2025 IL App (1st) 220499-U

FIFTH DIVISION
September 30, 2025

No. 1-22-0499

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DARRYL LLOYD, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 13 CR 0935103 Honorable Carl B. Boyd, Judge Presiding.

JUSTICE TAILOR delivered the judgment of the court.
Justice Mikva concurred in the judgment.
Justice Oden Johnson dissented.

ORDER

¶ 1 *Held*: The trial court did not err in admitting other crimes evidence. The victim sensitive interview was properly admitted.

¶ 2 Following a jury trial, defendant Darryl Lloyd was convicted of three counts of first degree murder and one count of attempted murder and sentenced to life in prison. On appeal, Lloyd argues that he was deprived of a fair trial when other crimes evidence was adduced against him and the surviving minor's victim sensitive interview (VSI) conducted a year and a half after the murders was inadmissible because it was irrelevant, more prejudicial than probative, and unreliable. For the following reasons, we affirm Lloyd's conviction.

¶ 3 I. BACKGROUND

¶ 4 In October 2010, Lloyd and his co-defendants Brandon Griffin, DaJuan Crockett, and Faheem Norwood, engaged in a 12-hour crime spree. In the early evening hours of October 24, 2010, the group robbed a man who was selling cigarettes near a convenience store. Later that evening, around 9:50 p.m., the group murdered three members of the Davis family, and attempted to murder the fourth, minor Nathaniel Davis, during a home invasion and robbery at an apartment in Harvey. After that, the group robbed a man in Chicago Heights. Finally, the group carjacked a man in Dolton early the following morning. Faheem was the gunman in the murders and the attempted murder, and the State prosecuted Lloyd under a theory of accountability.

¶ 5 After the murders, police tried to interview the attempted murder victim, four-year-old Nathaniel Davis, when he was released from the hospital on November 1, 2010, and again the following day. However, Nathaniel was too traumatized by the murders of his mother and siblings to complete the interview.Nathaniel's grandmother asked police to give Nathaniel time to recover before attempting to interview him again. A victim-sensitive, video-recorded interview was ultimately conducted 17 months later, on April 5,

2012, when Nathaniel was five years old.

¶ 6 At the beginning of the interview, which took place at Nathaniel's grandparents' house in Indiana, Nathaniel stated his age and where he lived, the name of his best friend and which sports he liked, and that he wanted to be a firefighter or race car driver when he grew up. Although Nathaniel at times provided off-topic information and required redirection, he was able to relate certain details of the incident. Nathaniel stated that he, his mother, his sister, and his brother were shot but that his father was not. When one of the officers asked him about being shot, Nathaniel responded, "Wanna see it?" He then removed his t-shirt, walked out of the frame toward the officer, and pointed out his scars. Nathaniel stated that the offenders "slam[med] the door open" and "didn't say 'hi,' they just wanted to kill us." He explained that the offenders wore "shoes and boots," that one wore a backwards hat and sagging pants, that all of them were Black males, and that they "tried to shoot *** and kill" him and his family. Nathaniel related that he saw the offenders' faces but did not know their names. He also stated that there were eight or nine offenders. Nathaniel explained that he saw a gun, that he was afraid, and that he tried to hide under the covers in his bed, but the offenders "saw [his] feet." Finally, he stated that his residence had a large television on a dresser but did not have a "downstairs" and that, after the shooting, police arrived and family friend named "Grrod" held him and told him that he would not let anything happen to him. In a later unrecorded interview on March 8, 2013, Nathaniel stated that there were only three or four offenders, and he identified Lloyd and Crockett as two of the offenders.

¶ 7 Prior to trial, the State moved for a hearing under section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2018)), which provides that

a child victim's recorded statement describing a physical act perpetrated against him "shall be admitted as an exception to the hearsay rule" if the court finds after a hearing "that the time, content, and circumstances of the statement provide sufficient safeguards of reliability." At the hearing on the motion, the State introduced Nathaniel's VSI and a transcript of the interview, which the court reviewed, and presented testimony from Detective Gregory Thomas, one of the officers who interviewed him.

¶ 8 Thomas explained that he was involved in investigating the murders of Nathaniel's family members. Nathaniel suffered multiple gunshot wounds and was hospitalized from the day of the murders until the afternoon of November 1, 2010. Officers made two attempts to interview Nathaniel in November 2010, but Nathaniel's grandmother requested that Nathaniel "have time to emotionally recover from the tragic incident" before police attempted to interview him again. Thomas further testified that he arranged with Nathaniel's grandmother to interview Nathaniel on April 5, 2012. Although Nathaniel's grandmother made introductions before the interview, Nathaniel's grandparents were not in the room and did not intervene or correct Nathaniel during the interview. Nathaniel's grandmother reported that she and Nathaniel "do not discuss the incident at all." Thomas further testified that neither he nor anyone else told Nathaniel details about the case.

¶ 9 The State argued that the timing, circumstances, and content of the interview showed that it was reliable. The State acknowledged the delay in interviewing Nathaniel but noted that the delay was necessary because Nathaniel was too distraught to be interviewed immediately after his release from the hospital. The State further argued that during the interview of Nathaniel, the officers asked "nonleading questions," made no attempt to influence Nathaniel's responses, and that Nathaniel had no motive to lie. The

State pointed to the fact that Nathaniel's responses showed that he was able to answer questions and "explain[] *** what occurred from the mindset of a 5-year-old," that his occasional off-topic comments were not "fanciful" or "irrational" and were to be expected given his age, and that the substance of the responses showed that the information he provided was "coming from [Nathaniel] and not another source." As to Nathaniel's incorrect statements that there were eight or nine offenders, the State argued that the defense would be free to impeach Nathaniel with his later statement that there were three or four offenders.

¶ 10 The court found that the interview was sufficiently reliable to fall within the statutory hearsay exception, noting that the questioning was not suggestive, that there was "no prompting or manipulation," and that Nathaniel had no motive to fabricate. The court also found that the interview was relevant, noting that Nathaniel identified who was present during the shooting, who came to his aid after the shooting, the race and gender of the offenders, the weapon used, as well as a possible motive for offense (*i.e.*, the television). The court further found that Nathaniel's statements about "trying to hide" were relevant to the mental state of the perpetrator and that his statements "established that there [wa]s some element of surprise involved . . . which may tend to show this was an ambush."

¶ 11 The State also moved to admit evidence of the other crimes from that evening–the carjacking and the two robberies–to show motive, criminal intent, identity, modus operandi, the "continuing narrative of the entire transaction," the group's proximity to the crime scene at the time of the crimes, that the group acted in concert pursuant to a common criminal scheme or design "to commit a crime spree to obtain money," the group's efforts to distance themselves from the crime scene and avoid capture, that the group stayed

together after the murders and were "accountable for each other," and to explain the group's actions, corroborate the testimony of a prosecution witness (Rhonda Smith), show absence of mistake, disprove any alibi, and contradict any denials. Over Lloyd's objection, the court ruled the Chicago Heights robbery of Jackson and the carjacking of Witherspoon admissible; however, the court excluded evidence of the convenience store robbery.

¶ 12 At trial, thirteen-year-old Nathaniel Davis, testified that he was four years old on the night of the murders and was living in an apartment in Harvey with his parents, Donysha and Cornell Davis, his nine-year-old sister, Clarisma, and his sixteen-year-old brother, Shaquille. Nathaniel was talking to his mother in the living room when three men entered the apartment and began "arguing and screaming." Clarisma was in her bedroom, and Shaquille was in the shower. Nathaniel testified that he began crying and ran to his bedroom. As he ran, one of the men shot him and chased him. Nathaniel hid under the covers in his bed, where the man shot him again. Nathaniel remained in his bed until his father arrived, and he was taken to paramedics. He sustained seven bullet wounds. Nathaniel identified photographs of his family members, his apartment, and his injuries, and testified that he sustained gunshot wounds to his neck, chin, chest, arm, wrist, and shoulder. He also testified that a television was missing from his apartment after the men left.

¶ 13 Grrod Walker testified that he was a friend of Cornell's who lived across the street. On the night of the murders, he and Cornell were visiting in Walker's yard around 10 p.m. on the evening of the murders when they heard a series of gunshots. After calling his apartment and receiving no answer, Cornell went home and returned a minute later, telling Walker that someone had killed his family. Cornell then ran back to his apartment, and

Walker followed. Walker saw Donysha, who appeared to be asleep, on the sofa in the living room.

