2020 IL App (1st) 191320-U

FOURTH DIVISION
December 24, 2020

No. 1-19-1320

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellee,	)	
v.	)	No. 17 CR 11777
EVERETTE SILAS,	)	
Defendant-Appellant.	)	Honorable Timothy Joseph Joyce, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where (a) the trial court properly admitted evidence of the defendant's other crimes and (b) even if the other-crimes evidence was improperly admitted, the error was harmless.

¶ 2 Defendant Everette Silas was charged by indictment with aggravated kidnapping (720 ILCS 5/10-2(a)(6) (West 2016)) and armed robbery (720 ILCS 5/18-2(a)(2) (West 2016))[1] of Jonathan Pena Romero (Romero). Following a jury trial, defendant was found guilty of armed

[1] The State nol-prossed a third count charging defendant with aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2016)).

robbery but not guilty of aggravated kidnapping. Defendant contends on appeal that the trial court abused its discretion when it allowed the State to present evidence of two other armed robberies allegedly committed by defendant. For the reasons discussed herein, we affirm.

¶ 3 BACKGROUND

¶ 4 Motion to Allow Evidence of Other Crimes

¶ 5 Prior to trial, the State filed a motion to allow evidence of other crimes, which described the alleged events involving Romero as follows. On May 8, 2017, at approximately 4:15 p.m., defendant approached Romero at an ATM. After Romero withdrew money, defendant pointed a small black handgun at his ribs and stated, "Do not move or I'll kill you." Defendant directed Romero to enter Romero's vehicle and to follow a red vehicle; defendant rode in Romero's vehicle. As they approached 2108 South Trumbull, defendant ordered Romero to stop, exit from the vehicle, and walk up to the building. Defendant removed a set of keys from his pocket and opened the front door. Defendant ordered Romero to give him all his money. Romero responded that he did not have any; defendant searched Romero's pockets and took his cellphone. Defendant then told Romero to leave. Romero flagged down police officers, reported the incident, and subsequently identified defendant in a photo array.

¶ 6 The motion described four other criminal cases allegedly involving defendant. The complainant in each case agreed to meet defendant in person at 2108 South Trumbull after meeting on an online dating application (app). In case number 17 CR 11776, when Carlos Barriga (Barriga) arrived at 2108 South Trumbull on May 8, 2017, at 12:55 a.m., defendant opened the front door, pointed a black semi-automatic handgun at him, and demanded his property. Defendant took his cellphone and wallet, told him to leave, and locked the door. In case number 17 CR 11778, Mario Acacia-Ramirez (Acacia-Ramirez) went to 2108 South

Trumbull on May 12, 2017, at 3:20 a.m. Defendant opened the door, pointed a black handgun at him, and ordered him to "give me everything." After Acacia-Ramirez responded that he did not have anything, defendant searched him, took his cellphone and money, and told him to leave. In case number 17 CR 11779, Arturo Ramirez (Ramirez) arrived at 2108 South Trumbull on May 12, 2017, at 4 p.m., defendant opened the front door, and Ramirez entered the front hallway. Defendant pointed a semi-automatic black handgun at Ramirez and demanded his phone; defendant grabbed the phone and patted down Ramirez. Defendant then took money from Ramirez's pockets and demanded his headphones. In case number 17 CR 11780, when Eli Dominguez (Dominguez) went to 2108 South Trumbull on May 16, 2017, at 1:10 a.m., defendant invited him into the hallway. Defendant pointed a black handgun at Dominguez and demanded his property and money. Dominguez dropped his wallet and phone on the floor and began yelling loudly. Defendant told him to "shut the f*** up," and struck him in the face with the handgun. A second Black male then came out of the first-floor apartment and began helping defendant to push Dominguez out of the building. Dominguez fought back, and defendant and the other individual fled into the first-floor apartment. After each of the foregoing four incidents, the complainant reported the incident to police and identified defendant in a photo array, and defendant was charged with armed robbery with a firearm and aggravated unlawful restraint.[2]

¶ 7 The motion indicated that defendant was arrested on July 27, 2017, following an investigative alert. When defendant was stopped for a traffic violation while driving a red sedan registered to his boyfriend, he initially provided officers with a false name and birthdate.

¶ 8 The State sought to introduce evidence of the other crimes for the limited purpose of demonstrating defendant's *modus operandi*, intent, identity, and consciousness of guilt. The

[2] Defendant was additionally charged with aggravated battery with a deadly weapon with respect to the incident involving Dominguez.

