2019 IL App (1st) 160789-U

No. 1-16-0789

January 23, 2019

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 20939
	)	
RICKEY WHITEHEAD,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's convictions for aggravated battery with a firearm and attempted armed robbery over his contention that the trial court improperly admitted other crimes evidence to establish his *modus operandi*.

¶ 2 Following a bench trial, defendant Rickey Whitehead was convicted of aggravated battery with a firearm and attempted armed robbery and was sentenced to consecutive terms of six and four years' imprisonment, respectively. On appeal, defendant challenges his conviction, arguing that the trial court erred in admitting other crimes evidence because the other crime was

dissimilar to the crime charged and, therefore, inadmissible to show his *modus operandi*. For the reasons set forth herein, we affirm.

¶ 3 In connection with the October 30, 2011, attempted robbery and shooting of James York the State charged, by indictment, defendant and Maxie Taylor with: two counts of attempted first degree murder (720 ILCS 5/8-4(a) (720-5\9-1(a)(1)) (West 2010)); one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)); one count of attempted armed robbery (720 ILCS 5/8-4 (18-2(a)(2)) (West 2010)); three counts of aggravated battery (720 ILCS 5/12-4(a), 4(b)(8) (West 2010)); and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2010)). Defendant was also charged with two counts of attempted first degree murder (720 ILCS 5/8-4(a) (720-5\9-1(a)(1) (West 2010)).

¶ 4 Prior to trial, the State filed a motion seeking to admit evidence pertaining to the armed robbery of Christopher Campbell which occurred 40 minutes before the attempted robbery and shooting of York. In the written motion and argument at a hearing on the motion, the State contended that the other crimes evidence was admissible in the case involving York under "a number of theories," including to show motive, intent, identity, knowledge, the circumstances and contents of defendant's arrest, and, as relevant here, *modus operandi*. The State highlighted the factual similarities in both cases, including the temporal and geographic proximity of the two crimes and the factual similarities in how they were committed. Specifically, the State pointed out that both crimes occurred in the Stony Island area and involved: four men approaching the victim in a red four-door car; two men in the rear of the car exiting; one of the two men brandishing a handgun and demanding the victim's belongings; and the second of the two men collecting or attempting to collect the victim's belongings while defendant held them at

gunpoint; and the men departing in the same red car. The State also noted that police found defendant and three other men in a red car with a handgun the day after the robberies and that both Campbell and York identified defendant as the man with the gun, the red car as the red car driven by their assailants, and the handgun as the same or similar to the gun defendant used during both crimes.

¶ 5 After hearing the parties' arguments, the trial court granted the State's request to admit evidence pertaining to the robbery of Campbell to show *modus operandi*. The court noted that, to use other crimes evidence to show *modus operandi*, the facts and circumstances of the other crime must be sufficiently similar to the offense it would be admitted to prove. In finding that the evidence of the robbery of Campbell and the attempted robbery and shooting of York were sufficiently similar, the court stated:

> "This is not an instance where there is some distinct mask, some distinct clown mask or something like that but there are a lot similarities. The times, the location, the general proximity of the location, the matter [*sic*] in which the offense was committed, the use of the car that is very similar in description. Leading to the conclusion that it is in fact the same car.
>
> Mr. Whitehead is identified in both, does give rise to the conclusion to the same persons who committed the 11:30 offense are therefore the same persons that committed the 12:10 offense, less making it particularly relevant to in my mind and that the probative value substantially outweighs an prejudicial effect."

¶ 6 At trial, York testified that, at about 12:10 p.m. on October 30, 2010, as he was walking to his sister's house on 84th Street and East End Avenue, he ran into an acquaintance in the lot of a gas

station near the area of 8322 South Stony Island Avenue. As the pair conversed about music, York noticed a red car a few feet away on the other side of a gas pump. The passenger's side of the car was closest to York and he saw defendant in the rear passenger's seat. The men in the car were staring at York and his acquaintance. York's conversation ended and he walked south down Stony Island on the west side of the street.

¶ 7 As York crossed 83rd Place, the red car occupied by defendant and three other men pulled alongside him and drove slowly next to him as he walked. The men in the car asked York if he had rap music. York said he did and went into his bag to retrieve his compact discs. At the time, the car parked on the southwest corner of 83rd Place and Stony Island. The men in the car suggested moving to a side street because Stony Island was busy and the police might come along. The car reversed and ultimately parked three car lengths west of Stony Island on the north side of 83rd Place. The car was parked facing east, the wrong way, and its driver's side was next to the curb.

