2016 IL App (1st) 132722-U

FIRST DIVISION
July 18, 2016

Nos. 1-13-2722 and 1-13-4052
(CONSOLIDATED)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 1428
	)	
DIANSIO WILKERSON,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Attempted first-degree murder and attempted armed robbery convictions affirmed. The trial court did not abuse its discretion in denying defendant's pretrial motion for ballistics testing on a handgun recovered from another individual 15 months after the shooting, where defendant failed to show sufficient nexus between the shooting and the recovered handgun.

¶ 2 Following a bench trial, defendant Diansio Wilkerson was found guilty of attempted first-degree murder, aggravated battery, and attempted armed robbery. Defendant was sentenced to 35 years for attempted first-degree murder (including a 25-year enhancement) and a concurrent 10-

year sentence for attempted armed robbery. On appeal, defendant alleges that, based on the defense theory that a 9-millimeter weapon was used in the offense and that another individual, Lorenzo Cureton[1], committed the offense, the trial court erred in denying defendant's pretrial motion for ballistics testing on a 9-millimeter handgun in Cureton's possession 15 months after the shooting. We affirm.

¶ 3 We note that because two separate notices of appeal were filed in this matter, two docket numbers have been assigned and consolidated. The first notice of appeal, in case number 1-13-2722, was filed on August 16, 2013, before defendant was sentenced on August 19, 2013. Final judgment is entered in a criminal case only after a defendant is sentenced. *People v. Danenberger*, 364 Ill. App. 3d 936, 939 (2006). Jurisdiction is conferred on this court pursuant to Illinois Supreme Court Rule 606(b) (eff. Feb. 6, 2013), which provides that a notice of appeal must be filed within 30 days *after* the entry of the final judgment. As we did not acquire jurisdiction with the filing of the first notice of appeal, which was prior to imposition of defendant's sentence, we dismiss the appeal under docket number 1-13-2722. We affirm the judgment of the circuit court under docket number 1-13-4052.

¶ 4 Defendant and his brother, Darius Wilkerson (Darius), were charged by indictment with multiple felony counts arising from the shooting and attempted robbery of Ramone Vaughn on March 3, 2012, which left Vaughn a paraplegic. Prior to trial, defendant filed a motion for ballistics testing "through the Illinois State Police" of a 9-millimeter semi-automatic handgun recovered from Lorenzo Cureton on June 1, 2013. The motion stated that after Vaughn was shot

[1] Cureton's name is also spelled Curitan or Curiton elsewhere in the record.

while sitting in a vehicle, a 9-millimeter shell casing was recovered from that vehicle near where Vaughn was sitting. The motion asked that the weapon recovered from Cureton by Chicago police and inventoried be tested to see if it matched the casing. The defense cited no authority for the testing, either in the motion itself or in argument on the motion.

¶ 5 In presenting the motion, defense counsel argued that, in addition to the 9-millimeter handgun in Cureton's possession on June 1, 2013, other physical evidence allegedly linking Cureton to the crime was discovered when Cureton was arrested on another occasion, on March 14, 2012, 11 days after the shooting. That evidence included cannabis found on Cureton's person, a jacket found in the car Cureton was driving, and the car itself. In response, the State argued that the shooting victim and two eyewitnesses had positively identified defendant as the shooter and Darius as his accomplice. None of the witnesses indicated that a third person was involved in the shooting incident. The State argued that there were a large number of 9-millimeter handguns and that the possibility of a connection was too remote where the shooting occurred on March 3, 2012, and Cureton was in possession of a 9-millimeter handgun when arrested on June 1, 2013.

¶ 6 The court denied the motion after ruling that its basis was vague, that it lacked relevance due to remoteness, and that there was "no tie-in" between the casing found near the victim after the shooting on March 3, 2012, and the handgun recovered from Cureton on June 1, 2013.

