

NOTICE

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2015 IL App (4th) 130459-U

NO. 4-13-0459

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 10, 2015

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
ANTONIO PHILLIPS,)	No. 10CF86
Defendant-Appellant.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pope and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Although the trial court erred in admitting other-crimes evidence on the ground that it was relevant under a continuing-narrative-of-events theory, its error was harmless where the other-crimes evidence was admissible under an alternate theory of relevancy and it was otherwise unlikely the jury would have reached a different result without the presentation of the other-crimes evidence.

¶ 2 A jury found defendant, Antonio Phillips, guilty of first degree murder and armed robbery and the trial court sentenced him to 65 years in prison. Defendant appeals, arguing the court erred in allowing the admission of other-crimes evidence at his trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In the early morning hours of December 10, 2009, police officers found William Suggs slumped behind the wheel of a vehicle near the intersection of Lincoln and Mossman Streets in Springfield, Illinois. Suggs had been shot in the head and was deceased. On February

18, 2010, a grand jury returned an indictment, charging defendant with first degree murder (720 ILCS 5/9-1(a)(3) (West 2008)) and armed robbery (720 ILCS 5/18-2(a) (West 2008)). The charges were based on allegations that defendant, or someone for whom he was legally accountable, took a wallet from Suggs by the use of force and while carrying a firearm and discharged that firearm, striking Suggs in the face and causing his death.

¶ 5 On July 2, 2012, the State filed a notice of its intent to offer other-crimes evidence at defendant's trial. It asserted defendant had pending felony charges against him in two other cases that were relevant and admissible (1) as part of a continuing narrative of events which gave rise to the offenses in the case at bar; or (2) to show defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The State first pointed to case No. 10-CF-17, in which defendant was charged with the armed robbery and aggravated robbery of Kazio Hunt. The State alleged its evidence in that case would show as follows:

"[O]n December 6, 2009, at approximately 10:43 PM, the victim, a taxicab driver for the Yellow Checker Cab [Company] picked up the defendant in the vicinity of Lawrence and State Street[s] after having called the cab [company] from the Hometown Pantry, located at 555 [South] MacArthur [Boulevard]. Thereafter, the victim felt a handgun against his ribs and heard the gun being cocked. The Defendant stated [']I don't want to shoot you; I have [two] rounds, so you better give me the money.['] The victim gave the defendant the money and the defendant fled on foot."

The State also sought to introduce evidence that defendant had been charged in case No. 10-CF-

1084 with armed robbery, aggravated robbery, and vehicular invasion. It alleged its evidence in that case would show the following:

"[O]n October 27, 2009, at approximately 1:00 AM, the defendant approached and entered Diane Albers['] automobile while she was stopped at the intersection of Monroe and Lincoln Street. The defendant entered without her permission and was holding a handgun. The defendant grabbed Albers' wrist and pointed the gun at her head. The defendant told Albers to give [him her] money. The defendant took Albers' money and then fled on foot."

¶ 6 On September 7, 2012, defendant filed a motion *in limine*, seeking to exclude the evidence of the other crimes referenced in the State's notice of intent. He argued evidence of crimes he allegedly committed on October 27, 2009 (case No. 10-CF-1084), and December 6, 2009 (case No. 10-CF-17), were not admissible under any basis asserted by the State. Additionally, defendant asserted the probative value of such evidence, if deemed relevant, was substantially outweighed by its prejudicial effect and should be precluded.

¶ 7 On September 14, 2012, the trial court conducted a hearing on defendant's motion *in limine*. Before the court, the State argued the other-crimes evidence was relevant to show a continuing narrative and *modus operandi*, and it pointed out the similarities between the other-crimes evidence and the charged offenses. In particular, the State asserted all of the offenses at issue occurred close together in time (within a two-month period), at night, and in the same general area in Springfield. Additionally, each case involved an armed robbery, with a firearm, that took place inside of a vehicle. Again, defendant asserted the other-crimes evidence was not suf-

ficiently intertwined with the charged offenses to constitute a continuing narrative of events. Further, he maintained that, even if the other-crimes evidence was admissible under a basis asserted by the State, it was highly prejudicial and should not be admitted. At the conclusion of the hearing, the court took the matter under advisement.

