FIRST DIVISION
December 29, 2017

No. 1-15-0975

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 11 CR 2094801
	)	
TYVONE BROWN,	)	The Honorable
	)	Stanley Hill,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it admitted uncharged other crimes evidence to establish identity. Defendant's mittimus is corrected.

¶ 2 Following a bench trial, defendant Tyvone Brown was found guilty of first degree murder in the shooting death of Brandon Cannon and was sentenced to six concurrent terms of 50 years' imprisonment. Defendant now appeals and argues that (1) the trial court erred in considering other crimes evidence of uncharged offenses when the evidence was not admissible for the purpose of establishing identity, and (2) the trial court violated the one-act, one-crime doctrine when it entered a conviction and sentenced defendant on all six counts of first degree murder. For the following reasons, we affirm but correct defendant's mittimus.

¶ 3 BACKGROUND

¶ 4 Defendant was indicted with 42 counts of first degree murder after he entered Brandon Cannon's home, attempted to rob him and then shot and killed him. The State proceeded to trial on six counts.

¶ 5 Prior to trial, defendant filed a motion to bar the admission of his videotaped statements to the police. While the motion was pending, the trial court viewed the video and transcripts. Defendant testified at the hearing on the motion. The trial court ultimately denied defendant's motion. Defendant's statements were not admitted at trial.[1]

¶ 6 Also prior to trial, the State filed a motion to admit other crimes evidence that, on the night of the offense, defendant shot a gun in the alley on the west side of Chicago, displayed a gun while at Lexus Liquors, and later possessed a gun at a sandwich shop, "to show intent, motive, knowledge, continuing narrative, absence of mistake, and the course of investigation." Defendant filed a written response seeking to preclude the State from introducing uncharged other crimes evidence. After several hearings, the trial court found that "if [defendant] is denying that he was the shooter, that [other crimes] evidence becomes relevant on the issue of the identity of the shooter." The trial court further stated that "the evidence of Lexus Liquor comes in on the issue of the – on the issue of identity under other evidence, other evidence being admissible." The trial court further found that "the evidence regarding any testimony regarding [defendant] allegedly having a gun on the West Side of Chicago that was-that can be described as being similar to the gun that was used at the time of the shooting in Cannon. That's my ruling." The trial court excluded testimony regarding the sandwich shop because "it's confusing."

[1]We will not address any of defendant's argument relating to his statement where the statement was not admitted as evidence at trial.

¶ 7 Deontae Saunders testified that defendant is his cousin and that on March 16, 2011, defendant drove him to Addison, Illinois for a family barbeque. After the barbeque, they drove to Cannon's house in Maywood to pick up defendant's friend, Darius Blackedge, also known as "Schiest." They then drove to a home on the west side of Chicago. Saunders stayed in the car and defendant and Blackedge exited. Saunders heard gunshots. Shortly thereafter, defendant and Blackedge got back into the car. Defendant had a gun, which Saunders had not seen before. They drove to a liquor store and defendant got out of the car and went inside. According to the time stamp on the liquor store video, defendant entered the store at 11:26 p.m.

¶ 8 Defendant exited the liquor store, got back into the car and Saunders drove them to a sandwich shop. When they arrived there, defendant and Blackedge got out of the car and went into the sandwich shop. Defendant returned to the car but Blackedge did not. Defendant and Saunders then went back to Cannon's house.

¶ 9 When they arrived at Cannon's house, Saunders parked in an alley a few houses down. Defendant told Saunders to get out of the car and follow him. They walked to a door near the back of the house and adjacent to the attached garage. Defendant knocked on the door and Cannon asked "Who is it?" Defendant responded, "Its Schiest." Cannon opened the door holding a shotgun. Defendant pointed his gun at Cannon and told him to drop the shotgun and Cannon complied. Defendant asked Cannon, "Where is the shit at?" Cannon told defendant that it was in the garage and proceeded to open the door to the attached garage that was a few feet away. Cannon went up to the car that was parked in the garage and opened the door. Defendant followed Cannon into the garage and Saunders remained in the doorway. Defendant and Cannon started "tussling." Defendant's gun flew out of his hand. Saunders tried to break up the fight by picking up Cannon's shotgun and hitting Cannon twice in the head. Cannon stopped fighting

and defendant was able to recover his gun. As Cannon headed toward defendant, defendant shot him, causing Cannon to fall on his stomach. Defendant shot Cannon a second time and then defendant and Saunders ran back to the car.