¶ 7 At Darius and defendant's joint bench trial, Darrion Taylor testified as a State witness that on March 3, 2012, at around 1 p.m., he was with his good friends, Ramone Vaughn and Brian Jones. Taylor drove Vaughn and Jones in his black Infiniti to Riverdale because Vaughn had arranged to sell someone marijuana there. Jones sat in the front passenger seat and Vaughn sat in the back seat on the passenger side. Taylor did not know who they were meeting or who was

buying marijuana from Vaughn. Taylor stopped the car at Wallace Avenue and Pacesetter Parkway in Riverdale. Vaughn was on his cell phone directing the buyer to their location. One or two minutes later, Taylor looked ahead and saw two men approach on foot. One of the men, whom Taylor identified at trial as Darius, walked up to the front of Taylor's car. The other man, whom Taylor identified as defendant, approached the back passenger window where Vaughn was seated. Vaughn handed marijuana to defendant, who looked at it, smelled it, and handed it back to Vaughn. Defendant had some money in his hand. Taylor heard defendant say, "Hold on, let me get the rest of the money." Defendant motioned toward Darius to give him money, but Darius did not give defendant any money. Defendant put his money back in his pocket, pulled out a gun, pointed it at Vaughn, and said, "give me everything" or "give me this shit." Taylor heard a gunshot, and he immediately drove off. Taylor realized Vaughn was shot and drove him to Ingalls Hospital.

¶ 8 Taylor described the shooter to police as a male black, age 19 to 25, five feet eight or nine inches tall, with a slim build and "medium to brown skin," wearing jeans and a black-color hood or hat. Taylor told the police it was possible the shooter "had lighter color eyes" and that the shooter and the second man each wore a dark-colored coat, possibly a Pelle Pelle jacket because it had beads. Neither Taylor nor Jones nor Vaughn possessed a weapon that day, and Taylor did not see Darius with a gun. On March 15, 2012, Taylor went to the Riverdale Police Department and viewed photo arrays. He identified a photo of Darius as the man that stood at the front of the car and identified defendant as the man who stood at the back passenger side window. Taylor returned to the police station on March 16 and identified Darius Wilkerson in a lineup. On December 13, 2012, Taylor viewed another police lineup and identified defendant as

the man who had approached the back passenger side window where Vaughn was sitting. Taylor had never seen nor spoken to defendant prior to the shooting.

¶ 9 Brian Jones's testimony was substantially the same as that of Taylor. Taylor drove Jones and Vaughn to Riverdale in a black car, not a red older car, so Vaughn could make a marijuana sale. At trial, Jones identified Darius as the individual who approached the front of Taylor's car, and he identified defendant as the second man who went to the back seat area and spoke with Vaughn. Defendant wore "like a jacket with a hood on." Vaughn handed marijuana to defendant who smelled it, gave it back to Vaughn, and asked Darius for the rest of the money. Jones indicated to Taylor that this was taking too long and that they had to leave. Vaughn indicated the same to defendant. Then Jones heard a gunshot from the back seat, looked back and saw that Vaughn had been shot in the neck, and drove straight to Ingalls Hospital. Jones had never seen either defendant or Darius before the shooting. Nearly two weeks later, Jones identified police photos of defendant and Darius. Jones returned to the police station two more times and identified defendant and Darius in separate lineups as the men who approached Taylor's vehicle.

¶ 10 Ramone Vaughn, the shooting victim, testified that in March 2012, he was selling a potent type of marijuana known as purple loud. At trial, Vaughn identified defendant and Darius as the men who approached Taylor's car on March 3. About three weeks earlier, Vaughn had met Darius and began selling marijuana to him on a regular basis. He spoke to Darius by phone every day. However, Vaughn did not know Darius by that name; he knew him only as TJ. On the evening of March 2, defendant was with Darius when Vaughn sold marijuana to Darius. Vaughn had not seen defendant before and never spoken with him by phone. At around 11:30 a.m. or noon on March 3, Darius phoned Vaughn and asked if he had some more weed because his

brother wanted to buy half an ounce. Vaughn recognized Darius's voice as the individual he knew as TJ. Vaughn told Darius he did have the weed but was busy at that time and would call Darius back. Vaughn was selling half an ounce of weed for $175.00. Darius phoned him again a short time later, but Vaughn said he was still busy. At about 12:30 or 1 p.m., Vaughn phoned Darius. They arranged to meet around 138th and Wallace in Riverdale, the same place where Vaughn had met Darius and defendant the previous night.

