

No. 1-16-1168

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 21709
	)	
JEMETRIC NICHOLSON,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* In defendant’s trial for murder, the trial court erred in admitting evidence of defendant’s involvement in a separate shooting approximately 36 hours before the murder. However, in light of the totality of the trial evidence, such error was harmless and does not warrant reversal.

¶ 2 Defendant Jemetric Nicholson appeals from his first degree murder conviction, on the ground that the trial court erred in admitting evidence of another crime that was unduly prejudicial. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 Defendant was charged with the murder of Metra Police Officer Thomas Cook, whose body was found in his squad car near a Metra train station in Harvey, Illinois. Officer Cook had been shot in the head, and his service weapon was missing from the crime scene.

¶ 5 Before trial, the State filed a motion *in limine* to allow proof of other crimes by defendant, including evidence of three other shooting incidents, all of which occurred within the two days preceding Officer Cook's murder on the evening of September 27, 2006. First, the State sought to introduce evidence that in the early morning hours of September 26, defendant shot and injured Lonnie "Pen" Cooksey and Eric "EJ" Johnson while they were at a gas station in Harvey, Illinois (the "Cooksey-Johnson shooting").

¶ 6 In addition to evidence of the Cooksey-Johnson shooting, the State sought to introduce evidence of two shootings that occurred in the early morning hours of September 27, 2006, both of which involved defendant and Jeremy Lloyd. The State sought to present evidence that defendant was driving with Lloyd as a passenger, when they shot at a car near Cooksey's residence. As defendant and Lloyd fled from that scene, they were pursued by a police car driven by Officer Alex Gbur. Defendant and Lloyd fired shots at Officer Gbur's police car before they abandoned their vehicle and fled on foot. Defendant and Lloyd left behind a .357 handgun and defendant's semiautomatic "Tec-9" firearm.<sup>1</sup>

¶ 7 According to the State's motion, defendant's desire to replace the firearm lost after the encounter with Officer Gbur motivated the murder of Officer Cook several hours later; the State's theory was that defendant "executed Officer Cook for his service weapon." The State's motion requested that evidence of the prior shootings be admitted "for the limited purpose of

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<sup>1</sup>The record is inconsistent in describing this firearm; the same weapon is sometimes referred to as a "Mac 10" and sometimes referred to as a "Tec-9" firearm.

establishing defendant's intent, motive, lack of mistake," and to provide a "continuing narrative" of defendant's conduct leading up to Officer Cook's murder.

¶ 8 At a hearing on the motion, defense counsel argued that such evidence was "extremely prejudicial" and amounted to improper evidence that defendant had a propensity to commit crimes. Defense counsel acknowledged the State's theory that Officer Cook's shooting was motivated by defendant's desire to obtain his service weapon, and defense counsel did not object to the admission of evidence that defendant's gun was lost after the incident with Officer Gbur. However, defense counsel argued that the State's theory of motive had "nothing to do with" the Cooksey-Johnson shooting. Thus, defense counsel requested that the court bar evidence of the Cooksey-Johnson shooting, as well as the subsequent shooting near Cooksey's home that immediately preceded the defendant's encounter with Officer Gbur.

¶ 9 The trial court granted the State's motion to admit other crimes evidence, finding that the prior incidents "show[ed] a common scheme as well as motive." The court specified that it would allow the State to present evidence of incidents in "the 36 hour period" preceding Officer Cook's shooting, including the Cooksey-Johnson shooting.

¶ 10 Defendant's first trial was conducted in 2015. After deliberations, the jury could not reach a verdict, and the court declared a mistrial.

¶ 11 Defendant's second trial commenced on January 7, 2016. The State first called Antoine Lee. As of September 2006, Lee was 17 years old and lived at his grandparents' home on 147<sup>th</sup> Place in Harvey, near the Metra station. On the night of September 27, 2006, he was on the back porch of the home with a friend, Timothy Hoye. Lee heard two gunshots, and then told Hoye that "someone maybe just shot that Metra cop." Lee acknowledged that, earlier that evening, he

had noticed a police car “stationed in a field behind our house facing the Metra station.” However, Lee could not see the police vehicle when he heard the shots.

¶ 12 Approximately one hour later, Lee was taking garbage out of his grandparents’ home when he noticed “debris” by the police vehicle. Lee approached the vehicle and tried to speak to the person inside, whom he later learned was Officer Cook. After Officer Cook did not respond, Lee told his grandfather, who contacted Harvey police.

¶ 13 Lee testified that he was later questioned by police for several days. He admitted that in one of his interviews, he told police that he had seen a man named Matthew James near the driver’s side of Officer Cook’s vehicle. However, he testified that this statement to police was false. At trial, Lee testified that James lived about “five houses down” from his grandparents’ home, and stated that he had, in fact, seen James near a liquor store earlier on the evening of the shooting. However, Lee denied that he saw James near Officer Cook’s police car. Rather, Lee testified that during his questioning by police, he felt pressured to implicate James.

¶ 14 Timothy Hoye similarly testified that he was at Lee’s grandparents’ house when they heard two gunshots. Hoye recalled that, about an hour later, they left the house and observed a “Metra cop car” sitting in a vacant lot. Hoye recalled that Lee approached the car and tried to speak to the officer inside, who did not respond.