¶ 14 Walker ran out of the apartment to get help. He noticed a police officer in a store parking lot in front of his house and notified the officer. When he returned to the apartment, he saw Cornell carrying Nathaniel. Walker took Nathaniel from Cornell, carried him out of the apartment, and held him until paramedics arrived. Walker testified that Cornell had a large flat-screen television in his living room before to the murders, and he identified photographs of Cornell's building and the surrounding area. Walker further testified that one of the photographs depicted a speaker and a wire on Cornell's porch that had been inside the apartment before the murders and that Lloyd, whom he knew from the neighborhood, had visited Cornell's apartment prior to the murders. Cornell died of congestive heart failure before the trial.

¶ 15 Harvey police officer Leonard Weathers testified that, on the night of the shooting, he was sitting in his police car in back of a gas station doing paperwork. At around 10 p.m. he received a dispatch of shots fired at the Davis's apartment complex and responded. When he approached the steps of the apartment, he saw two men he later learned were Cornell and Walker, and one of them was holding a small child. Cornell was hysterical and said that his family had been shot and that they were still upstairs. Officer Weathers radioed for an ambulance and then went upstairs into the apartment where he found a black female, Donysha Stovall on the living room couch. She had been shot multiple times but was still alive. In a bedroom he found a young girl, Clarisma Torry, lying on the floor unresponsive. Then last he entered the bathroom where he found a black male, Shaquill Davis, unresponsive in the tub. Lifesaving efforts were attempted by paramedics on Donysha and

Clarisma, but they were later transported to the hospital and pronounced dead. Shaquill was declared dead on the scene.

¶ 16 Kevin Coffey, a paramedic, testified that he was dispatched to Cornell's apartment on the evening of the murders and met by a man holding a four-year-old child with multiple gunshot wounds. Inside the apartment, Coffey found an unresponsive woman with multiple gunshot wounds lying on a sofa covered in blood, a teenaged boy face down in a bathtub surrounded by a significant amount of blood, and a young girl in a bedroom bleeding from her eye, nose, and mouth. Coffey and his partner Sean Peasley began treating Nathaniel in the ambulance. The woman and the girl were transported to a hospital; the boy was declared dead at the scene. Coffey identified photographs of the crime scene that were admitted as evidence.

¶ 17 Dr. Mitra Kalelkar, an expert in forensic pathology, testified that twenty-eight-year-old Donysha Stovall died of gunshot wounds to the head, neck, and shoulder. Nine-year-old Clarisma Torry died of a gunshot wound to the eye and was ducking when she was shot. Seventeen-year-old Shaquille Davis died of gunshot wounds to the neck and back. The State introduced diagrams and photographs of Cornell's apartment and items recovered from the crime scene.

¶ 18 Sergeant Thomas testified that he was involved in investigating the murders of Nathaniel's family members, and that Nathaniel suffered multiple gunshot wounds and was hospitalized. Officers made two attempts to interview Nathaniel on November 1, 2010, and November 2, 2010, but Nathaniel was too traumatized to be interviewed. Nathaniel was ultimately interviewed on April 5, 2012. In the VSI, Nathaniel said that there were eight or nine people who entered his house, shot him, and broke a door. Nathaniel did not identify

any of the intruders, but described them as black men, one wearing a backwards baseball cap and had pants that were falling down.

¶ 19 Crockett testified that he was originally charged with the murders but pled guilty to armed robbery and home invasion in the murder case (13 CR 9351) in exchange for a 32-year sentence and his "truthful testimony." He also stated that he pled guilty to the 2010 vehicular hijacking in connection with the murder case and received a five-year sentence. He also pled guilty to armed robbery in 2006 and was sentenced to six years in prison.

¶ 20 Crockett testified Faheem Norwood, the shooter in this case, is his half-brother. In October 2010, Crockett was living in an apartment at 64th Street and Parnell Avenue in Chicago with his stepfather, Vincent Gordon. On October 23, 2010, Crockett visited his brother, Ron-Ron in Waukegan. Faheem and Faheem's mother, Lisa Norwood, were also present. Faheem left around 6 p.m. and returned with Lloyd and Griffin. Crockett, Faheem, Lloyd and Griffin then spent the night at Erica Taylor's apartment in the Whispering Oaks complex. The next morning, Griffin drove Crockett, Faheem and Lloyd to Harvey in a black Lincoln Town Car. Crockett identified a photograph of the Lincoln. During the drive to Harvey, Faheem showed Crockett a gun that was in Lloyd's "path of *** vision."

¶ 21 When they reached Harvey, the group dropped off Faheem and drove to Lisa's apartment, which was located on Center Avenue. After they arrived at Lisa's apartment, Griffin left to go elsewhere, and Crockett and Lloyd went inside. Crockett took a nap and when he awoke, Lloyd, Faheem and Griffin were there. That afternoon, the group "went riding around***in the hundreds" in Chicago. As they drove, Crockett accidentally dropped the gun out the car window. Griffin stopped the car so he could retrieve it. Crockett noticed Rhonda Smith and another woman walking down the street and commented on

their appearance. Griffin turned the car around to follow the women, and Griffin and Faheem got out of the car to speak to them. Rhonda corroborated this aspect of Crockett's testimony. She testified that she met Griffin and Faheem, who were in a black Lincoln, while walking with a friend near 107th Street and Perry Avenue in Chicago, and she identified photographs of Faheem and the Lincoln and identified Griffin in court.

¶ 22 Crockett further testified that after Griffin and Faheem returned to the car, the group drove to the Cash Bar in Harvey where they met Lisa and her boyfriend, Mark Hegwood. The group left the bar sometime after dark and drove to One Stop Liquor, where Griffin made a purchase, and then continued driving around. Around 8:30 or 9:00 p.m., Faheem called Rhonda, and the group then drove to 106th Place and Perry Avenue in Chicago to pick up Rhonda. At about 9:30 p.m., the group drove to Sheldon Liquors and parked outside. It had begun to storm, and the streetlights went out. Crockett and Lloyd entered the store and made purchases, and as they walked out of the store, Crockett noticed that Lloyd was limping. Crockett identified People's Exhibit 34B as surveillance video from the liquor store and identified himself and Lloyd. Crockett was wearing a red jacket, and Lloyd was wearing a "colorful . . . fatigue . . . shirt."

¶ 23 Rhonda corroborated much of this aspect of Crockett's testimony. She explained that the group picked her up in the Lincoln at 106th Place and Perry Avenue in Chicago on October 24, 2010. They then drove to a liquor store where Crockett and Lloyd made purchases. Rhonda identified surveillance video from the liquor store. Rhonda testified that the video depicted Crockett, who was wearing a red jacket, and Lloyd, who was wearing a multicolored hoodie, and she identified a photograph of Crockett and Lloyd in the liquor store. The surveillance video, which was admitted as evidence, shows rain, a dark-colored

car pulling up outside the liquor store, the street lights going out, and two men exiting the car, entering the store, making a purchase, returning to the car, and driving off. One man is wearing a red jacket, and the other man is wearing a patterned hoodie. In addition, the man in the patterned hoodie walks with a limp.

¶ 24 Crockett testified that when the group left the liquor store, they returned to 106th and Perry, where they sat in the car listening to music and smoking marijuana. Crockett suggested that the group "find[] another stang," which he defined as "some . . . way of making . . . money," such as a robbery, break-in, or car theft. Lloyd mentioned "[D]ude," which Crockett understood as a reference to Cornell Davis, who lived in the "Rezos" apartment complex at 305 West 151st Place in Harvey, who had a "big ass TV." Crockett explained that he and Lloyd had seen Cornell's television when they visited his apartment several months earlier.

