No. 2—09—1031
Order filed May 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 07—CF—363
ANTOINE T. CHEST,	)	Honorable Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Bowman and Hutchinson concurred in the judgment.

ORDER

Held: (1) No abuse of discretion in admission of other-crimes evidence where the evidence was relevant to identity, where prejudicial value did not outweigh probative effect, and where, even if admission was error, the error was harmless. (2) Evidence sufficient to establish beyond a reasonable doubt the factor qualifying defendant for statutory sentencing enhancement.

Following a jury trial, defendant, Antoine T. Chest, was convicted of two counts of attempted first-degree murder (720 ILCS 5/8—4(a) (2006); 720 ILCS 5/9—1(a)(1) (West 2006)) and one count of aggravated discharge of a firearm (720 ILCS 5/24—1.2(a)(2) (West 2006)). The trial court sentenced defendant to 35 years' imprisonment on one count of attempted murder (involving

victim Damon Shipp) to be served consecutively to concurrent terms of 26 years' imprisonment on the second count of attempted murder (involving victim Demetrius Price) and 10 years' imprisonment for the aggravated-discharge-of-a-firearm conviction. Each attempted murder sentence included an enhancement (25 years and 20 years, respectively) on the bases that defendant: (1) personally discharged the firearm that (2) caused great bodily harm. 720 ILCS 5/8—4(c)(1)(C),(D) (West 2006). The court denied defendant's posttrial motions. On appeal, defendant argues that the trial court erred where it allowed the State to present evidence of another crime and where the evidence was insufficient to establish beyond a reasonable doubt that defendant qualified for the mandatory statutory enhancements to his sentences on the murder convictions. For the following reasons, we reject defendant's arguments and affirm.

I. BACKGROUND

A. December 21, 2007

At trial, the evidence reflected that, on December 21, 2007, at around 2:00 p.m., victims Damon Shipp and Demetrius Price exited the Stephenson County courthouse in Freeport and walked south on Galena Avenue toward Main Street. Two African-American men began to chase them and shots were fired. Damon fell to the curb near a Hampton Inn. One man remained in the street firing at Damon, while Price ran into a parking lot and hid under a car.[1]

Several witnesses testified to various portions of the attack. Tony Gilbertson, who was in his vehicle stopped at a stoplight when the incident happened, testified that both pursuers were

[1] Damon sustained gunshot wounds to his legs, buttocks, chest, head and left hand. His left knee joint was broken, two bones in his left hand were shattered, and plates were subsequently implanted in his left hand, rendering him unable to make a fist.

armed and pointed their guns at Damon and Price. One of the men wore a stocking cap. Jesse Mefford, who was on foot near the intersection where the shooting occurred, stated that one man remained in the middle of the street and fired at Damon. Darvin Kiper, in his truck near the intersection, observed one man wearing a black hooded coat or sweatshirt—not a stocking cap—fire at Damon.

Pat Leitzen Fye and Tom Sorg worked on the second floor of a building facing the intersection. They saw one man slumped at the curb while another man stood in the middle of the street shooting. According to Fye, the shooter was a stocky, heavyset African-American man wearing a dark hooded sweatshirt. The hood was up and she could not see the shooter's face. Fye was unable to identify anyone in the courtroom as the shooter. According to Sorg, the shooter was an African-American man wearing a dark hooded sweatshirt with the hood up. He thought the shooter's face was broad, but he had only a side view of the shooter's face. He, too, was unable to identify anyone in the courtroom as the shooter. Shortly after the shooting, an officer brought Fye and Sorg to see defendant; when asked if he looked familiar, they said he resembled the shooter.

Veronica Clair, a drive-thru teller at a Fifth Third Bank on Main Street, looked out the window after hearing shots and saw two men running down the street, with two men following. One man fired a gun and one of the pursued men fell. The two pursuers turned and ran past her through the ATM-machine lane of the drive-thru. One man wore a hooded sweatshirt. James Barker, also employed at the Fifth Third Bank, heard the shots, looked out of a window, and saw two young men wearing hooded sweatshirts run by. The jury was shown a bank video and photographs of men in hooded sweatshirts running by the building.