State argued that: the five incidents occurred within the span of eight days; all of the incidents occurred in whole or in part at 2108 South Trumbull; defendant committed the robberies in the hallway of the building where he resided; and he displayed a black handgun during each incident. According to the State, Romero's information led to the initial identification of defendant as the offender in this case, which in turn led to his identification in the other incidents. The State further asserted that the circumstances of defendant's arrest demonstrated his consciousness of guilt and corroborated the information provided by Romero. During a hearing on the motion, defense counsel argued that the instant case was dissimilar to the other cases since Romero did not meet defendant on a dating app and was not invited to his residence.

¶ 9 In its oral ruling on the motion, the trial court stated that it was required to weigh the probative value of the other crimes evidence against any prejudicial effect and that the evidence was not admissible to prove propensity to commit such a crime. After noting that the Romero case did not involve a meeting through a dating app, the trial court observed that all of the cases involved incidents at the same location during an eight-day time frame. Finding that the introduction of other-crimes evidence from the four unelected cases "would tend into the prejudice area," the trial court granted the motion in part, permitting the State to introduce evidence regarding only two of the other crimes. The State ultimately chose to introduce other-crimes evidence regarding the incidents involving Barriga and Ramirez.

¶ 10 Trial

¶ 11 During opening statements, defense counsel characterized defendant as a "deceptive con artist" who took money from three individuals, but argued that he did not commit armed robbery or kidnapping. Counsel indicated that defendant communicated with young men on the Grindr dating app, invited them to his residence where they expected to "receive something," and then

demanded that they "pay for that something before he gives it to them." Counsel suggested that the frustrated expectations of these individuals "is what this case is all about."

¶ 12 The State called Romero, who testified through an interpreter that he drove to a Chase Bank location near 26th Street and Springfield Avenue on the afternoon of May 8, 2017, to withdraw funds from an ATM. Romero observed an individual nearby; he identified that individual as defendant in court. When Romero returned to his vehicle after leaving the bank, defendant pointed a black metal handgun in his back and instructed him to be quiet and to enter the vehicle. Defendant entered the back seat of Romero's vehicle and ordered him to follow a red vehicle.

¶ 13 Romero testified that the red vehicle stopped at a corner near an empty lot and a two- or three-story residential building. Defendant directed him to exit the vehicle and walk toward the building. According to Romero, "plenty of people" were in the area. While pointing the firearm at his face, defendant patted down Romero near the entrance of the building and took his iPhone; Romero testified that he had left his wallet inside his vehicle. Although defendant opened the door, he did not make Romero enter the building. When defendant opened the door, Romero ran to his vehicle, and defendant attempted to follow him. Romero locked the vehicle doors and drove to look for police officers. He met police officers in front of a courthouse and took them to the building where the robbery occurred. Romero subsequently identified defendant in a photo array on May 18, 2017. Romero also identified various photographs during the trial, including a photograph of a building marked "2108," where the events transpired.

¶ 14 On cross-examination, Romero testified he does not speak English – and defendant spoke in English – but that he understood "a little bit." Romero indicated that defendant opened the door of the building using keys but denied telling the police he was robbed inside of the building.

He also testified that he never met defendant before the incident. When asked by defense counsel whether he communicated with defendant on the Grindr website, Romero responded, "How would I communicate if I don't speak English? I work 12 hours a day."

¶ 15 Chicago Police Officer Juan Martinez (Officer Martinez) testified that he was with two other officers at 28th Street and California Avenue on the afternoon of May 8, 2017, when they were flagged down by Romero, who stated he was just robbed. Romero did not know the address but offered to take the officers to the exact location of the robbery. The officers followed Romero's vehicle to an apartment building at 2108 South Trumbull. The door of the building was locked; the officers rang doorbells, and an individual opened the door for them to access the building. Officer Martinez testified that Romero indicated he was robbed inside the lobby of the building. The group went to the police station where Officer Martinez and Romero conversed in Spanish and Romero filed a police report.

¶ 16 On cross-examination, Officer Martinez testified that, after generating Romero's police report, the officers went to the 26th Street area and were met by another unit which had determined that nearby locations, including restaurants, had video cameras. Although the officers did not view the cameras, they were referenced in the police report "hopefully for a follow-up investigation by the detectives." Officer Martinez also testified that the police did not attempt to obtain fingerprints or DNA from Romero's vehicle. After the officer's testimony, the State presented a stipulation that defendant resided at 2108 South Trumbull on May 8, 2017.