¶ 10 Once at the car, Saunders drove to defendant's mother's house in Addison, Illinois. Defendant still had the gun with him. Defendant's shirt had blood on it so defendant took it off and threw it out the car window. An Addison police car began following them with its lights activated but Saunders did not stop. He eventually pulled in a driveway and he and defendant got out of the car and ran.

¶ 11 Saunders identified defendant in the Lexus Liquors surveillance video. Saunders also identified a photograph of a gun police recovered at 319 South Hale Street in Addison, Illinois, as "the gun" that defendant had on the evening of March 16, 2011.

¶ 12 On cross-examination, Saunders stated that he initially lied to the police about touching the shotgun but changed his story about wanting to tell the truth. Saunders denied shooting Cannon and denied telling family members that he shot Cannon. He further denied asking his aunt for money to leave town and denied urinating on himself as he hid from the police in a closet.

¶ 13 Addison Police Officer Anselmo Garcia testified that on March 17, 2011, at about 12:08 a.m., he observed a vehicle without taillights speed past him. Office Garcia followed the vehicle until it pulled into a driveway at 323 South Hale Street. Both occupants jumped out of the vehicle. Officer Garcia began to follow them but lost sight of them and headed back to his squad car. While walking to his squad car, Officer Garcia spotted defendant a few houses down. Defendant was walking in Officer Garcia's direction and did not have a shirt on. Officer Garcia placed him into custody.

¶ 14 Addison Police Officer Kevin Kuechler testified that on March 17, 2011, about 5:45 p.m. he received a call to respond to an apartment building at 319 South Hale Street. Upon arriving, he spoke with a resident of the building and then proceeded toward the rear of the building where he found a handgun lying near an electrical pole. Officer Kuechler stood guard over the gun until it was retrieved by Detective Powell, a Maywood officer. Officer Kuechler and Detective Powell identified photographs of the firearm found and recovered from the apartment building at 319 South Hale Street. Detective Powell also identified the firearm's magazine and a bag of live rounds.

¶ 15 Blackedge testified that he had known defendant for about 13 years. He knew Cannon sold marijuana. On the night that Cannon was shot Blackedge was intoxicated from alcohol and taking ecstasy pills. He remembered that he left Cannon's house with defendant and Saunders and then drove to the west side to his cousin's house, where he used the bathroom. Blackedge, defendant and Saunders then went to a liquor store but he could not remember which one or whether defendant had a gun. They then went to a sandwich shop where they parted ways. Blackedge learned that Cannon died the following day.

¶ 16 Blackedge met with an assistant State's Attorney (ASA), detectives, his lawyers, and his mother on September 29, 2011, and told them what happened on March 16, 2011. Blackedge did not recall telling them that he, Saunders and defendant drove to a liquor store, that defendant brought a gun into the liquor store, but did tell them that defendant had a gun. He did not see defendant with a gun that night. He denied testifying before the Grand Jury that defendant had a gun in the car.

¶ 17 ASA Zahr testified that on September 29, 2011, Blackedge gave her a signed statement regarding the events of March 16, 2011. In his signed statement, Blackedge stated that he "knew

that Brown had a gun when Brown went into the store because Brown had been talking about the gun while they were driving around Maywood." He never saw Saunders with a gun and Saunders never said he had a gun.

¶ 18 ASA Almednarez questioned Blackedge as a witness in the Grand Jury in October 2011 regarding Cannon's murder. Blackedge testified that he "noticed when [defendant] got back in the car, he had a handgun on him."

¶ 19 Marsha Reese testified that she lived with Cannon and her two daughters. On March 16, 2011, she was awakened by gunshots. She found Cannon lying face down on the floor. She called emergency personnel.