¶ 11 Taylor drove Vaughn and Jones in his black Infiniti to 138th and Wallace and parked but kept the car running. Vaughn was not driving his own red Charger that day. Vaughn phoned Darius and said he was waiting for Darius at the meeting place. Darius said he could not see the red Charger Vaughn usually drove, but Vaughn told him he was in a black Infiniti. Darius said he saw the Infiniti and was walking toward it. Vaughn saw Darius wave his hand and come up to the front of the car. He was with defendant, who came to Vaughn's rear passenger window. Vaughn produced half an ounce of marijuana. Defendant asked if this was the same weed he had before, the purple. Vaughn said it was and handed it to him through the open window. Defendant opened it, looked at it, smelled it, and gave it back to Vaughn who wanted $175 for it. Defendant went into his pocket and started counting some paper money. He turned and told Darius that he needed the rest of the money, but Darius did not give him the rest of the money and defendant did not give Vaughn any money. Defendant took a gun from his pocket and told Vaughn, "[G]ive me all that shit." Then defendant shot him once in the neck. Vaughn fell back as the car took off. Taylor and Jones drove him to Ingalls Hospital. He was later transferred to Northwestern Hospital. The shooting left him permanently paralyzed from the chest down. The bullet was still in Vaughn's back. He was never informed what caliber bullet it was and never asked.

¶ 12 On March 15, detectives came to Northwestern Hospital and showed Vaughn photo arrays. At that time Vaughn still did not know Darius's real name or defendant's name. He identified a photo of defendant as the shooter and wrote under defendant's photo, "Shot me." He also identified a photo of Darius and wrote "TJ" to the right of the photo. Vaughn did not see anyone other than Darius and defendant walk up to the car when he was shot. Vaughn did not remember describing one of the offenders as having light hazel eyes. Vaughn testified that the police had recovered his cell phone. The last few calls he would have had would have been the person that he was talking to before he was shot. The phone number from which Darius called Vaughn on March 3 was the same number Darius had called him on March 2. Vaughn did not remember the phone number but testified, "It's saved in my phone." It was saved as "TJ." Vaughn had told Darius that his (Vaughn's) name was T, the name he went by on the street. When defendant previously appeared in the courtroom before the trial date, Vaughn was not in the courtroom when defendant was brought out. Vaughn did not know Lorenzo Cureton.

¶ 13 Detective Willie Darkried testified that on the date of the shooting, he interviewed the eyewitnesses, Taylor and Jones, and later interviewed Vaughn at Northwestern Hospital. Vaughn told Darkried that he had met the offenders at the Citgo gas station at 13801 South Halsted a week or so before the shooting and had given them his cell phone number. Darkried testified: "Per Ramone Vaughn, learned that he knew a nickname of either C.J. or D.J., which was the person he had had numerous conversations with, that he's sold marijuana to before. Ramone Vaughn explained that he had met this person at the Citgo gas station on a certain date when he was in his car." Vaughn told Darkried the perpetrators were in a blue Chevy Lumina. At that time Darkried still did not know the names or identities of the persons involved. The police

obtained video from the gas station of Vaughn's car and a blue Lumina, and then prepared a flyer with a photo of the Lumina and a description of the people involved in the shooting. On March 14, 2012, the Lumina was stopped in Riverdale. The driver, Lorenzo Cureton, was arrested.

¶ 14 On the next day, March 15, Darkried interviewed Cureton, who stated that he was not involved in the shooting and that defendant and Darius had committed the offense. Previously, Taylor and Jones had told Darkried that just two offenders were involved and that they did not know the names of the two but would be able to identify them. The police recovered cell phones belonging to Vaughn, Taylor, and Jones from the Infiniti after the shooting. Darkried looked at the Vaughn's phone call logs. Darkried testified that at some point he learned that the last phone call Vaughn had before he got shot was "associated with" a phone used by Lorenzo Cureton.