¶ 17 The State next called Barriga, who testified through a Spanish interpreter that on the night of May 7, 2017, he met someone on Grindr, which he described as a "gay dating app." Although Barriga did not know the individual's name, he agreed to meet him at his residence at 2108 South Trumbull. In text message exchanges, the individual told Barriga where to park and

to come to the building door. When Barriga arrived at the door, he was met by defendant, who he identified in court. Defendant was wearing a black hoodie which covered his forehead. After Barriga entered the hallway of the building, defendant displayed a firearm which had been concealed in his hoodie, placed it against Barriga's back, and directed him to "give me everything you have." Barriga responded that he only had his cellphone and a wallet containing $6; defendant told Barriga to give them to him. When Barriga turned around to hand the items, he viewed the firearm – a black metal handgun approximately seven inches in size – and defendant's face. Defendant then told Barriga he could leave. After driving away from the building, Barriga flagged down police officers. The officers followed him to 2108 South Trumbull but indicated they could not enter "because they didn't have any right to go in the house." Barriga filled out a police report and returned to the police station on May 20, 2017, where he identified defendant in a photo array.

¶ 18 During cross-examination, Barriga clarified that he made the police report on the day after the incident. He denied telling the police that he did not view the robber's face.[3] Barriga testified he exchanged photographs with defendant before meeting in person, but when Barriga arrived at the residence, "it was a different person." After being questioned regarding his familiarity with firearms, Barriga testified that the weapon used during the robbery was semiautomatic, but he had not relayed this fact to the police.

¶ 19 The State's final witness, Ramirez,[4] testified that on May 11 and 12, 2017, he communicated with an individual using the Grindr app. On May 12, the individual suggested they meet at his residence at 2108 South Trumbull. Ramirez sent a message when he arrived at

[3] Defense counsel subsequently presented a stipulation providing that Chicago Police Officer Robert J. Brown documented in a police report in the early morning hours of May 8, 2017, that the offender wore all black clothing and that Barriga did not see his face.

[4] Ramirez testified that his name is Arturo Ramirez Angel, but he is identified throughout the record as Arturo Ramirez.

3:25 p.m.; the individual responded that Ramirez should wait. After a few minutes, defendant – identified by Ramirez in court – opened the door. Defendant pointed a five- or six-inch charcoal black metal pistol at Ramirez's forehead and ordered him to enter the lobby. Defendant directed Ramirez to give him money. When Ramirez did not move, defendant pointed the weapon with one hand while patting Ramirez with the other. Defendant took his money, cellphone, and headphones, and then opened the door and told Ramirez to leave. While walking to the police station, he encountered police officers and later made a police report. On May 19, 2017, Ramirez identified defendant in a photo array conducted at his home.

¶ 20 The State rested; the trial court denied defendant's motion for a directed verdict. Defendant did not present witnesses. During closing arguments, after discussing the elements of the charges involving Romero and the supporting evidence, the State referenced the testimony of Barriga and Ramirez, as well as the other-crimes jury instruction which would be given. The State contended that defendant's *modus operandi* – described as a "method of operation" or "MO" – was to rob victims at gunpoint at his residence at 2108 South Trumbull, where he knew there were no cameras, no one would intervene, and he was safe. The State argued that defendant "targeted a specific type of victim and he committed a specific type of crime."

¶ 21 Defense counsel initially reminded the jury that defendant was on trial for only one of the three offenses, *i.e.*, the incident involving Romero. Counsel argued that, despite Romero's denial, he had some communication with defendant before the incident. Counsel suggested that defendant did not need to rob someone exiting a bank given his ability to have individuals come to his residence by meeting them on Grindr. Counsel raised questions regarding, among other things, why defendant would direct Romero to his own residence to conduct a robbery. Counsel also noted the discrepancy between Romero's testimony that he was robbed outside of the

building and Officer Martinez's testimony that Romero had indicated he was robbed inside the lobby. Counsel further observed that the State did not present any DNA or video evidence.

¶ 22 During rebuttal closing argument, the State argued that "defendant has a type" with respect to his robbery victims, *i.e.*, "young Hispanic men of slight builds." As to defense counsel's speculation regarding why defendant was near the bank by 26th and Springfield, the State noted that the neighborhood (Pilsen) is predominantly Hispanic. The State contended that defendant was "brazen" and may have been more comfortable effectuating the robbery at his "home turf" at 2108 South Trumbull than the bank location where there may have been cameras.

