hearing, the State only asserted the other-crimes evidence was admissible to show the identity of the shooter in the September 2011 shooting. The evidence presented at the hearing pertinent to the issue on appeal follows.

¶ 7 Joe Patton, a detective with the Decatur police department, testified the September 2011 shooting occurred at 1502 North Church Street in Decatur. The police recovered 38 shell casings from the scene of the September 2011 shooting. Some of the casings were 9 millimeter, and some were .40 caliber. The police believed the September 2011 shooting involved two shooters. The August 2011 shooting occurred in the 1500 block of North Church Street in Decatur. The police recovered shell casings from two different locations after the

August 2011 shooting. The police believed the shooting involved two people shooting across the street at each other. Additionally, Detective Patton testified Carolyn Kersting of the Illinois State Police crime lab compared the shell casings from the August and September 2011 shootings and determined the .40-caliber Smith and Wesson shell casings recovered from both shootings were fired from the same gun.

¶ 8 Detective Patton also testified Tabatha Althoff and Zacarlin Hayes identified defendant as having fired a gun during the August 2011 shooting and other witnesses identified defendant as firing a gun during the September 2011 shooting. Moreover, Detective Patton noted the Macon County jail monitors inmates' telephone calls. In a conversation between defendant and "Mr. Nash," defendant told Nash "he needed him to move that little game, game that he had been carrying on him and rotate that bitch out." Detective Patton spoke with Nash, and Nash believed defendant wanted him to take a firearm from a Decatur residence and get rid of it for him. Before Nash got on the telephone with defendant, the police recorded defendant telling an unknown female that "the casings when I was shooting at dude over there um—and they matched those shells up to the little girl that got shot. And that is some straight bullshit. Um—they ain't even got a gun."

¶ 9 Althoff testified that, on August 24, 2011, she lived at 1532 North Church Street in Decatur. At around 10 a.m., she was at home with her daughter Zaire and her friend Hayes. Althoff was washing dishes at the back of her home, and the other two were on the front porch. Althoff observed defendant, whom she had known for a few years, in the backyard of her next-door neighbor to the north (1536 North Church Street). Defendant was in a rush and had his hands down by his sides. Defendant went to the north side of Althoff's home. Around the same time Althoff observed defendant, she heard Hayes tell her to come get her daughter because

something was about to happen. By the time she got to the front door to get her daughter, Althoff heard gunshots that seemed to be coming from the side of her house. Althoff stated it was a matter of seconds between seeing defendant and then hearing the gunshots. The shots sounded very close and caused ringing in Althoff's ears. Althoff further stated she had heard gunshots in that neighborhood a lot as a shooting took place on the street almost every day. On a map, Althoff indicated she first saw defendant in the backyard of 1536 North Church Street, which is the house directly north of hers. Althoff did not see defendant with a gun that morning.

¶ 10 Hayes testified that, on August 24, 2011, she observed two cars come past Althoff's house with men in it who were known to have had altercations with people in the neighborhood. As she grabbed Althoff's daughter off the porch, she observed defendant off to the side of Althoff's porch. Defendant was crouched down between the two houses. Hayes saw something in defendant's hand that she believed to be a black handgun. Hayes heard a series of gunshots, somewhere between 7 and 25 shots. Some of the shots sounded like they were coming from right next to the house. Hayes never saw defendant fire the gun. After the shots stopped, Hayes looked out a north window of the home and saw defendant jump into a car that was in front of Althoff's home.

¶ 11 Brian Cunningham testified that, on August 24, 2011, he went to visit his cousin, who lived in the middle of the 1500 block of North Church Street. His cousin was not home, but he talked with a guy called "Twin." Brian saw a red car turn off of Grand Avenue onto North Church Street. The car stopped, and a man got out of the car and started shooting. Brian had known defendant since defendant was little, and the man who fired the shots was not defendant. Brian also did not see defendant in the area that morning. He also did not see anyone outside at Althoff's residence. Brian said he and Twin were the only two people outside when the shooting

started. Brian denied talking to defendant about the August 2011 shooting and was not asked to testify by defendant.

¶ 12 Officer Edward Cunningham testified he assisted in the investigation of the August 2011 shooting. He spoke with Althoff and Hayes, both of whom stated defendant was near Althoff's residence in the front yard. On the map, Officer Cunningham noted the two eyewitnesses stated defendant was by the driveway in between Althoff's home (1532 North Church Street) and 1536 North Church Street. The police did not find any shell casings in the area where Althoff and Hayes said defendant was located. Some 9-millimeter casings were found on the sidewalk next to the front porch of 1533 North Church Street, which is across the street from Althoff's home. Officer Cunningham only knew the other shell casings recovered from the scene were found north of Althoff's home.

¶ 13 Officer Craig Lundy testified he found six shell casings after the August 2011 shooting. The shell casings were .40 caliber. He found the shell casings "in a diagonal line from approximately the back end of the house at 1566 running to the front of 1560 by the fence at 1548." Officer Lundy testified the shell casings were two houses and two lots away from 1532 North Church Street (Althoff's home).