¶ 8 On January 4, 2013, a hearing was held in the matter and the trial court ruled on defendant's motion *in limine*. Initially, it noted the State sought to introduce other-crimes evidence to show both a continuing narrative of events and *modus operandi*. The court stated the question before it was whether the previous acts had "a common scheme or design" and noted similarities between the other-crimes evidence and the charged offenses. It then held the evidence could "be brought in to show there [was] a continuing narrative of events." It found the State would be allowed to present evidence of the charges against defendant in case No.10-CF-17, which allegedly occurred on December 6, 2009, and stated the evidence would be admitted with a limiting instruction. However, the court believed evidence of case No. 10-CF-1084, which it noted involved defendant allegedly "entering the vehicle of the woman," would be highly prejudicial, outweighing the evidence's probative value. The court granted defendant's motion *in limine* with respect to that latter evidence.

¶ 9 In March 2013, defendant's jury trial was conducted. The State presented evidence that on December 10, 2009, at approximately 12:44 a.m., police received a report of a "slumped male driver." Officers were dispatched to the scene and found Suggs seated behind the wheel of a vehicle. He had been shot in the face at close range and was deceased. Suggs' girlfriend, Lindsey Holsapple, testified she lived with Suggs. Around 9:40 p.m. on December 9, 2009, Suggs made some phone calls. Holsapple testified that, shortly after making the calls,

Suggs left the couple's home, intending to purchase a pack of cigarettes for Holsapple and meet with his "weed dealer" to buy marijuana.

¶ 10 The State also presented evidence that, in connection with Suggs' murder, police began looking into defendant and his cousin, Jonathon Phillips, after two individuals, Nicole Cummings and Jamiela Scott, contacted the police and reported that during the evening of December 9, 2009, they heard two individuals discuss committing a robbery. Cummings and Scott shared an apartment. Both testified that, on December 9, 2009, between 7:00 and 9:00 p.m., Jonathon and defendant were in their apartment. At the time, Cummings did not know either defendant or Jonathon's name; however, she had seen both individuals before. Scott testified she "knew of" Jonathon and had "seen him around." She stated she had "kind of, but not really," seen defendant before. Later, both Cummings and Scott identified defendant and Jonathon in photographic line-ups provided by police as being the two individuals in their apartment on December 9, 2009.

¶ 11 Cummings testified Jonathon arrived at the apartment first and appeared nervous and anxious. Later, defendant arrived. Cummings heard Jonathon talk "about going to do a lick" and defendant agreed. Defendant and Jonathon then left the apartment together after defendant said it was time to go. The following morning, Cummings heard a body had been found and contacted the police. On cross-examination, Cummings acknowledged she had been smoking marijuana during the evening of December 9, 2009. Also, she agreed she contacted the police after learning her sister's boyfriend had been arrested; however, she asserted "that was not the only reason" she contacted the police.

¶ 12 Scott testified Jonathon was "[f]idgety" when he arrived at her apartment. She

stated he kept "leaving and coming back" and at some point "went and got his cousin," whom she identified as defendant. Scott testified she overheard Jonathon and defendant talking "about hitting a lick," which she understood meant they were going to rob somebody. She stated Jonathon seemed "anxious but scared" and defendant reassured him. According to Scott, defendant "told [Jonathon] not to worry about it, he had his back, everything was going to be okay." She also saw Jonathon pull up his shirt and observed the handle of a gun near his waist. The following day, Scott learned a friend's boyfriend "was picked up for questioning involving a murder." She spoke with both Cummings and her landlord regarding what she overheard and her landlord called a detective. Ultimately, Scott gave a statement to the police. She testified that, at some point, she contacted Crime Stoppers after a detective told her she could get a reward. Scott stated she received \$1,000.

¶ 13 On cross-examination, Scott testified that in December 2009, she worked as a stripper. She admitted "smoking weed" on December 9, 2009, and that she "smoke[d] weed" every day. She also acknowledged being charged with a felony in 2005 and receiving probation. In March 2007, her probation was revoked and she was sentenced to 120 days in jail. Scott admitted that in April 2009, she was charged with a Class 3 felony. That matter was pending when she provided her statement to the police. In September 2010, she pleaded guilty to the pending felony charge and, again, received probation.