¶ 25 Griffin drove the group to the "Rezos." Lloyd instructed Griffin to park so that the back passenger door was "out of sight" and only the trunk was visible from Cornell's apartment. Crockett testified that he, Faheem and Lloyd got out of the car and that Lloyd said, "we gonna have to kill [Cornell] because he knows my face." Faheem was carrying the gun. When they reached the apartment, Lloyd pulled his shirtsleeve over his hand and opened the door. Inside the apartment, Crockett saw a woman seated on a sofa talking on the phone and a small boy standing nearby. The woman said, "what the hell you all doing in my house[?]" Lloyd said, "go ahead," and Faheem shot the woman twice in the head and neck. Faheem then fired at the boy who ran toward the back of the apartment as Faheem chased him. Crockett was walking to the rear of the apartment to search the bedrooms for drugs and cash when Lloyd stopped him and instructed, "grab the TV." Crockett and Lloyd

then "snatched the TV off the stand" without unplugging it and carried it to the trunk of the waiting Lincoln.

¶ 26 Rhonda corroborated parts of this aspect of Crockett's testimony. She explained that Faheem, Crockett and Lloyd exited the Lincoln and walked out of sight between two buildings. She remained in the car with Griffin. She then heard seven to nine gunshots and saw Lloyd and Crockett running back toward the Lincoln carrying a large flat screen television, with Faheem following behind. Rhonda testified that Lloyd and Crockett put the television in the trunk. Faheem, who was "nervous, shaking, [and] acting like he was scared," threw a "hot" black gun onto her lap.

¶ 27 Crockett testified that the Lincoln's trunk would not close with Cornell's television in it. As they drove, the television fell out of the trunk. Griffin pulled over near a blue house, and Crockett, Lloyd and Faheem got out and returned the television to the trunk, closed it, and drove toward Markham. Rhonda likewise testified that the men were unable to close the trunk with the television inside, that the television fell out of the trunk as Griffin turned a corner, and that the men then got out of the car and returned the television to the trunk.

¶ 28 Crockett testified that when they arrived in Markham, the group stopped at a house on Honore Avenue, where they backed the Lincoln into the driveway. Griffin, Lloyd and Faheem went inside for several minutes and when they emerged, they removed the television from the Lincoln's trunk and carried it into the house. After the men returned to the car, one of them remarked, "We got to get a plug to the TV." Rhonda testified that the group drove to the home of a man they knew, where Lloyd, Crockett and Faheem carried the television inside before returning to the car.

¶ 29 Crockett testified that the group then drove to Chicago Heights, where he contemplated committing "[a]nother robbery." Crockett spotted a potential victim, a woman walking on the sidewalk, and asked Griffin to turn the car around and Faheem to hand him the gun. When Griffin turned the car around, however, the woman was gone.

¶ 30 Crockett then spotted Donald Jackson, who was stumbling through a field and appeared tipsy. Griffin stopped the car, and Crockett got out, carrying the gun. Crockett ran across the field, grabbed Jackson, and "put the gun on him," but as Crockett was about to "take [Jackson] down," Griffin "ran up and punched [Jackson] in the face." Jackson fell to the ground, and Griffin took his wallet and belongings. Crockett and Griffin ran back to where they left the Lincoln, but it was not there. They found the Lincoln in the next block, driven by Faheem, and got in. Faheem drove to a gas station, where Crocket attempted unsuccessfully to use Jackson's debit card to buy gas. The group then used cash from Jackson's wallet to buy gas and drove to Gordon's apartment at 64th and Parnell.

¶ 31 Crockett testified that when the group reached Gordon's apartment, Faheem and Rhonda went inside while Crockett, Gordon and Lloyd smoked marijuana on the back porch. Crockett then entered the bedroom he shared with his younger brother and removed a bullet from the gun in his brother's presence. Gordon entered the room, shook his head, and walked out. Early the next morning, Lloyd, Griffin and Rhonda were watching television. The news reported a story about a triple homicide in Harvey. Faheem "got upset," and the group drove the Lincoln to a gas station on Halsted Street to buy cigarettes and then to Calumet City.

¶ 32 Crockett testified that as the group was driving back toward Harvey, he noticed a sky- blue Chevy parked at a Marathon gas station next to a bowling alley in either Dolton

or Calumet City. The Chevy was "close[] to the main street so if you w[ere] to get in the car you could just drive right off," and a man, later identified as Pharoo Witherspoon, was standing next to the Chevy pumping gas. Crockett announced, "I want that car" so Griffin parked the Lincoln at the bowling alley, and Crockett, who was carrying the gun in his back pocket, got out and began walking toward Witherspoon. Crockett noticed a security camera at the gas station and decided to enter the station instead, but Lloyd, who was behind him, was "still heading towards [Witherspoon]." Crockett walked toward the Chevy with his hands in a position to indicate that he had a gun, and Witherspoon saw him and started running. Crockett attempted to open the Chevy's passenger door but found it locked, and Lloyd removed the nozzle from the gas tank and got in the Chevy's driver's seat.

¶ 33 Crockett saw Witherspoon standing on the sidewalk holding a cell phone, so he "decided to chase [Witherspoon] down." Witherspoon ran off, and Crockett tried to return to the Chevy, but Lloyd drove off without him. Crockett ran toward the expressway, crossed a bridge, and ran along the expressway toward 147th Street, where he hid in some bushes. Crockett did not have Faheem's telephone number so he called Faheem's mother, Lisa, and asked her to relay his location so Faheem could pick him up. Griffin, Faheem and Rhonda then picked up Crockett in the Lincoln, and the group drove back to Gordon's apartment. Crockett testified that the surveillance video from the gas station depicted the Chevy; Witherspoon pumping gas; Crockett, who was wearing a red jacket; and Lloyd, who was standing behind Crockett and wearing the same jacket he wore in the liquor store video. The video also showed Witherspoon running and Crockett chasing him, Griffin driving off in the Lincoln with Rhonda and Faheem. and Crockett running across the lot.

¶ 34 The group then went to Gordon's apartment. When they arrived, they met Lloyd, who was standing next to the stolen Chevy. The men used a hammer to open the Chevy's trunk and removed speakers, amplifiers, and a television and placed them in the Lincoln. Gordon then came outside and told the group to leave. Crockett, Griffin and Rhonda left in the Lincoln, and Lloyd and Faheem left in the Chevy. Crockett and Griffin tried unsuccessfully to find a buyer for the Chevy's sound system.

¶ 35 Crockett testified that later, he, Griffin and Rhonda met up with Lloyd and Faheem at a blue house on Honore Avenue in Markham. A man agreed to buy the Chevy's rims, and the man directed the group to a house in Hazel Crest, where they parked in the back yard. When someone telephoned the man and told him that Crockett was "trouble," the man asked, "which one of you all named DaJuan[Crockett?]," and the group left.

¶ 36 Crockett testified that the group then returned to Harvey and sold the Chevy's rims for $1000. The group left the Chevy at a blue house surrounded by trees and then drove to Lisa's apartment where they removed the Chevy's sound system from the Lincoln's trunk and attempted to sell it to a neighbor. They sold the TV and radio, but the group could not find a buyer for the speakers, so they left them in Lisa's apartment. The man who had purchased the Chevy's rims then called Griffin and told him that he was unable to remove them. Crockett and Griffin returned to where they left the Chevy and helped the man remove the rims. Crockett identified a photograph of Lisa's apartment and a photograph of the speakers and amplifier from the Chevy that the group left at Lisa's apartment.

¶ 37 Police eventually arrived and arrested Crockett, Griffin and Lloyd. When police searched Lloyd, they found Jackson's identification card.

¶ 38 Rhonda testified that, after the men took the television from the apartment in

Harvey, Faheem asked her for gas money, but she declined. The group then drove to Chicago Heights, where they saw "a lady walking with a purse" but after they drove around the block, the woman was gone. The group then spotted a man walking through a field. Griffin and another man got out and robbed the man, and Faheem moved to the driver's seat and drove around the block. When Griffin and the other man returned to the car, Faheem drove to a gas station. Faheem was holding a wallet, and he distributed the cards in the wallet to Lloyd, Crockett and Griffin. Griffin entered the gas station, and one of the other men attempted unsuccessfully to use one of the credit cards to purchase gas at the pump.

¶ 39 Jackson, the robbery victim, testified that he was walking through a field in Chicago Heights at around 11:30 p.m. on October 24, 2010, when he was hit on the back of the head and knocked to the ground. Someone removed Jackson's wallet from his back pocket, and when he looked up, he saw two men running away. The police returned his driver's license several months later.