¶ 15 To verify Cureton's information, Darkried had Taylor and Jones come to the Riverdale police station to view photo arrays. They both positively identified photos of Darius and defendant. Darius was arrested that day, March 15. On the following day, Taylor and Jones viewed lineups and each identified Darius as one of the offenders. Darkried received a spent 9-millimeter shell casing from Taylor, who had found the casing in his car. Darkried went to Northwestern Hospital and showed photos to Vaughn, who identified photos of both defendant and Darius. Darkried received descriptions of the offenders and one description was that the shooter had hazel eyes. He testified that information provided by either Bryan Jones or Darrion Taylor was that one of the offenders was wearing a blue Pelle Pelle coat.

¶ 16 Riverdale police officers testified that on December 14, 2012, defendant was observed near 137th and Wallace. He was wearing a dark Pelle Pelle jacket. Defendant ran from the police. A short time later he was found hiding in some bushes and was placed under arrest.

On December 15, Taylor and Jones viewed a lineup and identified defendant as the shooter.

¶ 17 After the State rested its case, a motion for a directed finding on behalf of defendant was denied. The court granted Darius's motion for a directed finding after finding it had heard no testimony presented by the State that Darius aided, abetted, or helped plan the attempt murder.

¶ 18 The following testimony was presented in defendant's case in chief.

¶ 19 A Riverdale Police Department officer testified that on March 3, 2012, he went to Ingalls Hospital where he saw a black Infiniti. He spoke with Bryant Jones and Darrion Taylor who described the shooter as a male black, medium-skinned complexion, five feet eight or nine inches tall and between 19 and 25 years old. He believed they told him the shooter had light hazel eyes. They gave a clothing description of a black cap, a hooded sweatshirt and jeans. They told him the second offender was five feet eight or five feet nine inches tall and wore a Pelle Pelle jacket.

¶ 20 Another officer testified that on March 14, 2012, he observed and stopped a blue Chevy Lumina at the corner of 138th and Wallace that matched the description of a car wanted for investigation. Lorenzo Cureton was driving the Lumina. Cureton had an active arrest warrant and was placed under arrest. Cureton was searched and cannabis was found on his person. A blue Pelle Pelle jacket was recovered from the trunk of the Lumina. The officer "ran" the Lumina's license plate at that time but at trial he did not recall the registered owner's name.

¶ 21 A Chicago police officer testified that on June 1, 2013, he arrested Lorenzo Cureton after observing Cureton, while walking with other individuals, drop a handgun to the ground and run. The officer chased and apprehended Cureton. The weapon, a 9-millimeter handgun loaded with 10 rounds of 9-millimeter ammunition, was recovered.

¶ 22 Dominique Jones testified that at around 9 a.m. on March 3, 2012, the day of the shooting, he met his friends Diansio (defendant), Lorenzo Cureton, and Edward Thomas at 136th and Wallace. As they were standing around conversing, Cureton got a phone call. He told someone to meet him on the corner of Wallace. An older little red car pulled up on Wallace. Dominique saw Cureton walk down the street toward the red car. Dominique, defendant, and Edward stayed in the middle of the block. The red car was at 137th Street, so Cureton had to walk a block to get to the car. Cureton was at the red car for a few moments, and then Dominique heard a shot. He saw Cureton leave the red car, which drove off toward Halsted shortly afterwards. Cureton ran eastbound away from the car. Shortly after that, Dominique saw Cureton drive past. He knew it was Cureton "[b]y his car. He had a blue Lumina." Dominique was asked at trial whether Cureton was the "the guy who shot the guy." He replied, "Yes, Sir." Dominique was a good friend of defendant and knew he had been arrested in December 2012 for the shooting. Dominique never went to the police station to report that Cureton was the individual who committed the shooting. In September 2012, at the Citgo gas station at 138th and Halsted, Dominique talked to Riverdale Police Officer Lewis, and told Lewis he had information that Cureton, not defendant, had committed the shooting. The first time Dominique told defendant's attorney that defendant did not commit the shooting was two days before his trial testimony.