¶ 15 The State next called Jeremy Lloyd, who acknowledged that he had pleaded guilty in two cases. Lloyd pleaded guilty to the attempt murder of Officer Gbur, in exchange for the State’s recommendation of a 20-year sentence. Lloyd had also pleaded guilty to the murder of Officer Cook; under that plea deal, the State would recommend another 20-year sentence, to run consecutively to his first 20-year sentence. Lloyd acknowledged that his plea deals were contingent on his testimony in this case.

¶ 16 Lloyd testified that he and defendant were members of the same gang, and that he knew defendant by his nickname, “Meechie.” Lloyd testified that, on the afternoon of September 26, 2006 he went to a “crack house” in Harvey, where he met defendant. Lloyd then “rented” a vehicle, by providing crack cocaine to someone in exchange for use of a vehicle.

¶ 17 Lloyd asked defendant to join him in looking for a person known as “Baby Tony.” Later that evening, Lloyd and defendant went out looking for Baby Tony, with defendant driving. Lloyd was armed with a .357 revolver.

¶ 18 Defendant and Lloyd did not find Baby Tony. Instead, defendant began following a black vehicle, as they believed that it belonged to a rival gang member known as “Pen,” who was later identified as Cooksey. When the black vehicle pulled over, defendant stopped on the opposite side of the street. Lloyd testified that he fired at the vehicle, using a Tec-9 gun that defendant handed to him. After someone in that vehicle started shooting back at them, defendant quickly drove off.

¶ 19 Lloyd further recalled that, as defendant and Lloyd were driving away, they observed another vehicle approaching them from behind. Lloyd believed that “Pen” was in that vehicle. Lloyd reached out of his window and fired two or three shots at the car, using his .357 revolver. Lloyd testified that he did not know whether defendant also fired at the car.

¶ 20 The approaching vehicle activated its lights, at which point Lloyd realized that he had been shooting at a police car. Defendant slowed down; he and Lloyd jumped out of their car while it was still moving. The police officer (Officer Gbur) shot at them as they fled the scene on foot. Lloyd testified that, as he fled, he “dropped” the .357 revolver, as well as defendant’s Tec-9 gun. Lloyd ran to the home of an aunt, who drove him to his residence in Gary, Indiana.

¶ 21 The next afternoon, September 27, 2006, Lloyd returned to Harvey and met up with defendant at “Big Sand’s” house. Lloyd offered to get defendant a new gun, “[b]ecause I had dropped his” firearm the previous evening. Lloyd planned to get a new gun for defendant with the help of Lloyd’s cousin, Detrick Henry.<sup>2</sup> Henry was also known as “DD.”

¶ 22 Lloyd testified that, later on September 27, a man known as “GG” (later identified as George Guider) drove him and defendant to meet Henry. Guider drove them to an apartment building in Harvey near 148th Street and Washington, and Henry came out to meet them. Defendant left the car and briefly spoke to Henry, before he signaled for Lloyd to join them.

¶ 23 Lloyd testified that defendant asked Lloyd to come with him to serve as a “lookout” while defendant “did a lick.” Lloyd testified that a “lick” is a term for a robbery.

¶ 24 Lloyd recalled that he and defendant began walking on a sidewalk, toward the Metra train tracks, until they reached an alley at the end of the street. At the end of the alley, Lloyd saw the “back of a police car.” Lloyd saw defendant “crouch down” and “sn[eak] up” behind the police car, on the driver’s side. Lloyd also saw Henry near the front passenger window of the police car. Lloyd saw defendant “raise[] his hand” near the driver’s side, and saw that defendant was holding a gun. Lloyd “turned around and ran,” and then heard gunshots. Later that night, Lloyd returned to his home in Gary, Indiana.

¶ 25 Lloyd testified that, on October 18, 2006, police arrived at his home in Indiana with an arrest warrant for the attempt murder of Officer Gbur. Before he was extradited to Illinois, he was questioned by police in Indiana. He acknowledged that, at that time, he falsely told police that he had been in Indiana at the time of Officer Cook’s murder.

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<sup>2</sup> In the trial transcript, Henry is referred to inconsistently as “Detrick” or “Detric.” The proper spelling of his name is unclear from the record.

¶ 26 Following an extradition hearing on October 19, 2006, Lloyd was driven by police to Illinois. He admitted that, as he was being transported to Illinois, he showed police the route that he and defendant had walked to reach the site of Officer Cook's shooting. Lloyd gave multiple videotaped statements to police between October 19 and October 26, 2006.

¶ 27 Lloyd acknowledged that on October 19, 2006, he identified a photograph of Guider as the person who drove him and defendant to meet Henry. On the same date, he identified a photograph of Henry as the person who "distracted the police officer" during the shooting. He also identified a photograph of defendant as the person he saw with a gun on the driver's side of the police car.

¶ 28 Lloyd also identified a diagram, created October 19, 2006, on which he had drawn a line to mark the route that he and defendant walked from the corner of 148<sup>th</sup> Street and Washington in the village of Harvey, to the place where he observed Officer Cook's police car. During his testimony, Lloyd was shown a videotape, created on October 24, 2006, which also showed that route. Lloyd again stated that defendant went to the driver's side of the police car, and that Henry was at the passenger's side of the squad car.