¶ 40 Rhonda testified that the group drove to Gordon's apartment, that Crockett slept in his room, and that Lloyd, Griffin and Faheem slept on the living room floor while she rested in a chair. Gordon testified that Crockett, Lloyd, Griffin, Faheem, and a "young lady" arrived at his apartment on the evening of October 24, 2010, and that the group was "acting weird." Crockett wanted to tell Gordon something but kept saying that he "couldn't tell [him]." Later that night, Gordon walked into Crockett's room and saw Crockett "pulling out a pistol."

¶ 41 Rhonda testified that, as the group drove toward Dolton, Lloyd commented on the events at Cornell's apartment, stating, "did you see shorty, she said [']I didn't let y'all in[']

and he just started shooting, shooting everybody." When the group reached the Dolton Bowling Alley, Crockett "saw a Chevy that he liked" at the gas station next door and said, "I want that," so Griffin parked the Lincoln at the bowling alley, and Lloyd and Crockett got out, carrying the gun. Lloyd walked over to the gas pump, removed the nozzle from the Chevy, and drove off in it while Crockett chased Witherspoon away with the gun. Faheem drove over to Witherspoon and said, "we s[aw] what happened[,] d[o] you know which way . . . the guy ran[?]" Witherspoon pointed and told Faheem which way Crockett ran, and Faheem drove in that direction. After driving around searching for Crockett and attempting to call him, he found Crockett near some bushes next to the expressway and returned with him to Gordon's apartment. Rhonda identified surveillance footage from the gas station and testified that it showed the Chevy; Crockett in a red jacket; Lloyd in a multicolored hoodie; Crockett approaching the Chevy; Witherspoon running away; Crockett chasing Witherspoon and then running off; and Lloyd getting into the Chevy and driving away.

¶ 42 Witherspoon testified that he was putting gas in his blue Chevrolet Caprice at a gas station in Dolton on the morning of October 25, 2010, when two men approached him and told him to get in the car. One man was wearing a burgundy jacket and carrying a gun; the other was wearing a brown "fatigue hoodie." The man in the hoodie got into Witherspoon's car, and the man in the burgundy jacket chased Witherspoon into the street. Witherspoon identified surveillance footage from the gas station and testified that a published clip of that footage showed him pumping gas and running away, the carjackers, and the black Lincoln. Witherspoon stated that his car had a sound system in the trunk, and he identified a photograph of the sound system. Witherspoon also identified photographs of a lineup he

viewed on October 30, 2010, and testified that he identified "Number 5," whom Detective Darryl Hope identified as Crockett, as the carjacker in the burgundy jacket. He also identified photographs of a second lineup he viewed on November 4, 2010, and testified that he identified Griffin as either one of the carjackers or one of the men in the Lincoln.

¶ 43 The surveillance video from the gas station, which was admitted and published, showed Witherspoon pumping gas, a man in a red jacket and a man in a printed hoodie approaching him, Witherspoon running away, the man in the red jacket chasing him, the man in the hoodie driving off in Witherspoon's car, and the man in the red jacket running across the lot.

¶ 44 Rhonda testified that, when the group arrived at Gordon's apartment, Lloyd had already arrived in the stolen Chevy. The men used a tool to open the Chevy's trunk, and Faheem, Griffin and Crockett began searching the Chevy, removing items, and transferring them to the Lincoln. Faheem and Lloyd then got into the Chevy, and Griffin and Crockett got into the Lincoln and asked Rhonda to sit in the front passenger seat. The group then "[r]ode by a couple of houses to try to sell some of the stuff that they took from the Chevy." At the last house, Faheem spoke to a man and then returned with cash, which he distributed to Lloyd, Crockett and Griffin.

¶ 45 Gordon testified that Faheem and either Lloyd or Griffin knocked on his door around 10:00 a.m. and asked to borrow a screwdriver and a hammer. Gordon provided the tools and noticed a blue Chevy parked outside. Crockett, another man, and the "young lady" pulled up in the black Lincoln, and the men used a tool to pry open the Chevy's trunk. They then removed speakers and other items from the trunk and transferred them to the Lincoln before leaving in both cars.

¶ 46 Rhonda testified that after the group drove to Lisa's apartment to use the bathroom, Griffin and Crockett left to get something to eat, and Rhonda went to a shop in Harvey with Faheem and Lloyd, where Faheem purchased socks, underwear, and toiletries. Faheem also bought items for Rhonda, including clothing, lip gloss, jewelry, and a cellular phone, and Rhonda identified a photograph of the shop where the items were purchased. When Griffin and Crockett arrived, Rhonda and Lloyd got into the Lincoln with them, and Faheem walked across the street to talk with his brother, Ron-Ron. The police arrived and searched Lloyd, who was carrying an identification card that he claimed belonged to his uncle. The police arrested Lloyd, Crockett, Griffin and Rhonda, and Rhonda overheard them say that they "got three of the main suspects they wanted in the triple homicide."

¶ 47 After Rhonda was released early the following morning, Faheem called her and told her to meet Lisa. Rhonda met Lisa at a store and accompanied her to her apartment, where she, Lisa, and Mark waited for Ron-Ron to send them money to travel to Waukegan. Later, they traveled via bus and train to Ron-Ron's apartment complex in Waukegan. Rhonda stayed in an apartment down the hall from Ron-Ron's apartment. While there, Rhonda spoke by phone with her family and Detective Thomas but was unable to relay her location. Detective Thomas eventually located Rhonda and drove her back to Harvey.

¶ 48 Lisa's boyfriend, Mark Hegwood, echoed aspects of Rhonda's testimony. Hegwood testified that he and Lisa met Faheem at the Cash Bar on the afternoon of October 25, 2010, and that Lisa gave Faheem the keys to her apartment. The next morning, Lisa received a telephone call, and as a result of the call she and Hegwood "began to pack and leave." Lisa and Hegwood went to a currency exchange, where they met Rhonda and picked up a money order "to go to Waukegan." The three then traveled to Waukegan by

train, where they stayed for several days. On October 28, 2010, Detective Thomas arrived in Waukegan and drove them to a police station. Hegwood consented to a search of Lisa's apartment, where Thomas found speakers that Hegwood did not recognize. Hegwood identified a photograph of the speakers Thomas found in Lisa's apartment and testified that the speakers were not in the apartment before Lisa loaned Faheem her house keys on October 25.

¶ 49 Finally, the State offered evidence relating to the Lincoln, which belonged to Griffin's mother, and introduced photographs showing the contents of the Lincoln's trunk, which included clothing items and a spare tire, and items recovered from the Lincoln, including a bag, mobile phone packaging, and a receipt dated October 25, 2010, from Boost Mobile; a bag containing clothing, lip gloss, and a package of earrings; and a piece of mail addressed to Witherspoon. Rhonda identified the mobile phone packaging, clothing, lip gloss, and earrings as the items Faheem purchased for her, and Witherspoon identified the piece of mail and testified that it was in his Chevy before it was stolen.

¶ 50 The parties stipulated that a fingerprint expert would testify that Lloyd's fingerprint was found on the Lincoln's front passenger seatbelt buckle, that Faheem's fingerprint was found on the Lincoln's trunk lid, and that Crockett's fingerprint was found on a water bottle recovered from the Lincoln. Lastly, the State introduced evidence showing that the I-PASS transponder associated with the Lincoln passed through Toll Plaza 43 near the interstate on-ramp at 171st Street and Wood Street at 10:17 p.m. on October 24, 2010. The on-ramp io approximately five minutes from Harvey and led to Interstate 57 South and Chicago Heights, where Jackson was robbed.

¶ 51 The jury found Lloyd guilty. After defense counsel filed a motion for a new trial,

Lloyd filed a *pro se* document he entitled "Krankel Petition." The court allowed trial counsel to withdraw and appointed a private attorney to represent Lloyd in post-trial proceedings. That attorney eventually withdrew from the case and private counsel Jarrett Adams appeared on Lloyd's behalf. Adams filed a motion for a new trial and incorporated by reference Lloyd's *pro se Krankel* motion. After a hearing, the court denied all the claims.

¶ 52 After a sentencing hearing on March 11, 2022, the court sentenced Lloyd to 15 years in prison on the attempt murder and natural life on the three murder convictions.

¶ 53 This appeal followed.

¶ 54 II. ANALYSIS

¶ 55 Lloyd does not challenge the sufficiency of the evidence against him.