¶ 23 The jury instructions provided, in part, that the other-crimes evidence had been received on the issue of the defendant's identity, *modus operandi*, intent, and consciousness of guilt, and may only be considered for that limited purpose (Illinois Pattern Jury Instructions, Criminal, No. 3.14 (approved Oct. 17, 2014)). During deliberations, the jurors asked two questions: whether they should consider the lack of a recovered firearm or fingerprints or DNA in the vehicle, and whether there was a withdrawal transaction receipt from Chase Bank. The trial court responded to each question that the jurors heard all the evidence and should continue their deliberations.

¶ 24 The jury found defendant guilty of armed robbery and not guilty of aggravated kidnapping. In a posttrial motion, defendant argued, in part, that the trial court erred in allowing the State to present other-crimes evidence as the probative value of this evidence was greatly outweighed by the danger of unfair prejudice. According to defendant, the dissimilarities of the Barriga and Ramirez robberies outweighed their similarities to the Romero robbery. Defendant contended that the other-crimes evidence allowed the jury to convict defendant in the instant case "even though the jury harbored serious doubts" regarding Romero's testimony. The trial court denied the posttrial motion and sentenced defendant to 28 years in prison; the State nol-prossed

the remaining cases. Defendant filed this timely appeal.

¶ 25 ANALYSIS

¶ 26 Defendant contends on appeal that the trial court abused its discretion by allowing the introduction of "dissimilar and highly prejudicial evidence" of the other crimes involving Barriga and Ramirez. The State responds that the trial court properly admitted the other-crimes evidence where the Barriga and Ramirez robberies were substantially similar to the Romero robbery.

¶ 27 Under Illinois common law, other-crimes evidence is inadmissible if offered only to demonstrate the defendant's propensity to commit the charged crime. *People v. Johnson*, 406 Ill. App. 3d 805, 808-09 (2010). Accord *People v. Lindgren*, 79 Ill. 2d 129, 137 (1980) (noting that evidence of collateral crimes, *i.e.*, crimes for which the defendant is not on trial, is inadmissible if relevant merely to establish the defendant's propensity to commit crimes). "The concern is not that such evidence is lacking in probative value, but that it may overpersuade the jury, which might convict the accused because it believes he or she is a bad person." *People v. Pikes*, 2013 IL 115171, ¶ 16. See also *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010); *People v. Donoho*, 204 Ill. 2d 159, 170 (2003); *People v. Thigpen*, 306 Ill. App. 3d 29, 36 (1999).

¶ 28 Evidence of other crimes is admissible if it is relevant for any purpose other than to demonstrate the defendant's propensity to commit crime. *Pikes*, 2013 IL 115171, ¶ 11; *Dabbs*, 239 Ill. 2d at 283; *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). See also Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). Other-crimes evidence is admissible to prove intent, *modus operandi*, identity, motive, absence of mistake, "and any material fact other than propensity that is relevant to the case." *Donoho*, 204 Ill. 2d at 170.

¶ 29 "When the trial court finds some relevance in other-crimes evidence, it must then conduct a balancing test." *People v. Gwinn*, 366 Ill. App. 3d 501, 515 (2006). Even where relevant,

other-crimes evidence should not be admitted if its probative value is substantially outweighed by its prejudicial effect. *Pikes*, 2013 IL 115171, ¶ 11. Accord *Dabbs*, 239 Ill. 2d at 284 (providing that "[e]ven if offered for a permissible purpose, such evidence will not be admitted if its prejudicial effect substantially outweighs its probative value"). See also Ill. R. Evid. 403 (eff. Jan. 1, 2011) ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence").

¶ 30 The determination is not whether the other-crimes evidence is prejudicial, as such evidence is "unquestionably prejudicial to a defendant." *People v. Perez*, 2012 IL App (2d) 100865, ¶ 45. See also *People v. Maya*, 2017 IL App (3d) 150079, ¶ 66 (observing that "all evidence is prejudicial, in that it is intended to persuade the finder of fact in one direction or another"). "[T]he concern is with prejudice which is undue or unfair, the type of prejudice that 'speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.' " *Id.*, quoting *Old Chief v. United States*, 519 U.S. 172, 180 (1997).

¶ 31 If the trial court is satisfied that the other-crimes evidence is relevant to a material question unrelated to propensity, and the court then determines that the probative quality of the evidence outweighs the prejudice to the defendant, the evidence may be admitted. *People v. Clark*, 2015 IL App (1st) 131678, ¶ 28. The admissibility of evidence rests within the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Pikes*, 2013 IL 115171, ¶ 12. See also *Dabbs*, 239 Ill. 2d at 284 (applying a "clear abuse of discretion" standard); *Wilson*, 214 Ill. 2d at 136 (same). An abuse of discretion will be found only where the

court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Baez*, 241 Ill. 2d 44, 106 (2011). See also *People v. Smith*, 406 Ill. App. 3d 747, 751 (2010) (noting that a reviewing court owes some deference to the trial court's ability to assess the impact of the evidence on the jury).