¶ 20 Doctor Ariel Goldschmidt, a qualified expert in the field of forensic pathology, testified that she performed an autopsy on Cannon on March 17, 2011. Cannon sustained a gunshot wound on the back of the neck with a corresponding exit wound on the front of his neck. He also sustained a gunshot wound to the left side of his neck with no exit wound. A bullet was recovered from Cannon's left lung. Dr. Goldschmidt testified that the manner of death was homicide and the cause of death was multiple gunshot wounds.

¶ 21 Maywood police Sergeant Patrick Grandberry processed the crime scene on March 17, 2011. He took photographs and recovered three spent shell casings, one live ammunition round, and one live shotgun round. Latent prints were recovered from the car in Cannon's garage. Sergeant Grandberry found cannabis and a shotgun.

¶ 22 The parties then stipulated that if called to testify, Nabil Abdel Rahman would testify that he is the owner of Lexus Liquors, that he had a surveillance system in place there, and that the system was in proper working order on March 16, 2011. He would also identify a copy of the

video downloaded from that system. The State then published the liquor store video over defendant's objection.

¶ 23 The parties also stipulated as follows: Bob Berk, a forensic scientist in the trace/microscopy section of the Illinois State Police would testify that he analyzed gunshot residue evidence taken from defendant and concluded, within a reasonable degree of certainty, that defendant may not have discharged a firearm, or that the particles were removed by activity, were not deposited or were not detected by the test. Wendy Gruhl, a forensic scientist in the biology/DNA section of the Illinois State Police, would testify within a reasonable degree of certainty that blood was present in swabs taken from the gun. Ryan Paulsen, a forensic scientist in the biology/DNA section of the Illinois State Police, would testify within a reasonable degree of certainty that the DNA profile obtained from the gun matched Cannon's DNA profile. Fred Tomasek, a forensic scientist in the firearms section of the Illinois State Police, would testify within a reasonable degree of certainty that the three shell casings found at the scene of the crime were fired from the gun recovered at 319 South Hale Street and the bullet recovered from Cannon's body was fired from the recovered gun.

¶ 24 The State rested. Defendant's motion for a directed verdict was denied.

¶ 25 Defendant called Cleveland Saunders, defendant's uncle and Saunders's father, Louise Saunders, defendant's and Saunders's grandmother, Howard Mance, Louise's ex-boyfriend, and Elizabeth Brown, defendant's mother. All four testified that on or around the night of the murder, Saunders confided in them that he, and not defendant, was the one who shot Cannon.

¶ 26 Cleveland stated that he talked with Saunders on the night of the murder at his sister's house at 215 South Hale Street in Addison, and that Saunders, who looked "high" and scared, told him that he shot someone in Maywood who was going to shoot his cousin. Cleveland

further stated that when police arrived one hour later, they found Saunders in the closet and that Saunders had urinated on himself. Two weeks later, Saunders again told Cleveland that he shot someone. He knew that defendant was in jail for killing Cannon but did not tell the police or defendant's attorney about what Saunders told him until three and a half years later.

¶ 27 Howard Mance testified that he was having dinner with Louise and Deontae Saunders on March 18, 2011, when Deontae told them that he shot someone who was going to shoot defendant. Mance stated that he knew that defendant was in custody for shooting someone but did not contact the police or the State's attorney.

¶ 28 Elizabeth Brown testified that when she asked Deontae why defendant was in custody, Saunders told her that they went to someone's house and were drinking and smoking and that he, Deontae, shot someone who was going to kill defendant. She further testified that Saunders asked her for money to get out of town.

¶ 29 Maywood Police Detective Charles Porter testified that he was assigned to investigate the homicide of Cannon. He interviewed Deontae Saunders around September 26, 2011, and recorded the interview. Saunders told him that he did not exit the car at Cannon's house and did not touch the shotgun. Saunders later told him that he hit Cannon on the head with the shotgun, and when Cannon stepped back, defendant shot Cannon two or three times. Saunders stated that he heard gunshots while he was in the living room but Cannon was near the entrance to the garage. He also stated that Cannon's body fell on the floor in the living room.