¶ 56 Lloyd first argues that he was deprived of a fair trial when alleged other crimes evidence was admitted, where he was not involved in one of those other crimes and the crimes were not relevant for any non-propensity purpose. He claims that a significant portion of the State's case against him pertained not to the charged murders and attempt murder, but rather to the armed robbery of Jackson and the carjacking of Witherspoon, which occurred after the incident in question and had nothing to do with the charged offenses. Therefore, he argues, the admission of this evidence was erroneous because it was not relevant for any non-propensity purposes, and it was far more prejudicial than probative.

¶ 57 Evidence of other crimes is inadmissible "if it is relevant only to show the defendant's propensity to engage in criminal activity." *People v. Rios*, 2022 IL App (1st) 171509, ¶ 64. The rule against other-crimes evidence "is an aspect of the rule that the

prosecution may not introduce evidence of a character trait of the accused." *People v. Pikes*, 2013 IL 115171, ¶ 16. The concern is that other-crimes evidence has "too much" probative value and may cause the jury to convict a defendant simply for being a "bad person deserving punishment." (Internal quotation marks omitted.) *People v. Moore*, 2023 IL App (1st) 211421, ¶ 93. Other crimes evidence encompasses misconduct or criminal acts that occurred before or after the alleged criminal conduct for which the defendant stands trial. *People v. Norwood*, 362 Ill. App. 3d 1121, 1128 (2005).

¶ 58 Evidence of other crimes may be admitted for certain purposes other than propensity when such evidence is relevant, as "relevance is a threshold requirement that must be met by every item of evidence." *People v. Dabbs*, 239 Ill. 2d 277, 283, 289 (2010). Some non-propensity relevant purposes include "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 59 In assessing the admissibility of other crimes evidence, the evidence should not be admitted if the probative value is substantially outweighed by the prejudicial effect. *Pikes*, 2013 IL 115171, ¶ 11. In weighing the probative value of other crimes evidence against undue prejudice to the defendant, the court may consider (1) the proximity in time to the charged or predicate offense, (2) the degree of factual similarity to the charged or predicate offense, and (3) other relevant facts or circumstances. 725 ILCS 5/115-7.4(b) (West 2018). The admissibility of other crimes evidence is within the discretion of the trial court, and the decision will not be disturbed absent an abuse of discretion. *Pikes*, 2013 IL 115171, ¶ 12. A trial court abuses its discretion where its ruling is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *People v. Becker*, 239 Ill.

2d 215, 234 (2010).

¶ 60 In this case, the State was allowed to admit the armed robbery of Donald Jacksosn and the carjacking of Pharoo Witherspoon as other crimes evidence. The jury was instructed that the other crimes evidence could be considered for the issues of intent, motive, knowledge and continuing course of conduct.

¶ 61 Lloyd argues that the uncharged armed robbery of Jackson was not evidence of other crimes. He claims that according to the State's motion *in limine*, on October 24, 2010, after the shooting in Harvey for which Lloyd was charged, co-defendants Griffin and Crockett robbed Jackson as he was walking through the field in Chicago Heights. Lloyd was arrested the next day in possession of Jackson's identification card, but Lloyd did not participate in Jackson's armed robbery. Because Lloyd did not participate in the armed robbery, the other crimes principles do not apply to this evidence, and we must only consider it under ordinary relevancy principles.

¶ 62 The State responds that Lloyd has forfeited this argument because at the pretrial motion hearing, he never argued that this evidence did not qualify as other crimes evidence and never objected to its relevancy. Rather, Lloyd argued that it should not be admitted as other crimes evidence because it was propensity evidence and "highly prejudicial." The State further argues that even if this argument is preserved, the evidence was admissible as other crimes evidence and/or was relevant. In his reply, Lloyd maintains that this issue has been fully preserved where he made general arguments regarding the admissibility of the other crimes evidence that included its relevancy. We agree with Lloyd that he preserved this issue as his objection to the evidence necessarily included an objection based on the relevancy of the evidence and, therefore, we will consider it on its merits.

¶ 63 We first address the issue of whether the evidence of Jackon's armed robbery was other crimes evidence. When the State seeks admission of other-crimes evidence, it must first show that a crime took place and that the defendant committed it or participated in its commission. *Pikes*, 2013 IL 115171, ¶ 12. If the crime is not committed by the defendant, the concerns underlying the admission of other-crimes evidence are not present because there is no danger that the jury will convict the defendant because it believes he has the propensity to commit crime. *Id*. ¶ 16. As Lloyd did not directly participate in Jackson's robbery, but merely stayed in the car, the admissibility of evidence of the robbery in this case is judged under ordinary principles of relevance. *Id*. ¶ 20.

¶ 64 Lloyd argues that under general relevancy principles, the evidence relating to Jackson's alleged robbery does not have any tendency to make any fact of consequence about the murders and attempt murder more or less probable. Lloyd urges that the facts relating to the armed robbery of Jackson, which occurred hours after the charged offenses, in a different town and in an open field had no bearing or connection to the murders. The State responds that the evidence of Jackson's robbery was relevant because it was part of the continuing crime spree and showed that the group robbed Jackson to obtain the gas money needed to flee the area after the murders, and in addition placed Lloyd in Chicago Heights, not far from the murder scene in Harvey within 90 minutes after the murder. In addition, because Lloyd was prosecuted under a theory of accountability, the evidence was relevant to show that he was accountable for the charged offenses. For the reasons we explain below, we agree with the State that the evidence of Jackson's robbery was relevant.

¶ 65 Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it

would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011); *People v. Patterson*, 192 Ill. 2d 93, 115 (2000). "All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible." Ill. R. Evid. 402 (eff. Jan. 1, 2011). However, even when evidence is relevant, the trial court has the discretion to exclude it if its prejudicial effect substantially outweighs its probative value. Ill. R. Evid. 403 (eff. Jan 1, 2011); *People v. Lewis*, 165 Ill. 2d 305, 329 (1995).

¶ 66 Jackson's robbery was relevant evidence. It showed that Lloyd "voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference he shared the common purpose" of the group and is accountable for its acts. *People v. Fernandez*, 2014 IL 115527, ¶ 13. Not only was he present in the car during Jackson's robbery, but he accepted proceeds of that offense, specifically Jackson's identification card. See also *People v. McKibbins*, 96 Ill. 2d 176, 186 (1983) ("Evidence that the defendant, just two days later, was involved in another armed robbery with the same two companions *** was admissible to dispel any idea that [he] had been somehow innocently involved in the robbery-murder. Although he may not have directly and actively participated in the actual robbery and murder, his involvement in the subsequent offense with the same two companions and the other similarities noted tend to establish that he participated in the previous offense with the necessary criminal intent."). We find that the trial court did not abuse its discretion in admitting this evidence, even if it was admitted as other crimes evidence, where the evidence was relevant.

¶ 67 Lloyd next argues that the trial court erred in admitting the carjacking of Witherspoon as other crimes evidence, where it was not relevant for any non-propensity purpose, was used to bolster the credibility of the State's witnesses and was more

prejudicial than probative. According to the State's evidence, after the charged shootings in Harvey, the group went to Chicago Heights where Griffin and Crockett robbed Jackson as he was walking through a field. Griffin and Crockett got back in the car and Faheem passed some items out from a wallet. In the morning, the five men went to a gas station in Dolton where Crockett and Lloyd took Witherspoon's car by force. When the trial court granted the State's motion *in limine* to admit this evidence, it found the evidence was admissible to show motive, intent, knowledge, absence of mistake, lack of consent, modus operandi, a common scheme or design, and to show "some type of continuing crime spree." However, the jury was instructed that the other crimes evidence could be considered only for the issues of intent, motive, knowledge and continuing course of conduct. We find the trial court did not abuse its discretion in admitting the carjacking of Witherspoon as other crimes evidence.

¶ 68 At the very least, the evidence of the carjacking was admissible to show a continuing narrative. Evidence of other crimes may be admitted if it is part of the continuing narrative of the charged crime." *Pikes*, 2013 IL 115171, ¶ 20. "When facts concerning uncharged criminal conduct are all part of a continuing narrative which concerns the circumstances attending the entire transaction, they do not concern separate, distinct, and unconnected crimes." *People v. Collette*, 217 Ill. App. 3d 465, 472 (1991). However, "evidence may not be admitted under the continuing-narrative exception, even when the crimes occur in close proximity, if the crimes are distinct and undertaken for different reasons at a different place at a separate time. *People v. Lindgren*, 79 Ill. 2d 129, 140 (1980).