¶ 8 York walked north across 83rd Place, passing along the passenger's side and trunk of the car. As he did so, and placed his bag on the grass near the back of the car, defendant and another man exited the rear passenger seat. Defendant told the other man to give him a gun. The man handed a gun to defendant, who pointed the gun at York's midsection and said, "[Y]ou know what this is, give me your sh***." At the time, defendant was two feet away from York and York described the gun as a silver revolver with a long barrel and a brown handle. When York began putting the items he had taken out back into his bag, the man with defendant grabbed York's bag and tried to pull it away from him. Defendant said, "I'll shoot you, I'll F'ing shoot you." York snatched his bag free and defendant and the other man started walking back to the red car. As they did so, York started to walk away too, but never took his eyes off the men. Defendant still held the gun and was returning to the rear passenger's seat. York, believing the incident was over, turned his head away. After he did so

and less than a second after he had last seen defendant holding the gun, he heard a gunshot fired from the area of the car. The shot hit him in the right leg and he fell to the ground. The red car drove off and turned southbound on Stony Island. York did not actually see who fired the shot, but, a second before, he had seen defendant alone at the back of the car holding the handgun and had not seen him moving to give the gun to anyone else.

¶ 9 An ambulance arrived and took York to Northwestern Memorial Hospital. The bullet had entered the back of his right thigh and exited the front. York's femur had been shattered and a metal rod was surgically placed in his leg. York underwent five surgeries over the course of eight or nine months.

¶ 10 On November 1, 2010, Detective Raul Alvarez interviewed York at the hospital. Alvarez showed York a photographic array and York "instantly" identified defendant as the man with the gun. Alvarez testified that York was "100 percent" certain of his identification. From the same photographic array, York also identified the man who exited the car with defendant.

¶ 11 The State presented a photograph at trial from which York identified the red car involved in the attempted robbery and shooting. The State also presented a photograph of a gun that York said looked like the gun defendant shot him with, but he could not be certain if it was the same gun.

¶ 12 After York, in accordance with the trial court's ruling, the State called Campbell to testify. Campbell testified that, at 11:30 a.m. on October 30, 2010, as he was waiting at the bus stop near the intersection of East 92nd Street and South Marquette Avenue, a car with four men in it drove up and stopped across the street from where he stood. Campbell knew the man in the front passenger's seat, Chris, but none of the other men. Chris asked Campbell if he had any marijuana and Campbell said no. Campbell spoke to Chris and began walking to the vehicle across the street. A man sitting in the rear passenger's seat, whom Campbell identified as defendant, exited the vehicle and

pointed a large silver revolver with a wooden handle at him. Campbell placed his hands up. Defendant, from behind, placed the gun to Campbell's back. Defendant told Campbell not to move and threatened to shoot him. While defendant held Campbell at gunpoint, one of the other men in the car exited and took Campbell's wallet, cell phone, and shoes. Defendant got back into the rear seat of the car and the car drove away. The robbery lasted a total of approximately 30 seconds. Campbell found a phone 30 minutes later and called the police.

¶ 13 On October 31, 2010, Campbell was picked up by police and, on the way to the police station, was driven by 2454 East 100th Street. There, he saw the car involved in the robbery. Campbell looked through the car's windows and saw, in the back seat, the shoes which had been taken from him during the robbery. At the police station, Campbell viewed a physical lineup and identified defendant as the man with the gun. Campbell also identified another man in the same lineup as the man who had exited the car with defendant.

¶ 14 The State showed Campbell a photographic exhibit from which he identified the car involved in the robbery. The State also presented Campbell with a photographic exhibit of the gun that he identified as the gun used by defendant during the robbery.