¶ 29 Lloyd maintained that after he saw defendant raise a gun, he turned and ran before he heard shots. However, Lloyd acknowledged that in prior statements to police, he had claimed that he had seen defendant shoot at the police car. Lloyd also acknowledged that, contrary to his trial testimony, he had told police that Henry had walked with him and defendant to the site of the shooting.

¶ 30 On cross-examination, Lloyd acknowledged that he was testifying in order to fulfill his plea agreement, and to avoid a longer sentence. Lloyd also acknowledged that, in a prior proceeding, he had testified that defendant did not shoot at Officer Gbur's police car.

¶ 31 Lloyd admitted that he left two guns behind when he fled from Officer Gbur, and that the next day, Lloyd “told [defendant] I would get him another gun from my cousin,” Henry. Lloyd also admitted that, at the time, he knew that Henry was involved in prior “Metra armed robberies” near the site where Officer Cook’s vehicle was found.

¶ 32 Lloyd maintained that, when defendant told him about the “lick,” he had not asked defendant who the target was. Lloyd stated that he understood that he would only be a lookout while defendant robbed someone. Lloyd maintained that, contrary to his prior statements to police, he did not actually see anyone shoot Officer Cook, and that he was already running away when he heard the shots. On redirect examination, Lloyd agreed that he had consistently stated that defendant approached the driver’s side window of Officer Cook’s police car.

¶ 33 Following Lloyd, the State called Cooksey, who acknowledged that he is also known as “Pen.” Cooksey testified that he was shot at approximately 1:00 a.m. on September 26, 2006. At the time, he was with two friends, including Eric Johnson. Cooksey and his friends were standing outside a gas station, when he heard several shots from behind him. Cooksey was struck in the legs, and his friends drove him to a hospital. Cooksey did not see who fired the shots.

¶ 34 The State next called George Guider, who acknowledged that he was convicted on two counts of aggravated battery with a firearm, related to the Cooksey-Johnson shooting. Guider also acknowledged that he had a pending contempt of court charge for his prior refusal to testify against defendant, and that he had since been granted immunity to testify in this case.

¶ 35 Guider testified that he was with defendant when defendant shot Cooksey and Johnson in the early morning hours of September 26, 2006. Guider had been driving with the defendant as a passenger, when defendant suddenly told him to pull over as they approached a gas station. Guider slowed down, and defendant jumped out of the car. Guider saw the defendant go down a



“gangway” toward the gas station while Guider stayed in his vehicle. A short time later, Guider heard “about six gunshots.” He then saw defendant “run out of the gangway” back to Guider’s car. When defendant entered the car, Guider saw that defendant had a gun. Defendant told Guider that he had shot someone at the gas station.

¶ 36 Guider further testified that he knew Lloyd, as well as Henry. The day after the gas station shooting, September 27, 2006, Lloyd and defendant requested that Guider drive them to meet Henry at 148th Street and Washington Street in Harvey. Guider denied knowing why they wanted to go to that location. Guider drove defendant and Lloyd to the meeting point with Henry. Lloyd and defendant exited Guider’s car and spoke with Henry, but Guider did not hear their conversation.

¶ 37 Guider testified that, approximately 30 to 45 minutes later, defendant called and asked Guider to pick him up at 146th Street and Clinton Street in Harvey. Guider acknowledged that this location was near the parking lot for the Metra train station at 147th Street.

¶ 38 On cross-examination, Guider acknowledged that he hoped his testimony would mean that he would not serve any additional jail time for his earlier refusal to testify. Guider also acknowledged that he was a “paranoid schizophrenic” and had “bipolar disease.” Guider agreed that he did not see defendant shoot Cooksey or Johnson. With respect to Officer Cook’s murder, Guider said he “didn’t do anything but drop somebody off and pick somebody up, without know[ledge] of anything.”

¶ 39 The State called Harold Fuller, a commander of the Metra Police Department. Fuller testified that as of September 2006, there had been an increase in violent crime, including armed robberies, at the Harvey Metra station. For that reason, a police officer was assigned to that location.

¶ 40 At about 9:30 p.m. on September 27, 2006, Fuller received a report of an officer down at the Metra station. By the time he arrived, the crime scene was secured. Fuller identified crime scene photographs of Officer Cook's squad car, which was facing the Metra station. Fuller testified that Officer Cook's service weapon was missing from the scene. Fuller also observed that the driver's side window on Officer Cook's vehicle was "down about three inches."

¶ 41 The State called Master Sergeant Heather Hanson-Poeri of the Illinois State Police, who testified as an expert in crime scene investigation. Hanson-Poeri described various photographs that she had taken in and around Officer Cook's squad car. Officer Cook's holster was empty, and his weapon was not found in the vehicle. Hanson-Poeri testified that the blood pattern at the scene indicated a close-range gun shot behind Officer Cook's left ear. Hanson-Poeri subsequently collected a number of latent fingerprints from the squad car.

¶ 42 On cross-examination, Hanson-Poeri acknowledged that she did not collect any human hair from the interior of Officer Cook's police car. She also testified that stippling, such as that found on Officer Cook's head wound, indicated that he was shot from as close as "point blank" range, up to a distance of 12 to 16 inches. She opined that the barrel of the weapon was through the driver's side window when Officer Cook was shot.

¶ 43 Dr. John Gates of the Cook County Medical Examiner's Office testified that he had reviewed the autopsy of Officer Cook. Dr. Gates opined that the stippling on Officer Cook indicated that he was shot from between "half an inch to four feet away."