¶ 69 In *People v. Mulosmani*, 2022 IL App (1st) 200635, ¶ 26, the defendant and his codefendant were tried for first degree murder on theories of intentional murder, strong probability of death or great bodily harm, and felony murder based on attempted armed robbery. The State sought to introduce other crimes evidence and the court ruled that evidence that defendants hid a gun, then retrieved it and reloaded it, and codefendant fired it into the air as the defendant drove was admissible to show the defendant's knowledge that codefendant had an operable firearm. The court also found the evidence to be "part and parcel of the same course of conduct" of meandering around with a gun and killing with it. The defendant did not present a defense. *Id*. ¶ 13.

¶ 70 On appeal, the defendant argued that the court erred in admitting evidence that codefendant had fired a gun from a car the defendant was driving. We held that the the trial court did not abuse its discretion in admitting the other crimes evidence of the earlier shooting from the car, and that the other crimes evidence was more probative than prejudicial. In addition to being relevant to the issue of knowledge, the "evidence was also relevant as a continuing narrative of the events of the night in question. That codefendant had a gun and was willing to fire it randomly, and that defendant knew that, are highly relevant to understanding what happened in the gasoline station a short time later." *Id*. ¶ 73.

¶ 71 Here, the carjacking evidence was admissible because it was part of a 12-hour crime spree that involved stealing property from others to gain quick cash in the same general area by the same group of participants using the same vehicle and gun. As Crockett put it, the group had set out to "find another stang" to "mak[e] money." See *People v. Adkins*, 239 Ill. 2d 1, 33 (2010) (where defendant was charged with murder in the course of a

burglary, evidence of another burglary committed later in the day was properly admitted as the continuing narrative of the charged murder); *Mulosmani*, 2022 IL App (1st) 200635, ¶ 73. Therefore, the trial court did not abuse its discretion in admitting the carjacking as other crimes evidence.

¶ 72 Lloyd then argues that the evidence of the carjacking should have been excluded because it was more prejudicial than probative because it took up an extensive amount of the State's case against him, was cumulative and was used to bolster the State's witnesses' testimony.

¶ 73 Even if other-crimes evidence falls under one of the exceptions for admissibility, a court still can exclude it if the prejudicial effect of the evidence substantially outweighs its probative value. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Nevertheless, for a reversal to be warranted, the erroneously admitted evidence must have been a material factor in the defendant's conviction, such that without the erroneously admitted evidence, the verdict likely would have been different. *People v. Cortes*, 181 Ill. 2d 249, 285 (1998). If the error was unlikely to have influenced the jury, the erroneous admission of other-crimes evidence will not warrant reversal. *Id*.

¶ 74 Lloyd's argument fails where the evidence of the carjacking had substantial probative value. The evidence was not voluminous evidence, nor was it cumulative, as Lloyd suggests. It also was not used to improperly bolster the testimony of the State's witnesses. It was merely a piece in the puzzle explaining the motivation for the crime spree (taking personal property and selling it for money) and how it was carried out (taking personal property by force). Furthermore, the jury was instructed to use the other crimes evidence only for non-propensity purposes. We find that the trial court did not abuse its

discretion in admitting Witherspoon's carjacking as other crimes evidence.

¶ 75 Lloyd next argues that the State's comment during closing argument that Crockett's and Rhonda's accounts were corroborated by the video of the carjacking was "inappropriate" because "other-crimes evidence may not be used to bolster the testimony of a prosecution witness." The State argues that this argument is forfeited because Lloyd did not object to the prosecutor's argument during closing argument or in his posttrial motion. The State claims that although Lloyd's first posttrial motion alleged that the State "made prejudicial, inflammatory and erroneous statements in closing argument designed to arouse the prejudices and passions of the jury," that statement was not specific enough to preserve an objection to the comment he now challenges. With respect to Lloyd's second posttrial motion, the State argues that Lloyd's argument that "[t]he Court erred in overruling [the] defense's objections during the rebuttal closing argument of the state," did not preserve any objections at all because Lloyd did not object during the State's rebuttal closing argument.

¶ 76 We agree with the State that Lloyd has forfeited this issue as he did not object at trial or include this issue in his posttrial motion. See *People v. Enoch*, 146 Ill. 2d 44, 57 (1991) (in order to preserve an issue for review, a defendant must object at trial and include the issue in a posttrial motion). Forfeiture aside, our supreme court has expressly held that it is permissible to use other crimes evidence to bolster the credibility of a prosecution witness on "any material question." *People v. Thingvold*, 145 Ill. 2d 441, 459 (1991).

> "[U]sing other-crimes evidence to bolster the credibility of a witness on any immaterial question so that the witness will be believed on a material question is an illegitimate use of other-crimes evidence. But using other-crimes evidence to

> corroborate the witness's testimony on a material question is a legitimate use, for then the other-crimes evidence supplements the witness's testimony on a 'fact that is of consequence to the determination of the action.'" *People v. Jones*, 2020 IL App (4th) 190909, ¶ 159, citing *Thingvold*, 145 Ill. 2d at 459-60.

¶ 77 It is well-settled that a prosecutor is allowed "a great deal of latitude in closing argument[s]" as long the arguments are based on the evidence presented and the reasonable inferences therefrom. *People v. Alvidrez*, 2014 IL App (1st) 121740, ¶ 26. The use of properly admitted evidence during closing is permissible. *People v. Eckles*, 83 Ill. App. 3d 292, 301 (1980). Here, the State's comment was proper because the evidence supported the conclusion that the carjacking video corroborated Crockett's and Rhonda's accounts.

¶ 78 Even if there was error in admitting evidence of the carjacking, any error was harmless. The erroneous admission of other crimes evidence is harmless if there is no "reasonable probability" that the defendant would have been acquitted absent the error. *People v. Smart*, 2025 IL 1301277, ¶ 40. Here, the evidence against Lloyd was overwhelming. Crockett testified that after he suggested that the group find a "another stang" Lloyd suggested "[D]ude," which Crockett understood as a reference to Cornell who had a "big ass TV." Crockett explained that he and Lloyd had seen Cornell's television when they visited his apartment several months earlier. Crockett further testified that as Faheem and Lloyd got out of the car, Lloyd said, "we gonna have to kill [Cornell] because he knows my face." Faheem was carrying the gun. When they entered the apartment, Lloyd opened the door. Crockett saw a woman seated on a sofa talking on the phone and a small boy standing nearby. The woman said, "what the hell you all doing in my house[?]" Lloyd said, "go ahead," and Faheem shot the woman twice in the head and neck. Faheem then

fired at the boy who ran toward the back of the apartment as Faheem chased him. Crockett was walking to the rear of the apartment to search the bedrooms for drugs and cash when Lloyd stopped him and instructed, "grab the TV." Crockett and Lloyd then "snatched the TV off the stand" without unplugging it and carried it to the trunk of the waiting Lincoln. Crockett's testimony was corroborated in part by Rhonda who testified that at Cornell's apartment building, Faheem, Crockett and Lloyd exited the Lincoln and walked out of sight between two buildings. She remained in the car with Griffin. She then heard seven to nine gunshots and saw Lloyd and Crockett running back toward the Lincoln carrying a large flat screen television, with Faheem following behind. Rhonda testified that Lloyd and Crockett put the television in the trunk. Faheem, who was "nervous, shaking, [and] acting like he was scared," threw a "hot" black gun onto her lap. Thus, there was overwhelming evidence that Lloyd participated in the murder of the Cornell's family and the attempt murder of Nathanial and any error in admitting the other crimes evidence was harmless.

¶ 79 Lloyd next argues that the trial court abused its discretion when it admitted Nathaniel Davis's VSI which was conducted in 2012, a year and a half after the offense, by which time Nathaniel was five and a half years old. Specifically, Lloyd argues that Nathaniel's VSI should not have been admitted because it was irrelevant, more prejudicial than probative, and lacked the sufficient safeguards of reliability necessary to satisfy section 115-10's hearsay exception (720 ILCS 5/115-10 (West 2017)).