¶ 23 Judy Madison, defendant's aunt, testified that on February 14, 2013, she came to court and saw Ramone Vaughn in his wheelchair in the back of the courtroom. His mother was with him. When defendant was brought out, Madison heard Vaughn's mother ask him, "Is that him?" Vaughn said, "No. I never seen him before in my life. I don't know why I am here." Madison did not tell the public defender what Vaughn had said until the week of trial, five months later.

¶ 24 Defendant testified that on March 3, 2012, at about 10 a.m., he walked to 136th and Wallace where he met Dominique Jones and a couple of his other friends. Then he walked into the house they were standing in front of, his friend's house. He was inside the house for 25 or 30 minutes, then rolled up a "blunt" and went back outside to his friends. He did not see Lorenzo Cureton out there. Defendant was talking to his friends when they heard a gunshot which came from the end of Wallace. When defendant heard the gunshot, Cureton was the only one by the car. Defendant had not seen Cureton walk toward a car. After defendant heard the gunshot, he saw Cureton "running from the sidewalk between the houses." After that, defendant continued talking with Dominique, Edward, and his other friends. At that point, he did not know that anyone had been shot. He did not see any cars pull off because he was not paying attention. He did not know Ramone Vaughn, the man in the wheelchair, and had never before seen him. On March 3, 2012, defendant did not have a gun and did not shoot anyone that day. He did not walk to the corner and approach a car that day. Lorenzo Cureton was not around when defendant was out there, and he never saw Cureton until he heard the gunshot.

¶ 25 On the night of March 3, defendant went to his baby's mother's home in East Chicago, Indiana. When he came back in May 2012, his mother told him that he was accused of the shooting and that the police were looking for him, but he did not turn himself in. He also knew his brother Darius had been arrested about 10 days after the shooting and had been accused of being one of the men responsible for the shooting. Defendant did not go to the police to tell them that Darius was not out there on the day of the shooting. He denied that he ran from the police when he was arrested in December. When defendant got caught, he told the police the perpetrator was Lorenzo Cureton. Defendant testified his eyes were brown, not hazel.

¶ 26 After the defense rested, the State presented rebuttal testimony. Officer Marcus Lewis testified that he had known Dominique Jones for several years and knew Dominique to be a very good friend of defendant. In September 2012, Lewis was at the Citgo gas station in Riverdale, getting gas for his squad car, when he saw Dominique and had a conversation with him. Dominique never told Lewis at that time or at any time that Lorenzo Curiton was the one who committed the shooting on March 3. Dominique never mentioned Cureton's name. Lewis asked Dominique where defendant was, and Dominique said he did not know.

¶ 27 Linda Roman testified that she was employed by the Cook County State's Attorney's Office as a victim/witness specialist and was assigned to the case involving victim Ramone Vaughn. On February 14, 2013, Vaughn and his mother were in the Markham courthouse. He was in a wheelchair, paralyzed from the waist down. When defendant's case was called in courtroom 107, Vaughn and his mother were in the hallway outside the courtroom with Linda. Vaughn did not enter the courtroom that day. Afterward, the Assistant State's Attorney came out to the hallway to discuss the status of the case with them. At no time while Linda was present with Vaughn did he say that he did not know why he was there or that defendant was not the person who shot him.

¶ 28 At the end of the trial, the court found that State witnesses Vaughn, Taylor, and Jones gave consistent testimony as to what happened, especially the fact that Taylor and Jones, each of whom picked defendant out of a photo array and lineup, had never seen defendant before the shooting. The court found that Dominique Jones lacked credibility. Dominique testified the car he saw was a red car, but Vaughn rode in a black car on the day of the shooting. Dominique's testimony, that Lorenzo Cureton had been standing with Dominique and defendant but walked

down the street to the car, was completely contrary to defendant's testimony that when he came out of the house, Cureton was not there. The court also found it "coincidental" that defendant left the day of the shooting to go live with his baby's mother in Indiana. The court noted that when defendant came back months later, he never went to the police to discuss what happened. The court stated it believed the rebuttal testimony of Officer Lewis and Linda Roman. The court found the evidence of defendant's guilt was overwhelming and entered a finding guilty on all counts. Defendant was sentenced to 35 years for attempted first-degree murder, including a 25-year enhancement for personally discharging a firearm that proximately caused great bodily harm, and a concurrent 10-year sentence for attempted armed robbery.