Ted Austin, a parking enforcement officer, heard the shots and saw a black Lincoln vehicle come out from the bank lot and head south on Galena Avenue. Austin radioed the police with a description of the Lincoln and a partial license plate number. Freeport police officer Todd Barklow heard Austin's report and followed a Lincoln that fit Austin's description and was driving at a high rate of speed. The Lincoln lost control and ran into a snow bank. The car's occupants, four African-American males wearing dark, hooded sweatshirts, exited the vehicle and ran in two directions (the two driver's-side occupants ran southeast and the two passenger-side occupants ran west). Barklow secured the Lincoln and reported descriptions of its occupants and the directions in which they fled. Officer Thomas Madigan heard the report and drove south of where the Lincoln was stopped; as he turned east on a street, he saw defendant, wearing a black t-shirt (it was winter), emerge from a driveway near Beaver and Avon Streets and jog along the sidewalk. Madigan announced "Stop. Police." Defendant picked up his pace and ran away. Madigan exited his vehicle and pursued defendant on foot, again yelling "Stop. Police." Defendant eluded Madigan for a few minutes, ran into a backyard, and surrendered. Defendant's co-defendant, Gregory Shipp (unclear whether any relation to the victim), was subsequently tracked via police dog and found under bushes near another house.[2]

Barklow went to the vicinity of Beaver and Avon Streets to search for the remaining two men who had fled the Lincoln. He entered an open garage door on Beaver Street and found a bundle of clothes on the floor consisting of a black hooded sweatshirt, a dark stocking cap, and gloves. On

[2] At the time of trial, the two other men that fled the Lincoln had not been identified or apprehended.

December 22, 2007, Barklow returned to the garage and found behind a piece of drywall a Tech-9 Cobra 9 millimeter semi-automatic handgun with an extended magazine.

When asked at the scene who had shot him, Damon did not answer. When Price was initially shown a photo array that included co-defendant Shipp's photo, he stated that the array did not depict anyone involved in the shooting. Price told officer Matthew Summers that he did not know who had been shooting at them. Later, Summers spoke to Price and Damon together. He told them that defendant and co-defendant Shipp were being held in custody and that, if they did not identify their assailants, defendant and Shipp would be released. Damon stated that he did not see who shot him, but he nodded at Price to indicate that Price could speak to Summers. Price and Summers left Damon's room. Price then told Summers that defendant and co-defendant Shipp were both involved in the shooting. The next day, after viewing another photo array, Price identified defendant. At trial, however, both Damon and Price testified that they did not see who shot at them and did not know who was responsible. Further, Price testified that he knew defendant well enough that, if defendant had been shooting at him, he would have been able to identify him; he never saw defendant in a PT Cruiser. Price did not sign the photo lineups.

Officer Brian Kuntzelman interviewed defendant after his arrest. After Kuntzelman falsely told defendant that he had been videotaped driving the Lincoln, defendant admitted that he drove the car, explaining that he did not know who owned the Lincoln, that he had obtained it from a person named "Black," and that three strangers were seated inside the Lincoln when he took possession of it. Defendant asserted that he had fled from officers because he did not have a valid driver's license, and that he did not know why, after the car hit the snowbank, the three other passengers fled.

Trace chemistry expert Mary Wong from the state police crime lab testified that tests performed on gunshot residue lifts taken from the backs of defendant's hands two hours after his arrest led her to conclude that he: (1) had discharged a firearm; (2) was in the vicinity of a discharged firearm; or (3) came in contact with gunshot residue within six hours prior to taking the lifts. Lifts taken from co-defendant Shipp's hands did *not* test positive for the presence of gunshot residue.

DNA expert Keia Brown testified that defendant could not be excluded from having contributed to a mix of two human DNA profiles obtained from the gun. Co-defendant Shipp, however, was excluded. Defendant also could not be excluded from having contributed to a mix of DNA found on the black sweatshirt and black glove found in the garage.

B. December 20, 2007

Prior to trial and over defendant's objection, the court granted the State's motion *in limine* to introduce at trial evidence pertaining to a shooting that occurred on December 20, 2007, *i.e.*, one day prior to the shooting that formed the basis of the charges at trial. The State argued that the evidence was relevant to motive and intent; the court ruled that the evidence was admissible to "help explain an event that otherwise may not have happened."