¶ 80 The State argues that Lloyd's argument is forfeited because his brief does not set forth the contents of the VSI or include citations to the portions of the interview on which his argument is based, as required by Illinois Supreme Court Rule 341(h)(6) and (7). The State urges that Lloyd's brief only relies on trial counsel's argument regarding the

interview, and not on the interview itself. Lloyd counters that the State is "mistaken" and that he "explicitly cited throughout his argument the actual video exhibit." Although we agree with the State that Lloyd has failed to include a discussion of the relevant portions of the interview on which his argument is based, we do not find that Lloyd has forfeited this argument. The VSI is available for our review in this case.

¶ 81 Lloyd first claims that the VSI was inadmissible because it was irrelevant and more prejudicial than probative.

¶ 82 Again, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011); *People v. Patterson*, 192 Ill. 2d 93, 115 (2000). "All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible." Ill. R. Evid. 402 (eff. Jan. 1, 2011). However, even when evidence is relevant, the trial court has the discretion to exclude it if its prejudicial effect substantially outweighs its probative value. Ill. R. Evid. 403. *People v. Lewis*, 165 Ill. 2d 305, 329 (1995).

¶ 83 It is within the circuit court's discretion to determine whether evidence is relevant and admissible, and we will not disturb that determination absent an abuse of discretion. *Peach v. McGovern*, 2019 IL 123156, ¶ 25. "A trial court abuses it[s] discretion only where the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 84 Lloyd states that "Nathaniel's VSI was inadmissible because it did not tend to make any fact of consequence more or less probable." We disagree. Nathaniel's VSI was most certainly relevant and the trial court did not abuse its discretion in deciding to admit the

VSI. Nathaniel was present when Lloyd and his codefendants entered the apartment and began shooting at Nathaniel and his family. Although he was young at the time of the shooting, Nathaniel was able to convey during the interview who was present at the scene, and provide details regarding the offenders' appearance, including their race, gender, clothing and footwear. Nathaniel also described that the offenders had a gun and shot and killed his family members and shot him leaving him with multiple scars from his wounds. Nathaniel also relayed that the offenders entered through the kitchen door and pursued him after he ran and hid under the blanket, stating that the offenders were able to see his feet. Nathaniel further offered a possible motive for the shooting, to steal the big tv on the dresser, and recalled that after the shooting the police arrived and Grrod held him and told him he was not going to let anything happen to him. The fact that Nathaniel was wrong about the number of offenders, and did not identify any of the offenders, the type of gun, or the words spoken does not make his statement irrelevant. See *People v. Walker*, 2021 IL App (4th) 190073, ¶ 18 (Evidence need not be conclusive to be relevant; rather, it must simply have a rational connection to a fact of consequence.).

¶ 85 Lloyd also argues that the admission of the VSI was more prejudicial than probative. Lloyd contends that the VSI was "extraordinarily gut-wrenching" and may have improperly influenced the jury's verdict. The State, however, notes that Nathaniel maintains a relatively calm and matter-of-fact demeanor throughout the interview, with no overt displays of emotion. Furthermore, the record shows that the trial court instructed the jury not to let sympathy influence their decision. *People v. Lopez*, 371 Ill. App. 3d 920, 928 (2007) (reaffirming the strong presumption that jurors follow the trial court's instructions). Under these circumstances, the record does not support a finding that the VSI

improperly influenced the jury's verdict.

¶ 86 Lloyd also contends that Nathaniel's VSI did not sufficiently satisfy the requirements for admissibility under section 115-10 of the Code. Under section 115-10, certain out-of-court statements by a child victim in a prosecution for a physical act perpetrated against him are admissible as an exception to the hearsay rule. 725 ILCS 5/115-10(a) (West 2017). Such statements are admissible only if: (1) the court conducts a hearing outside the jury's presence and finds that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; (2) the victim either testifies at trial or is unavailable and there is corroborative evidence of the act; and (3) in cases involving child victims, the statement was made before the victim turned 13 or within three months of the offense, whichever is later. 725 ILCS 5/115-10(b) (West 2017). "As the proponent of the out-of-court statements sought to be admitted under section 115-10, the State bears the burden of establishing that the statements are reliable. *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009)). When conducting the "sufficient safeguards of reliability" analysis, "a trial court evaluates the totality of the circumstances surrounding the making of [the] hearsay statements." *People v. West*, 158 Ill. 2d 155, 164 (1994). "Some factors that are important in making the determination include: the child's spontaneous and consistent repetition of the incident, the child's mental state, use of terminology unexpected of a child of a similar age, and the lack of a motive to fabricate." *Id*. The trial court's decision to admit evidence under section 115-10 "will not be reversed unless the record clearly demonstrates that the court abused its discretion." *People v. Applewhite*, 2016 IL App (4th) 140558, ¶ 57. An abuse of discretion occurs where "the trial court's determination is arbitrary, fanciful, or unreasonable or when no reasonable person would agree with the

stance adopted by the trial court." *Id*. (quoting *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

¶ 87 Lloyd argues that the content, timing, and circumstances of the interview made it unreliable. First, he states that "the content of Nathaniel's statement does not support reliability" because "everything that [Nathaniel] said [in the VSI] is contradicted by statements that he makes later." The State responds that Nathaniel's statements were not completely contradicted by other evidence and were sufficiently detailed to corroborate some other evidence.

¶ 88 Independent evidence confirms that several black males entered Nathaniel's residence through the kitchen door and shot his mother, his sister, his brother and him. Nathaniel sustained multiple gunshot wounds. His family members were killed. This evidence is consistent with what Nathaniel stated in the VSI. Although the defense questioned the reliability of the statement based on inconsistencies, Nathaniel's central account, that several Black males entered the apartment, shot those present, and killed his family, was not meaningfully disputed and aligned with other evidence in the record. Additional details from the interview also matched witness testimony. Nathaniel said his family had a large television, that he hid in his bedroom during the shooting, and that Grrod held him afterward. Crockett and Rhonda testified about the television and its removal. Crockett described Faheem chasing Nathaniel while shooting. Walker confirmed that he held Nathaniel until paramedics arrived. Given that consistency, the trial court did not abuse its discretion in allowing the VSI under section 115-10.

¶ 89 Lloyd's nevertheless argues that several of Nathaniel's statements during the interview were "fantastical," "imaginary," and were contradicted by the State's evidence.

We disagree. Nathaniel's description that the offenders were carrying cash is consistent with the State's position that the offenders had robbed a man near a convenience store earlier that evening. His account that the offenders "slammed" and "broke" a door is corroborated by crime scene photographs showing damage to the bathroom door and that the victim, Shaquille, was shot while in the shower. His statement that "when they first came in, they didn't kill me," is of course true based on Nathaniel's account of the events and the fact that he lived to tell the story. Additionally, Nathaniel's statement that the police "put [offenders] in their car, drive it back," and "then they go in jail" reflects a general understanding of police procedure, not a firsthand observation, and is consistent with his age and developmental level. While we acknowledge the inconsistency in Nathaniel's description of the number of offenders that entered his apartment (he said eight or nine black men), the trial court allowed defense counsel to impeach Nathaniel during cross examination on that issue. In any case, the discrepancy is not enough to make the VSI inherently unreliable.

¶ 90 In terms of timing, Lloyd argues that the passage of one and a half years between the crime and the video interview makes the interview less reliable because it is questionable whether Nathaniel could recount the details of what took place. Lloyd relies on *In re E.H.*, 377 Ill. App. 3d 406 (2007), to support this argument.

¶ 91 In *In re E.H.*, a grandmother overheard a conversation between her granddaughters, K.R. and B.R., and asked them what they were talking about. *Id*. at 409. K.R. stated that they were talking about the defendant, who had made them suck her "puckets" (the girls' word for breasts) and lick her "front behind" and "back behind" while the defendant babysat them. *Id*. B.R. also told her grandmother that the defendant had sexually abused

her, using the exact same language as K.R. *Id*. The girls reported the sexual abuse approximately one year after the alleged acts took place. *Id*. at 408. K.R. was five years old at the time of the alleged abuse, and B.R. was two years old. *Id*. at 409. B.R., who was three years old at the time of the trial, did not testify at the defendant's bench trial. *Id*. at 407, 414.