¶ 29 On appeal, defendant contends the trial court violated his constitutional right to present a defense when it denied his motion for ballistics testing on Lorenzo Cureton's 9-millimeter handgun to determine if it fired the shell casing recovered from the car where Vaughn was shot.

¶ 30 As a preliminary matter, defendant asserts that *de novo* review is required because the issue is whether defendant was denied his constitutional right to present a defense. He contends that his defense was that Lorenzo Cureton shot Ramone Vaughn, and that if the ballistics testing determined that Cureton's handgun matched the shell casing found in the car, the match would support that defense. The State responds that the deferential abuse of discretion standard applies.

¶ 31 We agree with the State that the denial of defendant's pretrial motion for ballistics testing was subject to the abuse of discretion standard. We note that what defendant's motion sought was not the admission of evidence *per se*, but the authorization of ballistics testing by the State police with the hope that the testing would result in evidence favorable to the defense. The trial court's ruling did not deny defendant the opportunity to present a defense; it merely limited in a narrow

way evidence that potentially supported that defense. The trial court's decision whether to allow defendant's pretrial motion for scientific testing on the 9-millimeter handgun was within that court's sound discretion. See *People v. Slover*, 339 Ill. App. 3d 1086, 1092-93.

¶ 32 The decision to admit or exclude evidence rests within the sound discretion of the trial court, and a reviewing court will not disturb that decision absent an abuse of discretion. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007); *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). It is true that a defendant has the right to present a defense. *People v. Hayes*, 353 Ill. App. 3d 578, 583 (2004). However, "when a party claims he was denied his constitutional right to present a complete defense due to improper evidentiary rulings, the standard of review is abuse of discretion." *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 133. In the course of reviewing the exclusion of evidence offered to show that another suspect may have committed the crime, our supreme court has held that "[i]t is the function of the circuit court to determine the admissibility of evidence, and a reviewing court will not reverse the circuit court's ruling on a motion *in limine* absent an abuse of discretion." *People v. Kirchner*, 194 Ill. 2d 502, 539 (2000). An abuse of discretion occurs only when 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. Ramsey*, 239 Ill. 2d 342, 429 (2010).

¶ 33 A trial court is charged with the responsibility of determining whether evidence is relevant and admissible. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). Evidence is deemed relevant "if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence." *Id.* at 455-56. A trial court may reject offered evidence on the grounds of irrelevancy if it has

little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature. *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). A trial court may reject even relevant evidence if it is remote, uncertain, or speculative. *People v. Figueroa*, 381 Ill. App. 3d 828, 840-41 (2008).

¶ 34 Here, defendant hoped that ballistics testing could produce relevant evidence favorable to his defense if the gun found in Cureton's possession on June 1, 2013, was the gun which shot Vaughn 15 months earlier, on March 3, 2012. However, under the applicable abuse-of-discretion standard, we conclude the trial court properly denied the requested ballistic testing on the basis that that there was an insufficient nexus between the recovered weapon and the casing found in the car next to the victim where the evidence was remote in time and too vague and uncertain. While it is true that an accused may prove facts and circumstances tending to show the crime was committed by someone other than himself, it is also true that "if the evidence is too remote in time or too speculative to shed light on the fact to be found, it should be excluded." *Wheeler*, 226 Ill. 2d at 132. In *Kirchner*, defendant contended the trial court erred in excluding evidence that the murder weapon, a knife, had been owned by another individual, Warner, and was in his possession seven weeks before the murders. The supreme court held that the evidence of Warner's possession of the knife seven weeks earlier was not relevant to the murder charges against defendant because it "was too remote to demonstrate that Warner, rather than defendant, possessed the knife" at the time of the murders. *Kirchner*, 194 Ill. 2d at 540.