¶ 30 The parties stipulated that if called to testify, Addison Police Officer Laurie Felton would testify that she was dispatched to 323 South Hale in Addison at about 1:26 a.m., and when she arrived, two males stepped out of the bedroom. She heard noises coming from the closet and observed Saunders hiding inside. He was sweating and had urinated on himself.

¶ 31 The parties further stipulated that if called to testify, Addison Police Sergeant Cooper would testify that during the videotaped statement of Saunders, Saunders stated that after he hit Cannon, he went out of the garage. As Cannon was coming towards him, he heard shots. Defendant was coming from behind Cannon. After he heard the shots he was scared for his life and headed for the door. Defendant rested.

¶ 32 In rebuttal, the State called Public Defender investigator James Madden who testified that on July 15, 2014, he met with four witnesses defendant called in his case-in-chief individually and took notes. He did not recall Mance saying that Saunders told him that the guy who got shot had a shotgun. Mance did not recall the date of the dinner. He did not recall if Louise Saunders told him that Saunders told her that the guy who got shot was trying to shoot defendant. He did not believe that Elizabeth Brown told him that Saunders said he and defendant were drinking and smoking at someone's house and she did not say that Saunders asked her for money to get out of town. The State rested.

¶ 33 The trial court found defendant guilty. The trial court stated that it found the testimony of Cleveland, Louise, Howard and Elizabeth to be "incredible, unbelievable and unworthy of belief." The trial court found Saunders to be "very credible, very credible when he testified here." With respect to the results of the gunshot residue test, the trial court noted that it was reasonable for defendant's gunshot residue test to be negative because the video from the liquor store showed that defendant was wearing gloves. With respect to the gloves, the trial court stated, "You seen [*sic*] them clearly in the video that's already in evidence. At the least, we didn't get a clear enough view, but he comes back. There is the gun again, there is the gloves [*sic*] again. If there is a question about who had the gun that night, I think we put it to rest."

¶ 34 Defendant filed a motion for a new trial. At the hearing on the motion, defendant asserted that he wanted to claim ineffective assistance of counsel and asked for time to file a *pro se* motion. Subsequently, defendant filed a *pro se* motion based on ineffective assistance of trial counsel. Following a *Krankel* hearing, defendant's *pro se* motion was denied. The trial court then denied defendant's motion for a new trial. Defendant then filed a *pro se* motion for a new trial and a motion in arrest of judgment. After standby counsel was appointed, the trial court denied these motions. The trial court then sentenced defendant to six concurrent terms of 50 years' imprisonment, one term for each six counts. It is from this judgment that defendant now appeals.

¶ 35 ANALYSIS

¶ 36 Defendant argues that the trial court erred in admitting evidence of uncharged offenses for the purpose of establishing identity, when identity was not an issue in the case.

¶ 37 "Other-crimes" evidence does not pertain solely to prior convictions; the term encompasses bad acts, and the standard for the admissibility of such evidence is more than mere suspicion, but less than beyond a reasonable doubt. *People v. Colin*, 344 Ill. App. 3d 119, 126 n.2 (2003). Generally, it has been held that other crimes evidence is admissible if relevant for any purpose other than to show propensity to commit crime. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). Other crimes evidence may be admitted to show *modus operandi*, intent, motive, identity, or the absence of mistake. *People v. Pikes*, 2013 IL 115171, ¶ 11; see also Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). Nevertheless, even if other-crimes evidence is admissible for such a purpose, the trial court may exclude it if the prejudicial effect of the evidence substantially outweighs its probative value. *Pikes*, 2013 IL 115171, ¶ 11; see also Ill. R. Evid. 403 (eff. Jan. 1,

2011) (relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice").

¶ 38 The determination of whether the probative value of other crimes evidence outweighs its prejudicial effect rests within the sound discretion of the trial court (*People v. Hale*, 2012 IL App (1st) 103537, ¶ 24), and the court's ruling will not be disturbed absent an abuse of that discretion (*People v. Ward*, 2011 IL 108690, ¶ 21). An abuse of discretion "occurs when the court's decision is arbitrary, fanciful, or unreasonable." *People v. Gwinn*, 366 Ill. App. 3d 501, 515 (2006).