¶ 44 Courtney Melendez testified that in 2006, she was a forensic scientist with the Illinois State Police Crime Lab. She was provided with Officer Cook's fingerprints, as well as "elimination prints" of other Metra police officers who also had access to Officer Cook's police car. Melendez testified that most of the items found in and around Officer Cook's police car did

not yield prints suitable for testing. Melendez received ten latent print lifts which were suitable for comparison. She determined that six of those ten prints came from Officer Cook; two of the prints were from another Metra Officer, George Coghlan. The parties subsequently stipulated that Julie Wessel, another forensic scientist with the Illinois State Police, later determined that Officer Coghlan was the source of the two remaining unidentified latent prints.

¶ 45 Deputy Inspector General Michael Cooke testified that, as of September 2006, he was a commander of the Illinois State Police task force that investigated Officer Cook's murder. Cooke testified that, after conducting numerous interviews, the task force was looking for a person known as "Meechie," whom they learned was defendant. On October 6, 2006, the task force executed a search warrant, where they found defendant and Henry. After speaking with them, the task force obtained an arrest warrant for Lloyd.

¶ 46 The State called Anthony Murphy, who testified in this case pursuant to a plea agreement, relating to a conviction for delivery of a controlled substance. Murphy testified that, approximately a day and a half after Officer Cook's murder, he received a call from Guider asking Murphy if he wanted to buy marijuana. A short time later, Guider drove to Murphy's residence. Murphy entered Guider's car. Inside, Murphy saw defendant "laying back" across the back seat. The men smoked marijuana inside Guider's car. At one point, Murphy asked defendant why he was lying down in the car; defendant responded that police were looking for him for the murder of a Metra police officer. On cross-examination, Murphy stated that he was testifying in this case because defendant had named him as a potential alibi witness.

¶ 47 The State then called Alex Gbur, a former officer of the Harvey Police Department. At approximately 3:00 a.m. on September 27, 2006, Officer Gbur was on patrol in a squad car when

he heard a “volley of gunfire.” He believed that the shots came from the area where Cooksey had been shot and wounded the previous evening.

¶ 48 Officer Gbur proceeded to “pull up in front of Mr. Cooksey’s house,” where he saw a group of several people. One of those persons directed Officer Gbur’s attention to a vehicle on the next block, and told Officer Gbur that someone in the vehicle had “just blasted the house.”

¶ 49 Officer Gbur pursued the vehicle, which had two occupants. As he approached, Officer Gbur saw “flashes” of gunfire coming from the driver’s and passenger’s side of the vehicle. The occupants then “bail[ed] from the vehicle” and fled on foot in different directions. Officer Gbur pursued the driver but could not apprehend him. Officer Gbur recovered two firearms from the abandoned vehicle: a “Tec-9” and a “357.” Officer Gbur testified that in April 2007, he viewed a lineup and identified defendant as the “driver of the vehicle shooting at me.”

¶ 50 Wayne Ladd, a Master Sergeant with the Illinois State Police, testified about his involvement in the investigation of Officer Cook’s murder. Sergeant Ladd testified that, as of October 6, 2006, investigators were looking for a person who drove a blue Buick. On that day, he observed a blue Buick turn without signaling. Sergeant Ladd stopped the vehicle, which was driven by Guider. Sergeant Ladd questioned Guider, but let him go with a verbal warning.

¶ 51 During a subsequent briefing on the murder investigation, Sergeant Ladd learned that someone known as “GG” was an acquaintance of defendant. Sergeant Ladd realized that Guider could be “GG.” Sergeant Ladd contacted Guider, who subsequently acknowledged that he was known as “GG.” Based on information from interviews with Guider, investigators began to look for Jeremy Lloyd.

¶ 52 Police obtained an arrest warrant for Lloyd in connection with the attempted murder of Officer Gbur. After Lloyd’s arrest, Sergeant Ladd interviewed him on October 18, 2006.

¶ 53 The following day, October 19, Sergeant Ladd interviewed Lloyd in Hammond, Indiana, and asked Lloyd about Officer Cook's murder. Lloyd initially stated that he had been in Gary, Indiana at the time of the murder. Sergeant Ladd testified that he "challenged [Lloyd] on that statement, and ultimately [Lloyd] then admitted to being in Illinois and actually being at the scene of the murder, and that [defendant] was responsible for pulling the trigger."

¶ 54 After Lloyd waived extradition from Indiana, Sergeant Ladd drove him back to Illinois. During that drive, he asked Lloyd further questions about Officer Cook's murder. Lloyd then directed Sergeant Ladd to 148th Street and Washington in Harvey. Lloyd explained that, from this location, he and defendant had "walked down an alley to an open lot." Lloyd told Sergeant Ladd that defendant approached Officer Cook's squad car, while Lloyd stayed behind as a "lookout."

¶ 55 Sergeant Ladd also participated in recorded interviews with Lloyd on October 19, 25, and 26, 2006. In the October 19 interview, Lloyd told police that he saw defendant put a gun into the cracked window of Officer Cook's vehicle. In the October 25, 2006 interview, Lloyd stated that defendant "was going to rob the police officer for a gun because they had previously lost their guns during the shootout with the Harvey police earlier that morning."