¶ 35 We observe that in *Kirchner*, it was unquestioned that the knife was in fact the murder weapon, whereas here there existed only defendant's hope that ballistics testing would show the 9-millimeter handgun was the weapon used to shoot Vaughn. Even if ballistics testing were to establish that the shell casing found in the Infiniti had been fired from the handgun Cureton

possessed, Cureton's possession of it 15 months after the shooting was too remote and the conclusion that he was the one who used it to shoot Vaughn was too speculative. We conclude that the trial court did not abuse its discretion in holding that because the result of any ballistic testing would have been too remote to be admissible, there was no need to order testing.

¶ 36 Defendant contends, however, that testimony subsequently adduced at trial, after the trial court denied his motion, revealed the importance of ballistics testing to his theory that Cureton was the perpetrator. We note, however, that the defense did not renew the motion for ballistics testing after the trial began and that evidence admitted at trial did not establish the necessary link between Cureton and the shooting.

¶ 37 Defendant argues that a link was demonstrated between Cureton and the crime through a Pelle Pelle jacket, which one offender was alleged to have worn, as a Pelle Pelle jacket was found in the trunk of the blue Chevy Lumina Cureton was driving on March 14. However, trial testimony also established that defendant himself was wearing a Pelle Pelle jacket when he was arrested. Defendant contends that the Chevy Lumina was part of the shooting investigation. However, Dominique Jones was the only person who saw the blue Chevy Lumina in the vicinity of the crime at the time of the shooting, and he was the only person to testify that the Lumina was Cureton's car. His testimony was discredited and the trial court found his credibility lacking.

¶ 38 Defendant claims the police learned from Vaughn that the shooter had bought marijuana from him in the parking lot of a Citgo gas station about a week before the shooting and had driven a blue Chevy Lumina. Detective Darkried testified Vaughn told him that an individual with the nickname of either CJ or DJ was "the person he had had numerous conversations with, that he's sold marijuana to before." This description fit Darius, not defendant, as Vaughn testified

he had known Darius as TJ and had been dealing cannabis with Darius daily for about three weeks but had sold cannabis to defendant only the night before the shooting. Darkried testified that Vaughn had said he had met the perpetrator who was in a blue Chevy Lumina at the Citgo gas station on a date prior to the shooting. There was no testimony that the perpetrator *drove* the Chevy Lumina or that a drug transaction occurred at that time.

¶ 39 Defendant asserts that Cureton's phone was used to set up the aborted marijuana sale, that Vaughn called a phone "associated with" Cureton just before he was shot and directed the person who was going to buy marijuana to his location during that call. However, Vaughn testified that that phone call was to Darius and that Darius waved to him and approached the Infiniti while Vaughn was still speaking with him on the phone.

¶ 40 Defendant contends that "two defense witnesses testified that Cureton was the shooter" and that "[t]wo occurrence witnesses testified that Cureton approached the car Vaughn was in right before they heard a gunshot." However, the two witnesses referred to were defendant and Dominique Jones, neither of whom testified that he saw Cureton shoot Vaughn. Jones claimed that he was on Wallace Avenue with Cureton, defendant, and Edward Thomas when he saw Cureton leave them and walk to a red car, although, as the court noted, Vaughn was in a black Infiniti when shot. Jones heard a gunshot, and then saw Cureton running, but he did not see Cureton shoot anyone. A short time later Dominique saw Cureton driving his blue Chevy Lumina. The court observed that defendant's testimony contradicted that of Dominique Jones. Defendant claimed that before the shot was fired, he was standing with Jones, Edward, and a couple of other friends, but Cureton was not present, and defendant did not see Cureton walk down to a car. After defendant heard a gunshot, he saw Cureton running. Neither Dominique

Jones nor defendant testified to having seen anyone shoot anyone. There was no testimony that Vaughn was in the car Jones saw Cureton walking toward. Consequently, the trial evidence was insufficient to establish a nexus between Cureton and the shooting.

¶ 41 We conclude the trial court did not abuse its discretion in denying defendant's motion for ballistics testing of the 9-millimeter handgun found in Cureton's possession 15 months after the shooting where the defense theory behind the motion was too speculative and remote.

¶ 42 No. 1-13-2722, Dismissed.

¶ 43 No. 1-13-4052, Affirmed.