In accordance with that ruling, the State, at trial, questioned Damon about a shooting that occurred on December 20, 2007. Damon testified that he did not recall the event. After he was confronted with his grand jury testimony, Damon recalled that he had previously claimed that, on December 20, 2007, he saw a white Monte Carlo vehicle and a black PT Cruiser vehicle on Iroquois Street. Shots were fired out of the PT Cruiser's window; someone jumped out of the Monte Carlo and returned fire. Before noticing the Monte Carlo, Damon believed that the shots were being fired at him.

Investigation of the scene on December 20, 2007, uncovered 9 millimeter and .45-caliber shell casings. It was later determined that the casings recovered at the scene of the December 20, 2007, shooting (Iroquois location) and the casings recovered at the scene of the December 21, 2007, shooting (Galena location) were fired from the same weapon; specifically, they were all fired from the Tech-9 Cobra 9 millimeter semi-automatic.

As part of the investigation of the December 21, 2007, shooting, police went to the home of Aja Harrell, defendant's girlfriend. There, they spoke with Aja's father, Steve Harrell, who showed them a black PT Cruiser that was parked in his driveway, referring to it as defendant's vehicle. The PT Cruiser had bullet holes in its body and back window. Steve testified that he never saw defendant drive a PT Cruiser; however, when he saw it parked in the driveway in the evening on December 20, 2007, he took for granted that defendant would be there. He yelled outside the window "Antoine?" Defendant answered. Steve told the officers that defendant might have parked the PT Cruiser in the driveway. At trial, he testified he had assumed that defendant left the vehicle in the driveway. The PT Cruiser was searched, and a 9-millimeter shell casing was found on the front passenger seat. Defendant's cousin owned the PT Cruiser.

The defense rested without presenting any witnesses. In closing argument, defense counsel reminded the jury that two additional men were seen fleeing the Lincoln, that those men were not apprehended and, therefore, that "all kinds of things" were unaccounted for. In rebuttal, the State argued that it was unlikely that defendant would take the weapon from the shooter to dispose of it. The jury found defendant guilty of two counts of attempted murder and one count of aggravated discharge of a firearm, specifically finding that defendant personally discharged a firearm at Price and Damon and that, by doing so, defendant proximately caused great bodily harm to Damon.

The court denied defendant's posttrial motion (wherein he again objected to the introduction of other-crimes evidence). On September 24, 2009, the court sentenced defendant to 35 years' imprisonment on one attempted-murder conviction to be served consecutively to concurrent terms of 26 years' imprisonment on the second attempted-murder conviction and 10 years' imprisonment for the aggravated-discharge-of-a-firearm conviction. Each attempted-murder sentence included an enhancement (25 years' and 20 years', respectively) on the bases that defendant personally discharged the firearm that caused great bodily harm. 720 ILCS 5/8—4(c)(1)(C),(D) (West 2006). Defendant appeals.

II. ANALYSIS

A. Evidence of Other Crimes

Defendant argues first that the trial court erred in admitting evidence pertaining to the December 20, 2007, shooting. He notes that the only issue at trial was the identity of the shooter on December 21, 2007. Defendant argues that the State did not establish that he committed the crime on December 20, 2007, and, in any event, that the December 20, 2007, shooting was irrelevant to whether he was one of the two men who fired at Damon and Price the next day. Defendant asserts that the State could have, without any mention of a shooting on December 20, 2007, proved that the PT Cruiser was connected to defendant and that the shell casing found therein was connected to the December 21, 2007, shooting. Thus, he argues, the other-crimes evidence was irrelevant, inflammatory, and more prejudicial than probative. Further, defendant concludes, any argument by the State that the error was harmless must fail because identity was the main trial issue and the jury was likely influenced by the insinuation that he committed a shooting on December 20, 2007, and,

therefore, he must also have committed the December 21, 2007, shooting. Defendant argues that the trial court's error requires us to reverse his convictions and remand for a new trial. We disagree.