¶ 14 Marquette Jones testified both defendant and Jonathon were his cousins. Between 8:00 and 9:45 p.m. on December 9, 2009, he spoke with Jonathon and made plans to meet at the home of Jones' uncle, George Phillips. Jones stated defendant accompanied Jonathon to George's home. At some point in the evening, Jonathon showed Jones a gun and Jones took pho-

tographs of Jonathon holding the gun with his cell phone. The photographs were taken at approximately 9:39 p.m. and were admitted into evidence. Jones testified he left George's home after taking the photographs and saw Jonathon and defendant leave together. On cross-examination, Jones testified he only observed Jonathon handle the gun on the night in question and not defendant.

¶ 15 George Phillips testified defendant and Jonathon were his cousins. At some point in the evening on December 9, 2009, they came to his house and George observed Jonathon handling a gun. He also observed defendant and Jonathon leave his home together. In the days following December 9, 2009, defendant contacted George and stated he wanted to go see a girlfriend who lived out of town. Defendant asked George to purchase a train ticket to Bloomington because defendant did not have any identification. The day following their conversation, George went with defendant to the Amtrak station and purchased defendant's train ticket. Detective Ryan Sims testified Amtrak personnel reported that on the morning of December 12, 2009, George purchased a train ticket from Springfield to Bloomington. On December 20, 2009, Sims picked defendant up in Chicago and returned him to Springfield.

¶ 16 On cross-examination, George testified defendant had family in Chicago and it was not unusual for him to visit there. He also denied ever seeing defendant with a gun. Finally, George acknowledged he was close with Jonathon's mother and that he had previously had trouble with the law but had since straightened his life out.

¶ 17 Yvete McCants testified that in December 2009, she lived in an apartment with Jonathon's mother, Tasha Phillips, who was her girlfriend. During the evening of December 9 or the early morning hours of December 10, 2009, she woke to find Jonathon and another family

member, Christina Davis, awake inside her apartment. Soon thereafter, defendant arrived and looked nervous. According to McCants, Davis asked defendant what was wrong and he responded, "I did it." Jonathon then told defendant he "might as well tell them." McCants testified defendant stated he and Jonathon had been "riding with a friend [defendant] knew" and Jonathon got out of the car to smoke a cigarette. While Jonathon was outside of the car, defendant told the friend to "give it up." Defendant and the friend scuffled with the gun and it went off. When the gun discharged, Jonathon and defendant ran off in different directions.

¶ 18 On cross-examination, McCants testified Tasha was still "somewhat" her girlfriend and the two were temporarily living together and raising a child. She acknowledged having problems with the law, which included convictions for aggravated discharge of a firearm in 2002 and two prior convictions for selling drugs. Additionally, McCants testified she was aware that Jonathon faced the same charges as defendant but denied that she wanted Jonathon to "get a good deal," stating she was "not taking anyone's side."

¶ 19 Clinton Phillips testified defendant was his cousin. In December 2009, Phillips lived at the Macarthur Park Apartments. In the late evening or early morning hours of December 9 and 10, 2009, defendant came to Clinton's home and stayed the night. On cross-examination, Clinton testified he was not sure of the date defendant spent the night.

¶ 20 Barbara Ferguson testified that in 2009, she was employed at the Macarthur Park Apartments in Springfield and was responsible for cleaning the apartments, cleaning the grounds, and working in the office. On December 14, 2009, she found a wallet with Suggs' identification card dangling in a bush at the apartment complex.

¶ 21 Freddy Medley, Jr., testified he knew defendant from "hanging out." In late 2009

or early 2010, he was in the Sangamon County jail at the same time as defendant. According to Freddy, defendant reported he "got into some trouble" and "did something he didn't mean to do." Defendant asked Freddy to contact Freddy's son, Latravian Medley, so that Latravian "could get in touch with Hayes Miller so they [could] get rid of the gun that had a body on it." Freddy testified Miller was Latravian's best friend.

¶ 22 On cross-examination, Freddy acknowledged that, prior to November 2009, he had a criminal history that included five felony convictions and three terms of imprisonment in the Illinois Department of Corrections (DOC). After November 2009, he faced charges consisting of two counts of armed robbery, Class X felonies; unlawful possession of a weapon by a felon, a Class 2 felony; and two counts of aggravated battery, Class 3 felonies. Ultimately, he pleaded guilty to only the Class 2 felony. Freddy agreed that he contacted police with respect to defendant's case because he wanted to get a deal in his own case and because he "was trying to help [himself] out." However, he insisted his Class X felony charges were dismissed because the State did not have sufficient evidence against him.