¶ 39 The central question in this case was who shot and killed Cannon. The State's evidence established that defendant shot and killed Cannon. Defendant's evidence pointed at Saunders as the shooter. Although defendant's statement was not admitted at trial, Saunders testified that both he and defendant were at Cannon's house that evening and that prior to their arrival there, defendant had a gun in his possession. Additionally, Blackedge could not remember if defendant had a gun that evening, however, he was impeached by his Grand Jury testimony that defendant had a gun in the car sometime before the murder. Therefore, any evidence that defendant had a gun in his possession less than one hour before Cannon was shot and killed was relevant and tended to establish defendant's identity as the person who shot and killed Cannon.

¶ 40 Defendant is seen and identified by Saunders on the Lexus Liquors video holding what appears to be a gun. At trial, Saunders identified a photograph of the gun that defendant had on the night of the murder. Defendant was seen walking in the area of 319 South Hale Street, where the murder weapon was found, shortly after Saunders fled from the driveway at 323 South Hale Street. The bullet recovered from Cannon's body was later determined to have been fired from the same gun recovered from 319 South Hale Street that Saunders identified as having been in

defendant's possession that evening. Moreover, DNA taken from blood splatter on the gun recovered matched the DNA of Cannon. There was no testimony or other evidence to suggest that Saunders possessed a weapon of any kind on that evening. We therefore find that the trial court did not abuse its discretion in allowing defendant's possession of a firearm to establish identity.

¶ 41 Notwithstanding the fact that defendant's uncharged possession of a firearm in the hours leading up to Cannon's murder were admissible to establish identity, that uncharged possession of a firearm would be equally admissible as part of the continuing narrative of the murder. "Evidence of other crimes may be admitted if it is part of the 'continuing narrative' of the charged crime." *Pikes*, 2013 IL 115171, ¶ 20 (quoting *People v. Adkins*, 239 Ill. 2d 1, 33 (2010)). In such cases, ordinary relevancy principles apply and the rule related to other crimes is not implicated. *People v. Rutledge*, 409 Ill. App. 3d 22, 25 (2011). Evidence admitted as a continuing narrative are proper where intrinsic acts are " 'a necessary preliminary to the current offense,' " and where "the prior crime is part of the 'course of conduct' leading up to the crime charged." *People v. Morales*, 2012 IL App (1st) 101911, ¶¶ 24-25 (quoting *People v. Manuel*, 294 Ill. App .3d 113, 124 (1997)). Uncharged crimes admitted as a continuing narrative "do not constitute separate, distinct, and disconnected crimes." *Pikes*, 2013 IL 115171, ¶ 20. Defendant possessed a gun when he went to the west side, possessed a gun in the liquor store as seen on the video, and then possessed a gun when he and Saunders arrived at Cannon's home. The uncharged crime of possessing a gun throughout the evening is part of the course of conduct leading up to Cannon's murder and would be admissible as relevant evidence.

¶ 42 Defendant argues that the admission of his uncharged crimes was also inadmissible to establish identity because the State was using the uncharged crimes evidence to improperly

corroborate the testimony of its witnesses. Defendant is correct in his argument that evidence of other crimes is not admissible solely to enhance or bolster the credibility of the State's witnesses. *People v. Romero*, 66 Ill. 2d 325, 329-32 (1977); *People v. Barbour*, 106 Ill. App. 3d 993 (1982). However, as we have found, evidence of the previous acts of possessing the gun was properly admitted to prove identity and to establish the course of conduct leading up to Cannon's murder. Therefore, the previous acts were not admitted solely to enhance or bolster the credibility of the victim's testimony. Evidence which is otherwise admissible will not be excluded merely because it shows that defendant committed a crime other than the one for which he is being tried (*People v. McDonald*, 62 Ill.2d 448, 455 (1975)) or because it may enhance or bolster the credibility of the State's witnesses.