"It is well settled that evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes." *People v. Lovejoy*, 235 Ill. 2d 97, 135 (2009). Nonetheless, other-crimes evidence should not be admitted if its probative value is outweighed by its prejudicial effect. *Id.* Absent a clear abuse of discretion, we will not reverse a trial court's ruling on the admissibility of other-crimes evidence. *Id.* at 135-36.

Here, we conclude that the evidence of the shooting on December 20, 2007, was relevant to identity. See *People v. Donoho*, 204 Ill. 2d 159, 170 (2003) (other-crimes evidence may be admissible if relevant to establishing identity). On two occasions only one day apart, Damon Shipp witnessed gunfire. The gunfire on the first day came from a black PT Cruiser. The second day, Damon was severely injured, defendant was apprehended, and defendant was later tied to a black PT Cruiser that contained a shell casing matching the shell casings found after both the December 20, 2007, and the December 21, 2007, shootings. In considering the relevance of the evidence, the question is whether the evidence renders it more likely than not that defendant was the shooter, where the shell casings found at the scene on December 21, 2007, came from the same gun as the shell casing found in a car tied to defendant that had, the previous day, been seen at a shooting that Damon witnessed and, initially, thought was targeted at him. We agree with the State that it does, and we cannot conclude that the trial court abused its discretion in finding the evidence relevant.

Moreover, we disagree that the prejudicial effect of the evidence outweighed its probative value. Despite defendant's assertions on appeal, the evidence pertaining to the circumstances surrounding the December 20, 2007, shooting was limited. Indeed, Damon at first claimed he had

no recollection of the event. The State then used Damon's grand jury testimony to introduce only cursory facts about that shooting. Further, as defendant notes, Damon did not testify that defendant was involved in the December 20, 2007, shooting. Rather, the evidence suggested that defendant *might* have committed the December 20, 2007, shooting because of his connection to the PT Cruiser and the shell casing. This was not, for example, evidence of a prior conviction or crimes for which defendant was without question the perpetrator. Thus, the likelihood of the evidence to speak to defendant's propensity to commit crimes was limited. Further, the physical evidence pertaining to the December 20, 2007, shooting—shell casings that matched those found on December 21, 2007, and bullet holes in the PT Cruiser—would likely have been introduced irrespective of the December 20, 2007, shooting evidence. Indeed, the police found the PT Cruiser when investigating the December 21, 2007, shooting. Thereafter, they found the shell casing in the PT Cruiser that matched those found at the scene on December 21, 2007. Accordingly, while defendant points to these facts to argue that the State had no need to introduce the December 20, 2007, shooting, we conclude that the evidence was not unduly prejudicial *because* it was a relatively minor piece of evidence in relation to evidence that was otherwise introduced.

Finally, and for the foregoing reasons, even if the court erred in admitting the evidence, we agree with the State that the error was harmless. Error will be deemed harmless and a new trial unnecessary when " 'the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result.' " *People v. McKown*, 236 Ill. 2d 278, 311 (2010), quoting *People v. Arman*, 131 Ill. 2d 115, 124 (1989). Here, even without evidence of the December 20, 2007, shooting, the jury would have learned that defendant was linked to the PT

Cruiser and that, inside that vehicle, was a shell casing matching the shell casings found at the December 21, 2007, crime scene and fired from the same gun as the shell casings found at that scene. Further, and as described in more detail below, defendant's apprehension near the scene, together with the weapon, DNA evidence, and gunshot-residue analysis, presented sufficient evidence of defendant's guilt to render harmless an erroneous admission of the other-crimes evidence. Accordingly, we conclude that the trial court did not abuse its discretion in admitting evidence pertaining to the December 20, 2007, shooting.