¶ 23 Hayes Miller testified he grew up with defendant and they were "like best friends." Miller was also best friends with Latravian Medley. He recalled that on December 10 or 11, 2009, defendant came to his home and sold him a gun. Later, Miller was aware that defendant went to Chicago. He also received a phone call from defendant and noticed defendant was calling from a Chicago area code. Miller testified defendant asked him to wipe the gun down. He also became aware that on December 20, 2009, defendant was arrested and returned to Springfield. Following defendant's return, Miller made arrangements to get rid of the gun. He testified he placed the gun in a colorful cotton hat and gave it to his friend, Nicole Kroemlein.

Miller identified People's exhibit No. 94 as the gun he received from defendant and gave to Kroemlein.

¶ 24 On cross-examination, Miller acknowledged having a prior 2008 felony conviction, for which he spent time in DOC. In July 2009, he was charged with another felony, which was still pending when he was questioned by police regarding defendant's involvement in Suggs' murder. Miller acknowledged that he hoped his statement to police would help with his pending case. Further, he testified that the sentencing range for his pending case was one to six years and, in September 2010, he pleaded guilty and was sentenced to one year in prison.

¶ 25 Nicole Kroemlein testified she knew both defendant and Hayes Miller and had gone to school with them. In December 2009, Miller was her neighbor and asked her to hold a gun for him. On January 19, 2010, she received a phone call from Miller. After receiving the phone call, she took the gun to Miller's house, where police detectives were waiting for her. Kroemlein was questioned by police regarding the gun. Initially, she was dishonest about where she got the gun; however, later she told the truth. She also identified People's exhibit No. 94, indicating it was the gun she received from Miller.

¶ 26 Vickie Reels testified she was a forensic scientist specializing in firearms identification and employed by the Illinois State Police. She was asked to examine a bullet retrieved during Suggs' autopsy and the firearm from People's exhibit No. 94. Reels stated it was not "possible to make an identification with every single bullet fired from every single gun" and noted that sometimes a bullet submitted for comparison could be damaged or the condition of a firearm may have changed. She testified she could neither identify nor eliminate the bullet she examined as having been fired from the gun in People's exhibit No. 94. Reels testified the bullet

was a .38-caliber bullet and was consistent with a bullet that could have been fired from that gun, which was identified as a .357-magnum revolver. She noted, "this type of bullet, this caliber of bullet, could have been fired from this gun." Reels also testified the bullet had some mutilation or damage to about half of it.

¶ 27 On December 20, 2009, defendant was interviewed by Sims and Detective Mark Pointer. Pointer testified defendant was interviewed twice and his interviews were separated by a short period of time. Recordings of defendant's interviews were played at trial and transcripts distributed to the jury. During his first interview, defendant denied killing Suggs and denied ever being in Suggs' car on the night of the murder. Defendant initially asserted he did not see Jonathon on December 9, 2009, until he went to George's house. He also denied being with Jonathon after leaving George's residence. Defendant stated he saw Jonathon with a gun but asserted he "wasn't with Jonathon that night." According to defendant, he separated from Jonathon after leaving George's home and went to "15th Street to sell crack." He reported he paid a girl whose name he did not know \$5 to give him a ride and stayed out until 6 a.m. Defendant also denied asking George for a train ticket to leave Springfield and asserted he did not know if Jonathon killed someone.

¶ 28 Defendant's first interview with police concluded after defendant asked to speak with an attorney. His second interview began after defendant summoned Pointer and Sims back into the interview room and indicated he wanted to continue talking with the detectives. During his second interview, defendant altered his earlier statement and asserted he was with Jonathon "at them female's houses" prior to being at George's house, but he denied speaking with Jonathon about a robbery. Initially, defendant also continued to deny being with Jonathon later in the

evening and repeated his earlier story that, after leaving George's house, he got a ride to 15th Street from "some girl," whom he paid \$5 or \$6. He also reiterated that he was not in Suggs' car, he did not kill anyone, and he did not know if Jonathon killed anyone.