¶ 56 Sergeant Ladd acknowledged that Lloyd gave an inconsistent statement as to whether he only saw defendant raise a gun, or if he saw defendant shoot into Officer Cook's police car. Lloyd also gave inconsistent statements to police as to whether Henry was at the car's passenger's window.

¶ 57 The State also called Master Sergeant Matt Gainer of the Illinois State Police, who helped investigate Officer Cook's murder. Sergeant Gainer conducted videotaped interviews with defendant, excerpts of which were played during Sergeant Gainer's direct examination.

¶ 58 Sergeant Gainer questioned defendant about other crimes before asking about Officer Cook's murder. Sergeant Gainer spoke to defendant about the Cooksey-Johnson shooting on September 26, 2006. Defendant acknowledged that he had shot at Cooksey while Eric Johnson was standing near Cooksey.

¶ 59 Sergeant Gainer also asked defendant about the shooting incident with Office Gbur. Defendant initially denied involvement, but eventually admitted that he was in a vehicle when "GI" shot at Officer Gbur with a firearm that was left behind. Defendant eventually told police that "GI" was Jeremy Lloyd.

¶ 60 Sergeant Gainer questioned defendant about his whereabouts on the night of September 27, 2006, when Officer Cook was shot. Defendant indicated that around 9 p.m. he was at a home at 14623 Clinton Street in Harvey; Sergeant Gainer testified that the home was less than one block from the site of Officer Cook's murder. Defendant told police that, after he left that address, he hung out with "Juicy," who was later identified as Anthony Murphy. At another point, defendant stated that from 9 to 11 p.m. he was "bagging up" illegal drugs for sale with Lloyd, Murphy, and other individuals. He also told police that he and Lloyd played dice later that night.

¶ 61 Sergeant Gainer testified that defendant directed police to talk to Guider or Murphy, whom he claimed could vouch for his whereabouts. However, after defendant was confronted with portions of Guider's statements to police, defendant changed his approach and asked police to talk to Lloyd.

¶ 62 Also during Sergeant Gainer's testimony, the State played an interview clip in which defendant referenced possessing a gun located somewhere in the village of Robbins. Sergeant Gainer then testified that, in August 2007, the task force received information about a possible

location for Officer Cook's service weapon, in connection with an individual named Quinton Lewis. Officer Cook's service pistol was subsequently recovered in Robbins, at the home of Lewis' mother.

¶ 63 The State additionally presented defendant's testimony from his prior trial, by reading out loud the questions and defendant's answers from that testimony. The State also played the same video interview excerpts that had been shown to defendant during his prior trial.

¶ 64 The defendant's direct examination consisted of a single question and answer, in which he denied that he shot Officer Cook. On cross-examination, defendant admitted that he shot Cooksey and Johnson at a gas station, after he exited Guider's vehicle and stealthily approached them. Defendant admitted that he told police that both he and Lloyd had shot at Officer Gbur, but then testified that this had been a lie, and that he did not shoot at Officer Gbur. Defendant acknowledged that he told the police to look for Lloyd, Guider, and Murphy, as witnesses who could help prove his whereabouts on the night of Officer Cook's murder.

¶ 65 The State's final live witness was Homewood Police Chief William Alcott, who was present during a police interview with defendant on October 8, 2006. The State played clips of that interview in conjunction with Alcott's testimony. In that interview, defendant mentioned Guider as an alibi witness, and also encouraged police to talk to "GI," who was later identified as Lloyd. In the same interview, defendant acknowledged that he knew and associated with Henry.

¶ 66 Upon the completion of the State's case, the court denied defendant's motion for a directed verdict. Prior to the commencement of the defense case, the court conferred with the parties' counsel as well as Henry, who had been subpoenaed by defense counsel. At that time, Henry asserted his Fifth Amendment right to not testify. Defendant also informed the court that he elected not to testify.

¶ 67 When trial resumed, defense counsel presented evidence through a number of stipulations. South Suburban Major Crimes Task Force Investigator Walker, if called to testify, would state that he interviewed Antoine Lee on September 28, 2006. During that interview, Lee stated that he observed a male wearing dark clothing and a black skull cap near the driver's side of Officer Cook's vehicle.

¶ 68 Defense counsel introduced a separate stipulation that an investigator from the State's Attorney's Office would testify that he was present for an August 2007 conversation in which Lloyd described the events of September 27, 2006. In that conversation, Lloyd stated that on the night in question, Lloyd, defendant and Guider were "driving around Harvey looking for guns."

¶ 69 Defense counsel also presented a stipulation that Special Agent James J. Grady, if called, would testify about various statements by Lee. Lee stated that, prior to Officer Cook's shooting, he walked to a store and saw his neighbor, Matthew James. Lee stated that James was a known gang member, and that Lee had previously seen James fire a weapon at a group of people. Lee also said that the shirt that James was wearing was "identical to the shirt he described to the police of the person standing by the police car." Lee said that "within minutes of James leaving him, he heard gun shots and stated to Timothy Hoyer that the police officer had been shot." Lee also stated that he was "fearful" of James.

¶ 70 During its closing argument, the State referenced the shooting of Cooksey and Johnson. At one point, the prosecutor remarked: "You know from the other cases [defendant] \*\*\* when he shot [Cooksey], he sneaks up from the back and shoots him, or he rides up and shoots at their car. He knows how to shoot people without being seen."