¶ 14 At the conclusion of the hearing on August 16, 2013, the trial court denied the motion, finding no evidence was presented connecting defendant to the .40-caliber shell casings found at the scene of the August 2011 shooting because the casings were found four lots away from where the witnesses said defendant was during that shooting. On August 26, 2013, the State filed a motion to reconsider, asserting defendant's statements during the jail telephone conversations show he admitted shooting the gun that produced the shell casings linked to the shell casings at the September 2011 shooting. On September 17, 2013, the court held a hearing

on the State's motion to reconsider and denied the motion, finding again the location of the shell casings was not near where defendant was seen by eyewitnesses. The next day, the State filed a certificate of impairment and notice of appeal from the denial of its motion to admit evidence. The notice of appeal was timely filed and in compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, we have jurisdiction under Illinois Supreme Court Rule 604(a) (eff. Feb. 6, 2013).

¶ 15

II. ANALYSIS

¶ 16 The State's sole contention on appeal is the trial court erred by denying its pretrial motion to admit other-crimes evidence. Defendant disagrees.

¶ 17

A. Standard of Review

¶ 18 Generally, a reviewing court will review "the propriety of a ruling on the admission of other-crimes evidence for an abuse of the trial court's discretion." *People v. Ward*, 2011 IL 108690, ¶ 21, 952 N.E.2d 601. "An abuse of discretion occurs when the ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view." *Ward*, 2011 IL 108690, ¶ 21, 952 N.E.2d 601. The State points out a reviewing court will employ a *de novo* standard of review for evidentiary rulings in limited instances. *People v. Crowe*, 327 Ill. App. 3d 930, 936, 764 N.E.2d 1174, 1180 (2002). In *Crowe*, the court explained the exception as follows:

"For example, a trial court's decision that a statement is hearsay may be reviewed *de novo* when that determination does not involve fact finding or weighing the credibility of the witnesses. [Citation.] Thus, the exception to the general rule of deference on issues of admissibility will apply only in cases where 'a trial court's

exercise of discretion has been frustrated by an erroneous rule of law.' " *Crowe*, 327 Ill. App. 3d at 936-37, 764 N.E.2d at 1180 (quoting *People v. Williams*, 188 Ill. 2d 365, 369, 721 N.E.2d 539, 542 (1999)).

¶ 19 The State argues *de novo* review should apply in this case because the facts found by the trial court are not in dispute. However, as defendant notes, the State does not explain how the court applied an erroneous rule of law. The trial court clearly had to weigh witnesses' credibility and make factual findings. Accordingly, we find the abuse-of-discretion standard is the appropriate standard of review in this case.

¶ 20 B. Other-Crimes Evidence

¶ 21 Our supreme court has repeatedly held other-crimes evidence is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127, 135, 824 N.E.2d 191, 196 (2005). For example, Illinois courts have found other-crimes evidence admissible to show *modus operandi*, intent, identity, motive, or absence of mistake. *Wilson*, 214 Ill. 2d at 135-36, 824 N.E.2d at 196. "Relevant evidence is defined as evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Gonzalez*, 142 Ill. 2d 481, 487-88, 568 N.E.2d 864, 867 (1991). Even if other-crimes evidence is relevant to one of the aforementioned purposes, the court still can exclude the evidence if its prejudicial effect substantially outweighs its probative value. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714-15 (2003). However, before other-crimes evidence may be admitted for any purpose, "the State must show that a crime took place and that defendant committed it or participated in its commission; it need not prove defendant's

involvement beyond a reasonable doubt, but it must provide more than a mere suspicion." *People v. Nash*, 2013 IL App (1st) 113366, ¶ 20, 993 N.E.2d 56. Moreover, since the establishing of the existence of another crime involves relevancy depending on a condition of fact, Illinois Rules of Evidence 104(b) (eff. Jan. 1, 2011) now governs admissibility of other-crimes evidence and requires the evidence to show it is more probably true than not that defendant committed the other crime. M. Graham, *Graham's Handbook of Illinois Evidence* § 404.5, at 269 (10th ed. 2010).

¶ 22 Here, the State sought to introduce evidence defendant was a shooter during the August 2011 shooting to prove defendant was also a shooter in the September 2011 shooting based on the forensic evidence that showed the .40-caliber shell casings found at the scene of both shootings came from the same gun. The trial court found the State failed to establish defendant was the person who shot the gun that produced the .40-caliber casings. On appeal, the State argues the fact that the evidence showed defendant was present with a gun at the August 2011 shooting was sufficient to show defendant committed the August 2011 shooting. However, evidence defendant shot a gun in the August 2011 incident is irrelevant to the September 2011 shooting unless the gun was the one that produced the .40-caliber casings. The State's argument on appeal overlooks that fact. As the trial court found, none of the State's evidence tied defendant to the .40-caliber casings. Officer Lundy found those casings at least three lots north of where the State's witnesses said they saw defendant before and after the gunshots. The location of the shell casings is important in this case because the area involved was a high-crime area that experienced daily gunshots and more than one gun was fired during the August 2011 incident. Moreover, Hayes was unable to identify the type of gun she saw in defendant's possession in August 2011. Thus, in this case, defendant's proximity to the casings was key to