¶ 15 Sergeant James Desmond testified that, after 3 p.m. on October 31, 2010, he was working with his partner, Officer Sean Popow, when Detective Daniel O'Connor alerted them to a "robbery pattern" involving a red four-door vehicle. Desmond and Popow later observed four men in a red four-door vehicle parked on East 84th Street. Desmond and Popow approached the vehicle to perform a field interview and ordered the four occupants to exit the vehicle. Defendant, who Desmond identified in court, was in the front passenger's seat. Maxie Taylor was in the driver's seat, and Shaquille Taylor and Rodney Harris were in the rear seats. Popow alerted Desmond to a gun in the rear seat and immediately recovered a silver .357 magnum revolver which was fully loaded with

six live rounds of ammunition. All four men were taken to the police station. There were no other bullets or shell casings recovered from the car or from the car's occupants. Desmond inventoried the gun at the police station to be sent to the Illinois State Police for testing. The State presented Desmond with an exhibit of the gun that he identified as the handgun recovered from the car.

¶ 16 After 6 p.m., on October 31, 2010, O'Conner directed Desmond to locate a victim of a previous robbery, Campbell. Desmond did so and drove Campbell to the police station. Desmond drove Campbell by the area of East 100th Street where the red car had been parked. Campbell identified the car as the car used during the robbery and, after looking through the car's windows, also identified his shoes inside of the car. The State presented Desmond with a photograph of a red car that he identified as the car in which defendant and three others sat parked on East 84th Street at the time of arrest.

¶ 17 Catherine Howe, who on October 30, 2010, was working as a paramedic with the Chicago Fire Department, testified that she and another paramedic were dispatched to the area of 83rd Place and Stony Island Avenue. There, they found York lying on the ground with a through-and-through gunshot wound to his upper thigh and transported him to Northwestern Memorial Hospital.

¶ 18 Sergeant Raul Alvarez testified that, on November 1, 2010, he was working as a detective and was assigned to investigate with the attempted robbery and shooting of York. During the course of his investigation, Alvarez learned that four suspects, defendant, Harris, Maxie Taylor, and Shaquille Taylor, were found in a car matching the description of the car involved in the attempted robbery and shooting of York. Alvarez interviewed York at the hospital and showed him a photographic array with all four men in custody. York identified defendant as the shooter and Maxie Taylor as the man who exited the car with defendant.

¶ 19 Sergeant Daniel O'Connor testified that, on October 31, 2010, he was working as a detective and investigating the attempted robbery and shooting of York. He learned four suspects, defendant, Harris, Maxie Taylor, and Shaquille Taylor, had been arrested after being stopped in a vehicle believed to have been used during the crimes against York. O'Connor placed all four of those men in a physical lineup for Campbell to view. Campbell viewed the lineup and identified defendant as the man with the gun and Harris as a person he knew before the robbery.

¶ 20 The parties stipulated that, if called, Detective Kenneth Simmons would testify that, at about 12:40 p.m. on October 30, 2010, he arrived at the scene of the attempted robbery and shooting of York. He and an evidence technician canvassed the scene for evidence and did not find any shell casings or other physical evidence.

¶ 21 Defendant moved for a directed verdict, which the trial court denied.

¶ 22 Defendant called Aisha Jones, who testified that defendant was the father of her son. In April 2010, Jones lived with her parents on South Colfax Avenue with her son. Defendant stayed at Jones's house on Colfax about three or four days a week and stayed at his grandmother's house on East 87th Street and South Essex Avenue the rest of the time. On the morning of October 29, 2010, Jones and defendant took their son to a doctor's appointment together and then returned to Jones's house, where they stayed the remainder of the day. Defendant slept in Jones's bed with Jones and the baby on the night of October 29, 2010, remained at Jones's house throughout the day of October 30, 2010, and slept there the night of October 30, 2010. Defendant and Jones never left the house and defendant was in Jones's sight at all times, except for trips to the bathroom.

¶ 23 Defendant left the house on October 31, 2010, about 11 a.m. or 12 p.m. when Jones asked him to go to the store on the corner. About 10 seconds after defendant walked out the front door, he telephoned Jones, telling her that the police had pulled him and some friends over. Jones went to the porch, and saw about 12 police cars in front of her house. The police remained in front of Jones's house for about an hour. She believed defendant was in a "paddy wagon" and asked the police what defendant was being arrested for but they informed her they could not tell her anything. Jones first learned of the reason for defendant's arrest while she was testifying.