¶ 29 Ultimately, however, defendant continued to change his story. He admitted that he "was there in the car that night." He stated Jonathon flagged Suggs down and got in the back seat of Suggs' car, while defendant got in the front seat. Defendant stated he didn't know Suggs personally but would "always see him with his girl." He stated he paid Suggs \$10 to drop him off on 15th Street and, when he exited the car, Jonathon got in the front seat and they drove off. Defendant stated he went to the home of his cousin, Clinton, to sleep. He denied knowing anything about personal items that belonged to Suggs and were found in Clinton's apartment complex. Again, however, defendant changed his story, stating he saw Jonathon approximately two hours later and Jonathon stated "he shot the dude and he robbed him." Jonathon asked for defendant's help and told defendant to get rid of some shells, which defendant stated he threw in an alley. Defendant stated he also took Suggs' wallet from Jonathon and threw it "on top of some bushes." He denied taking Jonathon's gun.

¶ 30 At trial, the State also presented evidence that, on December 6, 2009, at approximately 10:43 p.m., police officers were dispatched to an armed robbery, which was located four or five blocks away from where Suggs was later found. Kazio Hunt, a taxicab driver who drove a minivan, reported he picked up a fare, drove a short distance, and was robbed at gunpoint. At trial, Hunt testified a call came in for a cab and he was dispatched to the corner of Edwards Street and Macarthur Boulevard. He picked up the customer, who asked to be taken to the hospital. After driving a short distance, the customer "put a revolver to [Hunt's] rib." Hunt testified

he heard a cocking sound and the customer directed him to make several turns and pull over at a specific location. The customer then demanded Hunt's money. When Hunt turned over the money, the customer told Hunt to "have a nice Christmas, have a nice day," exited the vehicle, and ran off. Hunt stated he got a good look at the customer's face and was able to give a description to the police. The State's evidence showed, on January 8, 2010, police officers showed Hunt two photographic line-ups—one containing a picture of Jonathon and one containing a picture of defendant. Hunt identified the photograph of defendant, asserting defendant was the customer who robbed him on December 6, 2009.

¶ 31 At the conclusion of the State's case, defendant rested without presenting any witnesses. Prior to closing arguments, defendant's counsel asserted that it was his "strategy" not to ask for a jury instruction regarding the admission of other-crimes evidence. He noted the trial court allowed other-crimes evidence, finding it was admissible to show a continuing narrative of events, and asserted he "struggled *** to put that into a jury instruction" in a manner that the jury would understand. Defense counsel then asserted his belief that the court had reached the incorrect ruling as to the other-crimes evidence and sought clarification that, during closing arguments, the State would only argue that the other-crimes evidence was relevant to show a continuing narrative of events. The State agreed it was "clear on that" and the parties presented their closing arguments.

¶ 32 On March 18, 2013, the jury found defendant guilty of both first degree murder and armed robbery. On April 3, 2013, defendant filed a posttrial motion, raising several issues. Relevant to this appeal, he argued the trial court erred in partially denying his motion *in limine* with respect to other-crimes evidence. On May 22, 2013, the court denied defendant's posttrial

motion and sentenced him to 65 years in prison. On May 24, 2013, defendant filed a motion to reconsider his sentence, which the court ultimately denied.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant argues the trial court erred in admitting other-crimes evidence at his trial. He contends the other-crimes evidence was not part of a "continuing narrative" of the charged offenses and asserts it was not otherwise relevant. Defendant also complains that the evidence was overly prejudicial and no limiting instruction was presented to the jury. The State concedes the trial court erred in admitting the other-crimes evidence pursuant to the continuing-narrative exception but maintains reversal is not required because the other-crimes evidence was admissible on other grounds, in particular, to show *modus operandi*. Alternatively, it contends any error in admitting other-crimes evidence was harmless because the evidence against defendant was overwhelming.

¶ 36 Generally, other-crimes evidence "is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119. Such purposes include motive, intent, identity, lack of mistake, and *modus operandi*. *Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119. Also, "evidence of other crimes may be admitted if it is part of the 'continuing narrative' of the charged crime." *People v. Pikes*, 2013 IL 115171, ¶ 20, 998 N.E.2d 1247.

¶ 37 However, even when other-crimes evidence is offered for a permissible purpose, it should not be admitted if the prejudicial impact of the evidence outweighs its probative value. *Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119. "It is within the sound discretion of the trial

court to determine the admissibility of other-crimes evidence, and its decision will not be disturbed absent a clear abuse of discretion." *Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119. "An abuse of discretion will be found only where 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. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000).