¶ 43 We also find that, even if it was error to admit testimony that defendant possessed a firearm earlier that evening, the error was not prejudicial. The entire prosecution was based on the testimony of Saunders and his version of the shooting. There is no question that Cannon was killed by the weapon found near the location where defendant was arrested and Saunders was found. The only issue was who shot Cannon. The trial court found Saunders' version credible and the defense witnesses incredible. Saunders' version of the killing, corroborated in part by Blackedge, when viewed in the light most favorable to the prosecution was sufficient to sustain the conviction. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (in assessing the sufficiency of the evidence, the reviewing court questions after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt).

¶ 44 Defendant also claims that the trial court erred when it ignored its own pretrial ruling regarding the uncharged other crimes evidence. Defendant claims that the liquor store video was

admitted solely as uncharged other crimes evidence to establish identity yet the prosecutor argued during closing argument, and the trial court took notice of the fact that defendant was wearing gloves. The trial court stated "you brandished the gun the face of the person in the liquor store, and at the time, I could see that you had *** gloves on." Defendant argues that the trial court made this finding despite the fact that there was no evidence introduced at trial that defendant wore gloves at Cannon's house yet the trial court accepted that defendant had gloves on in the liquor store as a means to explain the fact that defendant's gunshot residue test came back negative.

¶ 45 Notably, defendant objected only to the prosecutor's reference to the gloves on the basis that the video was admitted for the limited purpose of identity. Defendant's claim of error is essentially that the trial court could not consider the video for any purpose other than identity. We find this argument unpersuasive. We have found that the video showing defendant with what appears to be a weapon was properly before the trier of fact because it was part of a continuing course of conduct, it tended to corroborate Saunders and Blackedge and it tended to establish the identity of the offender. As such, it defies logic that the trial court could not consider the entire video, including what the defendant was wearing, and draw any reasonable inference from what he saw. The trial court is not expected to wipe its memory clean and ignore that the video showed defendant wearing gloves and then refuse to reasonably infer that an explanation for the absence of gun residue on defendant's hands was because he may have been wearing gloves. The defendant was not prejudiced by the trial court relying on the contents of the video in drawing an inference to account for the absence of gun residue on defendant shortly after the shooting.

¶ 46 Finally, defendant argues that the trial court violated the one-act, one-crime doctrine when it convicted him and sentenced him to 50 years' imprisonment on six counts of murder. Defendant acknowledges that he failed to raise this issue in the trial court and therefore failed to preserve the matter for appeal. However, a one-act, one-crime violation is reviewable under the second prong of the plain-error doctrine because it affects the integrity of the judicial process. See *People v. Nunez*, 236 Ill. 2d 488, 493 (2010); *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009).

¶ 47 The one-act, one-crime rule prohibits multiple convictions carved from the same physical act. See *People v. Almond*, 2015 IL 113817, ¶ 47; *People v. King*, 66 Ill. 2d 551, 566 (1977). In this case, the State agrees that under the one-act, one-crime doctrine, defendant's sentence should be affirmed on the most serious charge of intentional murder, which is count 11 in this case and the remaining counts should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Accordingly, we affirm defendant's sentence on count 11, vacate his convictions on counts 1, 16, 26, 32 and 40, and direct the Clerk of the Circuit Court to correct the mittimus to reflect a single conviction of murder on count 11. Ill. S. Ct. R. 615(b)(1); *People v. Walker*, 2011 IL App (1st) 072889-B, ¶¶ 39-41.

¶ 48 The court stated that based on the counts he was charged with, 45 years was the minimum sentence. The trial court stated that sentencing him to the minimum sentence would "send the wrong message to others" based on defendant's prior criminal history. The trial court then sentenced defendant to 50 years' imprisonment. We decline defendant's invitation to remand for resentencing. It is clear from the record before us that the court did not consider all six counts of murder when sentencing him. The trial court was clear that it was convicting defendant for only the murder of Cannon, not the murder of six people.

¶ 49 CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the trial court and order the Clerk of the Circuit Court to correct defendant's mittimus to reflect a single conviction and sentence for first degree murder on count 11.

¶ 51 Affirmed; mittimus corrected.