¶ 24 Defendant testified that, in October 2010, he would stay either at Jones's house on South Colfax or his grandmother's house two blocks away. On the morning of October 29, 2010, he went with Jones to their son's doctor's appointment and he returned with them to Jones's house afterward. Defendant did not leave Jones's house for two days. He only left Jones's bedroom to use the bathroom and when his sister came to pick up his son to babysit him. On October 31, 2010, defendant left Jones's house after Jones asked him to go to the store a block away. After he left and began walking to the store, he saw four men he knew sitting in car parked in front of Jones's house. Defendant walked to the car, which he identified as the same four-door car pictured in the State's exhibit. The man in the front passenger's seat asked defendant where he was going and offered him a ride to the store. The man in the front passenger's seat, who lived nearby, exited the car and left. Defendant then got into the front passenger's seat. Less than two minutes later, while the car remained in the same spot, the police drove up and arrested him defendant and the three other men in the car. Defendant never saw any guns in the car and only became aware there was a gun in the back seat of the car after he was arrested. He denied ever

being near 83rd Street and Stony Island Avenue, possessing a gun, or shooting anyone on October 30, 2010.

¶ 25 The court found defendant guilty of aggravated battery with a firearm (count 1), attempted armed robbery (count 7), three counts of aggravated battery (counts 8-10) which merged into count 1, and aggravated unlawful restraint (count 11) which merged into count 7. The court found defendant not guilty of attempted first degree murder. In announcing its ruling, the court stated that York and Campbell were "compelling" witnesses. The court pointed out that York's testimony was confirmed in a number of manners, including by Campbell's testimony. The court noted that "this is a classic other crimes evidence properly admitted to support the testimony of Mr. York" where the robbery of Campbell happened a half hour earlier involving the same car and "very much committed in the same manner," including the same person wielding the gun.

¶ 26 The court ultimately sentenced defendant to six years' imprisonment for aggravated battery with a firearm and four years' imprisonment for attempted armed robbery, to be served consecutively.

¶ 27 On appeal, defendant challenges the trial court's decision to allow the State to present evidence of the robbery of Campbell. He argues the admission of the other crimes evidence to show his *modus operandi* was an abuse of discretion where the robbery of Campbell was too dissimilar from the attempted robbery and shooting of York and, therefore, did not show that the same offenders committed the offenses involving both victims.

¶ 28 As a general rule, evidence of other crimes or prior bad acts, that is, evidence of crimes or acts for which a defendant is not on trial, is inadmissible if its purpose is merely to show the

defendant's propensity to commit criminal acts. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *People v. Heard*, 187 Ill. 2d 36, 58 (1999). Other crimes evidence, however, may be admitted if it is relevant for a purpose other than to establish the defendant's bad character or his propensity to commit the charged offense. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *People v. Pikes*, 2013 IL 115171, ¶ 11; *People v. Evans*, 373 Ill. App. 3d 948, 958 (2007). Accordingly, other crimes evidence may be admitted to show *modus operandi*, intent, motive, identity, or the absence of mistake. *Pikes*, 2013 IL 115171, ¶ 11; *People v. Hensely*, 2014 IL App (1st) 120802, ¶ 50.

¶ 29 In this case, the court allowed the State to present evidence of the robbery of Campbell to show defendant's *modus operandi*. *Modus operandi* "refers to a pattern of criminal behavior which is so distinct that separate crimes or wrongful conduct are recognized as being the work of the same person." *People v. Tipton*, 207 Ill. App. 3d 688, 694 (1990). " 'This inference arises when both crimes share peculiar and distinctive features not shared by most offenses of the same type and which, therefore, earmark the offenses as one person's handiwork.' " *People v. Jackson*, 331 Ill. App. 3d 279, 286 (2002), (quoting *People v. Berry*, 244 Ill. App. 3d 14, 21 (1991)). Ultimately, *"[m]odus operandi* acts as circumstantial evidence of identity on the theory that crimes committed in a similar manner indicate that they were committed by the same offender." *People v. Littleton*, 2014 IL App (1st) 121950, ¶ 44. The use of *modus operandi* evidence is therefore "especially proper when the defendant's identity is a central issue in the case." *People v. Howard*, 303 Ill. App. 3d 726, 730 (1999). Although the degree of similarity required to introduce other crimes evidence under the *modus operandi* exception is higher than for other exceptions, some dissimilarities between offenses will always exist. *People v. Clark*, 2015 IL App (1st) 131678, ¶ 53.

¶ 30 On review, the trial court's ruling concerning the admissibility of other crimes evidence will not be disturbed absent an abuse of discretion. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003); *People v. Moss*, 205 Ill. 2d 139, 156 (2001). An abuse of discretion pertaining to an evidentiary ruling " '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. Thompson*, 2013 IL App (1st) 113105, 100 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)).