¶ 92 On appeal, the court held that the admission of B.R.'s statement was an abuse of discretion. *Id*. at 414. The court found that the one-year passage of time between the alleged acts and B.R.'s revelation weighed against the reliability of her statements; while the one-year delay did not in and of itself make B.R.'s statements unreliable, they became less reliable when viewed in conjunction with her age. *Id*. The court found that, given the similarity between the girls' testimony, B.R. may have simply been repeating what K.R. told their grandmother. *Id*. The court found error because B.R. never testified, and there was no evidence in the record that the trier of fact interviewed B.R. or considered her age and maturity when determining her credibility and the weight to be given to her statement. *Id*. at 415.

¶ 93 Unlike in this case, in *In re E.H*., B.R.'s statements were not recorded, and the adult who related the purported statements had a possible to motive to lie. In addition, the offenses were not reported until a year after they occurred and the accounts of the child victims were the only evidence that the offenses occurred at all. Furthermore, B.R. was only two years old at the time of the alleged offenses and did not testify at trial.

¶ 94 As for the circumstances of the interview here, Lloyd argues that the police assumed, without confirming, that Nathaniel had emotionally recovered before the 2012 interview, despite earlier concerns about his distress in 2010. The record shows no inquiry

into whether Nathaniel received therapy, spoke to others about the incident, or his emotional state at school during that time. Additionally, Nathaniel did not testify at the motion hearing, and the trial court did not personally assess his age or maturity before admitting the statement. Under these circumstances, Lloyd asserts the court lacked an adequate basis to evaluate the statement's credibility and reliability. We disagree. The VSI shows Nathaniel was composed and capable of responding appropriately. He was not overly emotional or inappropriate. He stated that he was safe where he was living. There is no indication that he was suffering emotional distress.

¶ 95 We find Lloyd's reliance on *People v. Zwart*, 151 Ill. 2d 37 (1992), to be misplaced. In *Zwart*, the victim's mother observed blood in the victim's diaper and took the victim to the doctor, but the victim made no statements about sexual abuse. *Id.* at 40. The doctor notified the Department of Children and Family Services (DCFS) of a possible case of sexual abuse. *Id.* Later that week, the victim was interviewed by a police officer, a DCFS worker, and a hospital counselor. *Id.* The victim initially denied any sexual abuse occurred when interviewed by the hospital counselor but later made statements indicating that she was sexually abused by the defendant. *Id.* at 40-41. The State sought to introduce the victim's statements into evidence at the defendant's trial. *Id.* at 41. Following a hearing, the trial court determined that the victim, who was four years old at the time of the hearing, was not competent to testify. *Id.* Following another hearing pursuant to section 115-10, the trial court ruled that the victim's mother and counselor could testify at trial concerning the statements the victim made to each of them. *Id.*

¶ 96 On review, our supreme court concluded that the content of the victim's statements supported their reliability, where the statements were consistent, were made spontaneously,

and reflected knowledge of sexual activity that was unexpected for a three-year-old. *Id*. at 44. However, the court concluded that the timing and circumstances surrounding the victim's statements failed to provide sufficient safeguards of their reliability. *Id*. The circumstances surrounding the victim's statements were "particularly troubling," where the victim was interviewed by three different people regarding the alleged sexual abuse and "[t]he State failed to introduce any evidence regarding the substance of these interviews." *Id*. Our supreme court noted that "[w]ithout such evidence, it was impossible for the trial court to determine whether the victim was questioned in a suggestive manner or was encouraged to accuse the defendant of sexual abuse" or "whether the victim's precocious knowledge of sexual activity was due to sexual abuse, as the State claims, or was the result of suggestive interview techniques." *Id*. at 44-45. The court ultimately held that the trial court abused its discretion by admitting the out-of-court statements made by the three-year-old victim under section 115-10 where there was "substantial adult intervention" before the victim made the statements.

¶ 97 In contrast, in this case, Nathaniel testified at trial, there was no evidence of suggestive questioning or multiple interviews prior to the recorded statement, and police made no attempts to interview Nathaniel between the initial failed attempts immediately following the murders and the eventual videotaped interview. The video itself provided the best evidence of Nathaniel's maturity at the time, which the court reviewed before ruling. Given these facts, the trial court acted within its discretion in finding Nathaniel's statements sufficiently reliable for admission under section 115-10.

¶ 98 Even if the VSI was improperly admitted, Lloyd's final claim that admitting Nathaniel's VSI was not harmless beyond a reasonable doubt is erroneous. Defendants

mistakenly invoke the "harmless beyond a reasonable doubt" standard, which applies only to constitutional errors. Because the admission of the VSI evidence is not of constitutional dimension, the proper standard is whether there is a reasonable probability the trier of fact would have acquitted absent the error. See *People v. Smart*, 2025 IL 130127, ¶ 90 (holding that evidentiary error is not constitutional in nature and is harmless where there is no reasonable probability of acquittal absent the error).

¶ 99 "The improper admission of evidence is harmless where there is no reasonable probability that, if the evidence had been excluded, the outcome would have been different." *People v. Brown*, 2014 IL App (2d) 121167, ¶ 28. "When deciding whether error is harmless, a reviewing court may (1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id*. (quoting *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008)).

¶ 100 Any error in admitting Nathaniel's VSI was harmless. The video did not contribute to Lloyd's conviction. The video is not "emotionally evocative" or "extraordinarily gut-wrenching." The video shows that Nathaniel is not emotional as he speaks, even as he relays that the intruders shot and killed his family. He is calm and matter of fact. In addition, the evidence of Lloyd's guilt is strong, and he does not challenge the sufficiency of the evidence against him. Finally, Nathaniel's VSI largely reiterates facts already established through other testimony and exhibits. Specifically, Crockett identified the offenders and provided details of the crimes, and Rhonda corroborated that testimony. Nathaniel and the medical examiner testified to the identities of the murder victims. The medical examiner

testified to the nature of their injuries. For all these reasons, any possible error in admitting Nathaniel's interview was harmless.

¶ 101 III. CONCLUSION

¶ 102 Based on the foregoing, the judgment of the trial court is affirmed.

¶ 103 Affirmed.

¶ 104 Justice Oden Johnson, dissenting:

¶ 105 The alleged shooter in this case was acquitted. Clearly fearing another acquittal, the State introduced every piece of evidence that could sway the jury, including extensive evidence of other crimes. Unfortunately, not every piece of evidence had a legitimate purpose. There simply was no legitimate purpose to introduce the video of the adorable five-year old victim, when that same victim, now a teenager, testified at trial, but could not identify any of the perpetrators.

¶ 106 Only relevant evidence is admissible (Ill. R. Evid. 402), and relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *People v. Pikes*, 2013 IL 115171, ¶ 21. The video had no tendency to make any fact of consequence more or less probable. The then five-year old spoke about the games he liked to play, the need to drink all his milk, and that a group of Black men had entered his home over a year ago and shot his family. However, he could not offer any relevant descriptive information about the perpetrators, and his description of the shooting varied in significant details from the State's other evidence. This is not surprising given that the video was made a year and a half after the offense, which occurred when he was only four years old.

¶ 107 While the video did not connect any dots in the State's case, it was poignant, thereby motivating anyone with a heart toward a conviction. One of the attorneys, when speaking of a codefendant's trial, said that he saw jurors crying after the video was played. Not only did it fail to address consequential facts, but it also actually contradicted points in the State's case, such as the number of alleged perpetrators and the timing of the shots. At one point, the child asserted that the police "had to kill" the perpetrators with a gun. There simply was no legitimate evidentiary purpose for the video of the five-year old, and I cannot find the testimony of two co-conspirators to be "overwhelming." *Supra* ¶¶ 78, 99. No one else besides the co-conspirators identified defendant. No video, photo or other physical evidence connected him to the charged offenses. And, no admissions were introduced, since defendant made no confession or incriminating statements.

¶ 108 As an appellate court, we have to be very careful not to rely on the word "overwhelming," which is highly subjective, to ease us out of difficult cases. Simply put, the video was both highly prejudicial and not relevant, and the remaining evidence was not overwhelming. For these reasons, I would reverse and therefore respectfully dissent. Since I would reverse on this ground, I have no need to address the other issues.