B. Sentencing Enhancement

Defendant argues next that the State did not prove beyond a reasonable doubt the factor justifying his sentencing enhancements, *i.e.*, that he personally discharged the firearm that caused great bodily harm. Defendant argues that the evidence established that there were two men who pursued Damon and Price, but that only one man fired shots. None of the witnesses testified that they saw him shoot the gun. Although gunshot residue tests detected gunshot residue on defendant's hands, he notes that expert Wong opined that the residue could mean one of three things, *not* that defendant absolutely fired the gun. This is particularly important, defendant asserts, in light of the fact that four men were seen fleeing the Lincoln, two of whom were never apprehended. Finally, defendant argues that the evidence suggests that he was likely driving the getaway car and, therefore, it "would not make sense to assign the roles of shooter and getaway car driver to the same offender, as it takes more time for a fleeing man carrying a gun to get into a driver's seat and ready himself to drive than it would for him to simply slip into a passenger seat while someone else drives away." Accordingly, defendant concludes that, even viewing the evidence in the light most favorable to the

State, no rational trier of fact could have found beyond a reasonable doubt that *defendant* personally discharged the gun. We disagree.[3]

The State bears the burden of establishing beyond a reasonable doubt the fact qualifying a defendant for a statutory sentencing enhancement. *People v. Thurow*, 203 Ill. 2d 352, 360 (2003). Where a defendant challenges the sufficiency of the evidence establishing an enhancement factor, we consider the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found that factor established beyond a reasonable doubt. *People v. Lavelle*, 396 Ill. App. 3d 372, 382 (2009).

Here, the jury was presented with evidence that two men were apprehended for the December 21, 2007, shooting and that only one of those men, defendant, had gunshot residue on his hands. Defendant correctly notes that the presence of the gunshot residue does not necessarily imply that he fired the weapon. However, that conclusion was not ruled out by Wong. It was the jury's function to weigh the evidence in its totality to consider whether the gunshot residue on defendant's hands was the result of his having fired the weapon rather than the two other alternatives. In considering the evidence in its totality, the jury also knew that defendant's DNA could not be excluded from that found on the gun, whereas co-defendant Shipp's DNA *was* excluded. It knew

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[3] We note two points. First, defendant does not challenge the appropriateness of the statutory enhancements *if* the evidence established beyond a reasonable doubt that he personally discharged the weapon. Second, defendant agrees that, in the event we were to accept his sufficiency argument, the evidence nevertheless remains sufficient to uphold 15-year add-ons for attempted murder while accountable for the conduct of another who was armed with a firearm. Therefore, he requests only that we reduce the 25-year and 20-year enhancements to 15 years each.

that the weapon that was used in the shooting was the same weapon that ejected a shell casing that was found in the PT Cruiser linked to defendant. In that vein, the jury could reasonably have found that it was defendant's gun or that he was the person most connected to it and, therefore, that he was the person who fired it.

Defendant insists that, where there were two additional men who fled the scene and were never apprehended, the jury could not determine beyond a reasonable doubt that he was the shooter. Accordingly, he suggests that the existence of those two men renders impossible a finding, beyond a reasonable doubt, that he fired the weapon. We disagree. Again, the jury was aware that there were two men who fled the scene and who were never apprehended. The mere fact that others were involved does not necessarily preclude the jury from finding that defendant fired the gun. The jury could have reasonably found that it was *conceivable* but *unlikely* that one of the men who was not apprehended fired the gun, given: (1) defendant's apparent connection to the weapon as evidenced by the shell casing in the PT Cruiser; (2) the gunshot residue on defendant's hands; (3) that defendant's DNA could not be excluded as contributing to that found on the gun; and (4) defendant's exit from the garage where the weapon was found. Further, given that the weapon and clothes were found together, that defendant's DNA was also present on the clothes, and that defendant exited the garage where that evidence was found, the jury could reasonably have concluded that defendant disposed of all of the evidence together and, therefore, possessed and fired the weapon during the crime. Finally, we reject defendant's argument that it would have been illogical to assign him the roles of both shooter and getaway driver. This concept or version of the events is not inherently implausible. Accordingly, viewed collectively in a light most favorable to the State, the evidence was sufficient for the jury to conclude beyond a reasonable doubt that defendant personally

discharged the weapon. See *People v. Hommerson*, 399 Ill. App. 3d 405, 409 (2010) (trier of fact need not be satisfied beyond a reasonable doubt with each link in the chain of circumstantial evidence; rather, it is sufficient if the evidence as a whole satisfied the trier of fact beyond a reasonable doubt). As such, we reject defendant's argument that the statutory enhancements must be reduced.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed.

Affirmed.