¶ 31 After reviewing the record, we find the trial court did not abuse its discretion allowing the State to present evidence of the robbery of Campbell to establish defendant's *modus operandi*. As the trial court correctly observed, both the robbery of Campbell and the attempted robbery and shooting of York shared a number of similarities. The record shows that the targets of both robberies were on the side of the street and were located in close geographic proximity to each other on the southeast side of Chicago. The robberies were in close temporal proximity on October 30, 2010; Campbell's robbery preceded the attempted robbery and shooting of York by less than an hour. See, *e.g.*, *Littleton*, 2014 IL App (1st) 121950, ¶ 39 (finding that the trial court did not abuse its discretion in admitting other crimes evidence to establish the defendant's *modus operandi* where the offender targeted the same type of victims who lived in a fairly narrow geographical area and robbed them during late morning and early afternoon hours); *People v. Shief*, 312 Ill. App. 3d 673, 682 (2000) (upholding the admission of other crimes evidence to prove the defendant's *modus operandi* and identity where the crimes happened in close temporal and geographic proximity and involved the same general type of victim).

¶ 32 In addition to the geographic and temporal similarities between both crimes, the manner in which the crimes occurred also shared distinctive similarities. In both instances, four men pulled up to the victim in a red four-door car, the two men in the back seat exited and approached the victim, and one of those two men threatened the victim with a gun while the second man took or attempted to take the victim's belongings. Moreover, both victims subsequently identified the red car used in the robbery and identified defendant as being the armed offender before and during trial.

¶ 33 Defendant correctly observes the robbery of Campbell and attempted robbery and shooting of York were not identical in all respects. Campbell was standing at a bus stop and York was walking. When defendant held the victims at gunpoint, he was positioned differently. Defendant walked behind Campbell and held the gun at Campbell's side, but stood stood face-to-face with York and pointed the gun straight ahead. However, although differences between the two offenses certainly exist; we find that the similarities of these crimes, when viewed together, are sufficiently distinctive to raise the inference that defendant was involved in both offenses. See *People v. Wilson*, 214 Ill. 2d 127, 140 (2005) (recognizing that "even where evidence of other crimes is offered to prove *modus operandi*, some dissimilarity between the crimes will always be apparent"); *Littleton*, 2014 IL App (1st) 121950, ¶ 36 (same).

¶ 34 Defendant nevertheless argues that, even if details pertaining to the Campbell robbery were admissible other crimes evidence under the *modus operandi* exception, the trial court erred in admitting that evidence because it was more prejudicial than probative. We disagree.

¶ 35 Defendant is correct that even where the other crimes evidence is relevant for purposes other than to prove the defendant's criminal propensity, such as establishing the defendant's

modus operandi and identity, the evidence should not be admitted if its probative value is outweighed by its prejudicial effect. *Pikes*, 2013 IL 115171, ¶ 11. However, in the case at bar, the identity of the shooter was at issue during trial and, therefore, we agree with the trial court's conclusion that the admission of Campbell's testimony about his robbery was more probative than prejudicial. See *Howard*, 303 Ill. App. 3d at 730 (recognizing that *modus operandi* evidence is "especially proper when the defendant's identity is a central issue in the case").

¶ 36 Moreover, although it is true that, when other crimes evidence is admitted, "the court should carefully limit the details to what is necessary to illuminate the issue for which the other crime was introduced" (*People v. Nunley*, 271 Ill. App. 3d 427, 432 (1995)), we find that the court properly limited the scope of the other crimes evidence admitted at trial. Stated differently, this was not a situation where the trial court abused its discretion in admitting the other crimes evidence by allowing the State to present far more detail than necessary about the other crime and essentially creating "a mini-trial" regarding the other crime. The other crime here was very limited in nature where, aside from police investigating both robberies, the testimony of Campbell was the only other-crimes evidence admitted at trial. Campbell's testimony, as discussed, was highly relevant and probative given that the facts and circumstances of his robbery closely mirrored the events involving York that had occurred less than an hour later. Accordingly, we find no abuse of discretion.

¶ 37 For the reasons stated, we affirm the judgment of the Circuit Court of Cook County.

¶ 38 Affirmed.