¶ 38 Additionally, "[e]rroneous admission of other-crimes evidence calls for reversal only if the evidence was 'a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different.'" *People v. Adkins*, 239 Ill. 2d 1, 23, 940 N.E.2d 11, 24 (2010) (quoting *People v. Hall*, 194 Ill. 2d 305, 339, 743 N.E.2d 521, 541 (2000)). "In other words, the evidence 'must be so prejudicial that the defendant is denied a fair trial.'" *People v. Patterson*, 2013 IL App (4th) 120287, ¶ 59, 2 N.E.3d 642 (quoting *People v. Pelo*, 404 Ill. App. 3d 839, 865, 942 N.E.2d 463, 486 (2010)). "An evidentiary issue is harmless when no reasonable probability exists that the jury would have acquitted the defendant absent the error." *Pelo*, 404 Ill. App. 3d at 865, 942 N.E.2d at 486.

¶ 39 We agree with the parties' assertions on appeal that the trial court erred in finding the other-crimes evidence was admissible under a continuing-narrative-of-events theory. Other-crimes evidence is admissible under the continuing-narrative exception where it is "intertwined with the offense charged." *People v. Thompson*, 359 Ill. App. 3d 947, 951, 835 N.E.2d 933, 936 (2005). "When facts concerning uncharged criminal conduct are all part of a continuing narrative which concerns the circumstances attending the entire transaction, they do not concern separate, distinct, and unconnected crimes." *People v. Collette*, 217 Ill. App. 3d 465, 472, 577 N.E.2d 550, 555 (1991). "[E]vidence is admissible as part of a continuing narrative to explain

aspects of the crime that would otherwise be implausible or inexplicable." *People v. Slater*, 393 Ill. App. 3d 977, 992-93, 924 N.E.2d 1039, 1052 (2009). "[E]vidence may not be admitted under the continuing-narrative exception, even when the crimes occur in close proximity, if the crimes are distinct and 'undertaken for different reasons at a different place at a separate time.' " *Adkins*, 239 Ill. 2d at 33, 940 N.E.2d at 29 (quoting *People v. Lindgren*, 79 Ill. 2d 129, 140, 402 N.E.2d 238, 243 (1980)).

¶ 40 Here, the other-crimes evidence involved separate and distinct crimes that were not part of the events surrounding the charged crimes. The other-crimes evidence did not explain an implausible or inexplicable aspect of the charged offenses. Also, the other-crimes evidence was not "intertwined" with the charged offenses.

¶ 41 Although the trial court erred in finding the other-crimes evidence was relevant to show a continuing narrative and allowing its admission on that asserted basis, we find reversal of defendant's convictions unwarranted as defendant was not prejudiced. First, we agree with the State that the other-crimes evidence was relevant on other grounds—specifically, *modus operandi*.

¶ 42 "Evidence of *modus operandi*, or mode of operation, is useful when the identity of the perpetrator is in dispute." *People v. Stanbridge*, 348 Ill. App. 3d 351, 355, 810 N.E.2d 88, 93 (2004). When other-crimes evidence is offered to establish *modus operandi*, "a higher degree of similarity between the facts of the crimes charged and the other offenses is required." *People v. Wilson*, 214 Ill. 2d 127, 140, 824 N.E.2d 191, 199 (2005) (noting that, for purposes other than to show *modus operandi*, general areas of similarity between the other-crimes evidence and the charged offense are sufficient). "This higher degree of similarity is necessary because *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, 824 N.E.2d at 199.

¶ 43 "Nevertheless, courts have acknowledged that even where evidence of other crimes is offered to prove *modus operandi*, some dissimilarity between the crimes will always be apparent." *Wilson*, 214 Ill. 2d at 140, 824 N.E.2d at 199. "The offenses need not be identical but must share features that, although common to similar crimes in general, are distinctive when considered together." *People v. Rohlf*s, 322 Ill. App. 3d 965, 969, 752 N.E.2d 499, 501 (2001). "Although there must be a persuasive showing of similarity, the test is not one of exact, rigorous identity, and some dissimilarity will always exist between independent crimes." *Rohlf*s, 322 Ill. App. 3d at 969, 752 N.E.2d at 501.