¶ 71 Defense counsel's closing argument emphasized the lack of forensic evidence, attacked Lloyd's truthfulness, and argued that Lloyd, not defendant, shot Officer Cook. In its rebuttal



argument, the prosecutor acknowledged “minor” inconsistencies in its witnesses’ testimony, but urged that Lloyd was truthful in testifying that defendant shot Officer Cook. The prosecutor also referenced prior crimes, arguing that defendant “engaged in a progressive series of violent acts that concluded with the assassination of [Officer] Tom Cook.”

¶ 72 The jury found defendant guilty of first-degree murder. The court subsequently denied defendant’s motion for a new trial. On March 31, 2016, the court sentenced defendant to the mandatory sentence of natural life in prison. On the same date, defendant filed a timely notice of appeal. Accordingly, we have jurisdiction. Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014).

¶ 73 ANALYSIS

¶ 74 On appeal, defendant seeks reversal of his conviction and a new trial, based upon a single claim of error. Specifically, he asserts that the trial court erred in permitting the State to introduce evidence of the Cooksey-Johnson shooting. Defendant argues that such evidence was not relevant to the shooting of Officer Cook, as it occurred approximately 36 hours earlier and “involved a different co-offender and motive, and was not linked to Cook’s murder.” Rather, he urges that its admission was unduly prejudicial, as it “served to paint [defendant] as a trigger-happy menace.”

¶ 75 Notably, although the State introduced evidence of several incidents of “other crimes,” the focus of defendant’s appellate argument is narrow: he challenges only the evidence of the Cooksey-Johnson shooting on September 26, 2006. He does not take issue with the additional “other crimes” evidence presented at trial: that defendant and Lloyd shot at a vehicle that they believed belonged to Cooksey, and then shot at Officer Gbur’s police car before fleeing on foot. Defendant recognizes that the State’s theory was “that the loss of the guns in the [Officer] Gbur shooting created the motive for killing Officer Cook.” Defendant does not dispute the State’s

right to argue this motive at trial. Rather, defendant argues that the Cooksey-Johnson shooting “was not linked to the State’s proffered motive for the [Officer] Cook shooting, nor was it part of the same common scheme or course of conduct.”

¶ 76 Defendant contends that the Cooksey-Johnson shooting was too factually distinct from Officer Cook’s murder to be deemed admissible evidence. Defendant points out that the Cooksey-Johnson shooting occurred a “day and a half” before Officer Cook’s shooting. He also notes that the Cooksey-Johnson shooting involved “a different co-offender, George Guider, whereas the co-offenders in the murder of Officer Cook were Jeremy Lloyd and Detrick Henry.” He also emphasizes that the motive for the crimes was different: the Cooksey-Johnson shooting was a matter of “gang retaliation,” whereas Officer Cook was allegedly murdered for his gun.

¶ 77 Defendant further argues that testimony about the Cooksey-Johnson shooting was offered for the improper purpose of showing “bad character” and to “paint [defendant] as a trigger-happy menace deserving of punishment.” Defendant points out that the State mentioned the Cooksey-Johnson shooting in its initial closing argument and in its rebuttal argument. Defendant claims that such evidence “undoubtedly served as a deciding factor for the jury” because the State’s evidence of his guilt was “unconvincing.” Defendant concludes that he is entitled to a new trial because the prejudicial effect of the Cooksey-Johnson evidence “far outweighed any arguable probative value, and undoubtedly contributed to the verdict.”

¶ 78 The State responds that the other crimes evidence, including the Cooksey-Johnson shooting, was admissible to show “the continuing narrative of the charged offense,” to prove defendant’s motive of securing a new firearm, and to establish defendant’s identity. Notably, the State’s brief apparently assumes that defendant challenges the propriety of *all* the other crimes evidence, not only the Cooksey-Johnson shooting. That is, the State’s argument lumps together

all the “other crimes” incidents—the Cooksey-Johnson shooting, the shooting near Cooksey’s residence, and the shooting during the pursuit by Officer Gbur. The State suggests that all these prior crimes were admissible as part of a “continuing narrative” in order to explain why defendant would shoot an unsuspecting police officer, which would otherwise be “unexplainable.” The State argues that, without such evidence, the “trier of fact would have been deprived of the entire, accurate story, that defendant shot and killed Officer Cook for his service weapon because he lost his gun \*\*\* after he and Lloyd shot at Officer Gbur \*\*\* during a police chase that occurred after he and Lloyd shot at Cooksey’s house, the day after defendant shot Cooksey.”

¶ 79 Similar to its “continuing narrative” argument, the State urges that evidence of the earlier shootings was admissible to show defendant’s motive for shooting Officer Cook. Again, the State does not distinguish the Cooksey-Johnson shooting from the separate shooting incidents; it simply urges that “the prior shootings” showed that defendant shot Officer Cook in order to obtain his firearm.

¶ 80 Further, the State contends that “evidence of the earlier shootings was admissible to establish defendant’s identity” as the person who shot Officer Cook. On this point, the State cites “common evidence and common co-offenders between the shootings.” With respect to the Cooksey-Johnson shooting, the State notes that the same person, Guider, “drove defendant to the Cooksey shooting and to the Officer Cook shooting.”