¶ 44 In *People v. Taylor*, 101 Ill. 2d 508, 521, 463 N.E.2d 705, 712 (1984), the supreme court found other-crimes evidence involving the offenses of armed robbery and attempted armed robbery were admissible under the *modus operandi* theory, finding "substantial similarities" with the charged offense where each incident occurred within a one-block area, within a four-day period, and in the early evening hours; the defendant was carrying what appeared to be the same gun; and, in each case, the defendant searched the victim and was identified as the perpetrator. Similarly, in *People v. Robinson*, 167 Ill. 2d 53, 65, 656 N.E.2d 1090, 1095 (1995), it held other-crimes evidence admissible under a *modus operandi* theory where offenses occurred in the same area of Chicago and during the early evening, the offenses occurred within seven days of one another, the assailant covered his face, selected older women as targets, and attacked the victims as they exited their garage. See also *People v. Hayes*, 168 Ill. App. 3d 816, 819, 522 N.E.2d 1279, 1282 (1988) (finding no error in the admission of other crimes evidence where "the

armed robberies occurred in the same shopping plaza about the same time of evening and the assailant used a silver-colored gun").

¶ 45 Here, although the record shows the trial court only expressly found other-crimes evidence admissible to show a continuing narrative, its comments indicate it also determined the evidence was relevant to show *modus operandi*. The record supports this alternate basis for admission. In particular, the record shows the State sought to admit evidence of a previous armed robbery that shared substantial similarities with the charged crimes. Both incidents occurred in the same geographical area of Springfield. The offenses were committed within a short span of time, occurring only three days apart, and both occurred at night. Notably, in both cases, the victim was driving a vehicle and alone. In both cases, the assailant entered the vehicle and used a handgun to rob the victim. Defendant was identified as the perpetrator in connection with the previous offense. Although the crimes were dissimilar in some respects, the court did not abuse its discretion by finding the other-crimes evidence was relevant under the theory of *modus operandi*. Stated differently, its finding that the other-crimes evidence was admissible to show *modus operandi* was not "arbitrary, fanciful, [or] unreasonable," nor would "no reasonable person [have taken] the view adopted by the trial court." *Hall*, 195 Ill. 2d at 20, 743 N.E.2d at 138.

¶ 46 Second, even if we were to find the other-crimes evidence should not have been admitted in any respect, we cannot say the evidence was a material factor in defendant's convictions such that, without the evidence, a different verdict would likely have resulted. Here, excluding the other-crimes evidence, the remaining evidence presented at defendant's trial was not close and more than sufficient to sustain his convictions for murder and armed robbery based on a theory of accountability.

¶ 47 At trial, the State presented evidence that on the night Suggs was killed, defendant and Jonathon were together throughout the evening. Two witnesses contacted police and reported hearing defendant and Jonathon discuss committing a robbery. Jonathon was observed and photographed with a handgun. Defendant provided a statement to police and acknowledged being in the front seat of Suggs' car, as well as possessing and disposing of Suggs' wallet. Although defendant denied committing the crimes, his story changed several times during the course of his interviews with police. The State's evidence further showed that, following Suggs' murder, defendant made statements which indicated his involvement in the crime, and he fled Springfield. Finally, evidence showed defendant sold a gun, which forensic testing could not exclude as the murder weapon. Reels, who examined both the bullet recovered during Suggs' autopsy and the gun, testified the bullet was consistent with a bullet that could have been fired from gun, stating, "this type of bullet, this caliber of bullet, could have been fired from this gun."

¶ 48 On appeal, defendant argues he was prejudiced by the admission of other-crimes evidence and also points to comments the State made during its closing argument relating to the other-crimes evidence and the fact that the jury did not receive a limiting instruction. First, to the extent defendant asserts the prosecutor's closing argument and the lack of a limiting instruction warrant reversal of his convictions, we note the issues were not raised with the trial court and, thus, were not properly preserved for review. See *People v. Nelson*, 235 Ill. 2d 386, 436, 922 N.E.2d 1056, 1083 (2009) ("It is well established that to preserve an alleged error for review, a party must object at trial and include the issue in a written posttrial motion."). Second, as discussed, we find no prejudice to defendant because, even without the admission of other-crimes evidence, the evidence presented was not close and more than sufficient to sustain his

convictions. In other words, "no reasonable probability exists that the jury would have acquitted the defendant absent the [claimed] error[s]." *Pelo*, 404 Ill. App. 3d at 865, 942 N.E.2d at 486.

¶ 49

III. CONCLUSION

¶ 50

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

¶ 51

Affirmed.