¶ 81 The State otherwise contends that the “high probative value of the earlier shootings was not substantially outweighed” by any prejudicial effect. The State claims that there is “no risk” that a jury would convict defendant of Officer Cook’s murder, based on evidence of defendant’s involvement in prior shootings. Finally, the State submits that, even if we found that the other

crimes evidence should not have been admitted, any error was harmless. The State contends that, given the other trial evidence, the other crimes evidence could not have been a material factor in the jury's guilty verdict, and so its admission cannot be reversible error.

¶ 82 Defendant's reply reiterates his claim that the Cooksey-Johnson shooting "shares no common features" with the other shootings, other than defendant's alleged involvement. Defendant's reply brief otherwise disputes the State's claim that any error in its admission was harmless. On that point, defendant attacks the credibility of Lloyd, who "never provided a consistent account of the events" leading up to Officer Cook's murder. Defendant urges that Lloyd's testimony was "the only direct evidence placing [defendant] at Officer Cook's window." Defendant contends that the admission of the Cooksey-Johnson shooting was not harmless because it could have caused the jury to convict him because he was a "scary young man who liked to shoot people."

¶ 83 "Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crime. [Citation.] Other-crimes evidence is admissible to show *modus operandi*, intent, motive, identity, or absence of mistake with respect to the crime with which the defendant is charged. [Citation.]" *People v. Pikes*, 2013 IL 115171, ¶ 11. However, such evidence should not be admitted "if its probative value is substantially outweighed by its prejudicial effect. [Citation.]" *Id.*

¶ 84 Our supreme court has further explained that evidence of other crimes cannot be admitted "merely to establish [defendant's] propensity to commit crime," as "[s]uch evidence overpersuades the jury, which might convict the defendant only because it feels he is a bad person deserving punishment." (Internal quotation marks omitted.) *Id.* ¶ 13. However, evidence

of other crimes “may be admitted if relevant to establish any material question other than the propensity to commit a crime. [Citations.]” (Internal quotation marks omitted.) *Id.*

¶ 85 When the State seeks to admit such evidence, “the trial judge must weigh the relevance of this evidence to establish the purpose for which it is offered against the prejudicial effect the introduction of such evidence may have upon the defendant.” (Internal quotation marks omitted.) *Id.* “If the trial court is satisfied that [other crimes] evidence is relevant to a material question unrelated to propensity, and the court then determines that the probative quality of the evidence outweighs any prejudice to the defendant, the evidence may be admitted.” *People v. Clark*, 2015 IL App (1st) 131678, ¶ 28.

¶ 86 “A trial court’s decision to admit other-crimes evidence will not be reversed absent an abuse of discretion. [Citations.] We will find an abuse of discretion if the trial court’s evaluation is unreasonable, arbitrary, or fanciful, or where no reasonable person would adopt the trial court’s view. [Citation.]” *People v. Johnson*, 406 Ill. App. 3d 805, 808 (2010).

¶ 87 Furthermore, even if evidence of other crimes was improperly admitted, it does not necessarily constitute reversible error:

“The erroneous admission of evidence of other crimes carries a high risk of prejudice and ordinarily calls for reversal. [Citation.] However, where the error is harmless beyond a reasonable doubt, reversal is not required. [Citation.] In deciding whether the admission of other-crime[s] evidence is harmless beyond a reasonable doubt, we must ask whether the other-crime[s] evidence was a material factor in [the defendant’s] conviction such that without the evidence the verdict likely would

have been different. [Citation.] If the error is unlikely to have influenced the jury, admission will not warrant reversal.” (Internal quotation marks omitted.) *Clark*, 2015 IL App (1st) 131678, ¶ 65.

In other words, the “improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission.” (Internal quotation marks omitted.) *People v. Johnson*, 406 Ill. App. 3d 805, 818 (2010).

¶ 88 With these principles in mind, we reiterate that the evidentiary issue raised by defendant is relatively narrow, specifically, whether the trial court erred in admitting the evidence of defendant’s role in the Cooksey-Johnson shooting. That is, defendant does not take issue with the additional “other crimes” evidence, regarding the shooting near Cooksey’s house, or the incident involving Officer Gbur. The State broadly argues that all such “other crimes” evidence, including the Cooksey-Johnson shooting, was proper to establish a continuing narrative, and was relevant on the issues of defendant’s motive and identity.

¶ 89 We disagree. We acknowledge the deferential standard of review applicable to the trial court’s evidentiary rulings. Nevertheless, we conclude that it was unreasonable for the trial court to permit admission of the specific evidence of the Cooksey-Johnson shooting. That is, we fail to see why evidence of that particular incident was relevant to the State’s theory of the case.

¶ 90 The State suggests that the Cooksey-Johnson shooting was needed to help “set the stage” and explain the circumstances that led to Officer Cook’s murder. As defendant recognizes, the State’s theory at trial was that the loss of defendant’s gun following the encounter with Officer Gbur motivated the attack on Officer Cook, in order to obtain Officer Cook’s weapon. However, the State simply does not articulate why evidence of the specific Cooksey-Johnson shooting incident was necessary to its narrative, or to support its theory that Officer Cook was murdered

for his service weapon. The State's brief treats all these "other crimes" incidents as an inseparable unit, without attempting to parse why each individual incident was relevant to its theory of the case.

¶ 91 It is not disputed that it was proper for the jury to hear that Lloyd and defendant were involved in a shooting near Cooksey's home, which led to their encounter with Officer Gbur in the early morning of September 27, 2006. Those incidents were clearly relevant to explain the chain of events directly leading to the loss of defendant's firearm. Defendant's desire to replace that weapon was the State's proffered motive for the killing of Officer Cook, which occurred less than 24 hours later.

¶ 92 However, we see no reason why the prior Cooksey-Johnson shooting was necessary to that narrative, or otherwise relevant to the State's theory of Officer Cook's murder. The Cooksey-Johnson shooting incident, which occurred the night before the encounter with Officer Gbur, simply did not relate to the State's theory— that the loss of defendant's firearm to Officer Gbur led to the murder of Officer Cook for his service weapon. To explain that motive to the jury, the State did not need to reference the prior Cooksey-Johnson shooting. Rather, the State could have simply presented evidence that, in the early morning hours of September 27, defendant lost a firearm after he and Lloyd were pursued by Officer Gbur. That evidence would have been sufficient to explain the State's theory. There was no need to mention any prior bad acts by defendant to explain that motive. Contrary to the State's argument, we see no risk that the jury would have been confused as to the State's theory of the case, if it did not learn about the Cooksey-Johnson shooting. Thus, we reject the State's suggestion that the jury needed to hear about that prior incident in order to provide a continuing narrative, or to explain its theory of the motive for Officer Cook's murder.

¶ 93 Similarly, we reject the State’s suggestion that evidence of the Cooksey-Johnson shooting was otherwise admissible to “establish defendant’s identity as the shooter” in Officer Cook’s murder. We first note that, in granting the State’s motion *in limine*, the trial court did not admit evidence for the purpose of proving identity, but rather to “show a common scheme” as well as motive. In any event, we fail to see sufficient similarities between the circumstances of the Cooksey-Johnson shooting and the murder of Officer Cook that would justify admission of the prior crime as proof of defendant’s identity. See *People v. Wilson*, 214 Ill. 2d 127, 136 (2005) (other-crimes evidence must “bear[] some threshold similarity to the crime charged” to be admissible for the purpose of showing identity).

¶ 94 For the foregoing reasons, we conclude that the trial court erred, to the extent that it permitted admission of the Cooksey-Johnson shooting. However, that determination of error does not necessarily warrant reversal. Rather, we must also ask whether the erroneous admission of such evidence was harmless beyond a reasonable doubt. *Clark*, 2015 IL App (1st) 131678, ¶¶ 64-65. We thus consider whether the other-crime evidence at issue in this case was “a material factor in [the defendant’s] conviction such that without the evidence the verdict likely would have been different. [Citation.]” *Id.* ¶ 65.

¶ 95 In this case, the State’s case was strong, regardless of whether there had been any mention of the Cooksey-Johnson shooting. We recognize that direct evidence placing defendant at the scene of Officer Cook’s murder consisted almost entirely of Lloyd’s testimony, as well as Lloyd’s prior statements to police. We also recognize the inconsistencies in certain aspects of Lloyd’s statements, such as whether he actually witnessed defendant pull the trigger, or merely heard the shots seconds after seeing defendant point a gun at Officer Cook’s car. However, as the State pointed out at trial, Lloyd consistently identified defendant as the person who approached



the driver's window and raised a gun. He did so in numerous statements to police as well as during his trial testimony.

¶ 96 Moreover, the State elicited evidence to corroborate Lloyd's testimony about the moments leading up to Officer Cook's shooting. Notably, Guider testified that he drove defendant and Lloyd to the same meeting point with Henry that Lloyd discussed. Guider also acknowledged that less than an hour later, defendant called him and asked to be picked up near the location where Officer Cook was murdered.

¶ 97 In addition, apart from the Cooksey-Johnson shooting that is the focus of this appeal, the State offered additional "other crimes" evidence supporting its theory that the motive for the murder was to replace the weapon lost after Officer Gbur pursued defendant and Lloyd. Officer Gbur testified that he followed a vehicle after a shooting near Cooksey's residence. He identified defendant as the driver, and confirmed that firearms were left behind in that vehicle. The State also introduced defendant's prior trial testimony, in which he acknowledged that he was involved in that encounter with Officer Gbur. In addition, the State's theory of motive was consistent with the evidence that Officer Cook's service weapon was missing from the murder scene. The State also introduced evidence that defendant acknowledged he possessed a gun in Robbins, the same village where Officer Cook's gun was eventually recovered.

¶ 98 In sum, wholly apart from any reference to the Cooksey-Johnson shooting, there was ample evidence supporting the State's theory of the case. The jury could, and apparently did, credit that evidence to find defendant guilty. In light of all the other evidence, we find it highly unlikely that the Cooksey-Johnson shooting evidence, however improper, constituted a "material factor" in the jury's decision to convict. *Id.* In other words, we do not see any realistic probability that the jury relied on that evidence to convict defendant, rather than relying on the

other properly-admitted evidence at trial. There is no reasonable possibility that the jury would have reached a different verdict, but for the admission of the other crimes evidence challenged in this appeal.

¶ 99 We conclude that the trial court erred in allowing evidence of the Cooksey-Johnson shooting. Nonetheless, under the totality of the record, we do not find that the admission of that evidence was likely to influence the jury's decision to convict him of Officer Cook's murder, and thus its erroneous admission did not prejudice defendant. Accordingly, we do not find that the admission of such evidence constituted reversible error.

¶ 100 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 101 Affirmed.