¶ 32 The defendant initially contends on appeal that the trial court failed to conduct a meaningful assessment of the purpose and prejudicial effect of the other-crimes evidence. As discussed further below, however, the record indicates that the trial court assessed the similarities and distinctions between the elected case (involving Romero) and the other cases. Moreover, the trial court expressly noted its concern that the admission of other-crimes evidence on all four unelected cases "would tend into the prejudice area" and thus limited the State to the presentation of only two of the other crimes. *Cf. Johnson*, 406 Ill. App. 3d at 812 (noting that the "record reflects the trial court never considered the other side of the scale *** - whether the risk of unfair prejudice substantially outweighed the probative value of the evidence").

¶ 33 We reject defendant's contention that the court's decision to allow evidence of two out of the four other crimes "only served to highlight the lack of analysis." See, *e.g.*, *People v. Robinson*, 167 Ill. 2d 53, 64 (1995) (finding no abuse of discretion in the trial court's decision to allow the State to introduce only two of the eight other crimes); *People v. Cardamone*, 381 Ill. App. 3d 462, 497 (2008) (concluding that the "volume of the other-crimes evidence was overwhelming and undoubtedly more prejudicial than probative"). Such decision appears consistent with the trial court's awareness of the "incremental probative value for each additional other crime against the cumulative prejudicial effect." *Robinson*, 167 Ill. 2d at 64.

¶ 34 Defendant further contends that the other-crimes evidence was improperly admitted because it was too dissimilar to the instant case. Other-crimes evidence must bear "some

threshold similarity to the crime charged." *Wilson*, 214 Ill. 2d at 136. "[L]ess similarity between the facts of the crimes charged and the other offenses is required when the evidence is admitted to show intent, lack of accident, or any other exception other than *modus operandi*." *Id.* at 140. In cases where other-crimes evidence is offered to establish *modus operandi*, a higher degree of similarity between the facts of the crimes charged and the other offenses is required. *Id.* Although the other-crimes evidence in the instant case was received on the issue of the defendant's identity, *modus operandi*, intent, and consciousness of guilt, the State's primary focus was *modus operandi*.

¶ 35 *Modus operandi* or "method of working" refers to a pattern of criminal behavior so distinctive that separate crimes are recognized as the work of the same individual. *People v. Colin*, 344 Ill. App. 3d 119, 127 (2003). Accord *Wilson*, 214 Ill. 2d at 140 (providing that the "higher degree of similarity is necessary because *modus operandi* refers to a pattern of criminal behavior so distinctive that separate crimes are recognized as the handiwork of the same person"). "Although the similarities between the offenses need not be unique only to the two offenses being compared, there must be present some distinctive features that are not common to most offenses of that type in order to demonstrate *modus operandi*." (Internal quotation marks omitted.) *People v. Hansen*, 313 Ill. App. 3d 491, 506 (2000).

¶ 36 Where common features may be insufficient to raise the inference of *modus operandi* on an individual basis, the combination of such features may indicate a distinctive combination so as to suggest the work of the same individual. *Colin*, 344 Ill. App. 3d at 127. Courts have recognized, however, that even where other-crimes evidence is offered to prove *modus operandi*, some dissimilarity between the crimes will always be apparent. *Wilson*, 214 Ill. 2d at 140. See also *Robinson*, 167 Ill. 2d at 65 (noting that there must be a "persuasive showing of similarity,"

but the test is not one of rigorous, exact identity).

¶ 37 In the instant case, defendant contends that there were critical differences between the Romero incident and the unelected incidents. One dissimilarity involves the means by which the victim arrived at 2108 South Trumbull. Romero testified defendant confronted him at gunpoint at a separate location and forced him to follow another vehicle to the building on Trumbull. Whereas, Barriga and Ramirez testified that they willingly went to the building after communicating with defendant on a dating app. Defendant also points to other differences: the Romero incident involved an accomplice (*i.e.*, the driver of the other vehicle) and he was relieved of his property outside of the building, whereas defendant acted alone during the robberies of Barriga and Ramirez, both of which occurred inside the building.

¶ 38 Despite the foregoing dissimilarities, we find that the evidence herein sufficiently demonstrated that the Romero incident shared "distinctive features" or a "distinctive combination of common features" (*Hansen*, 313 Ill. App. 3d at 507) with the Barriga and Ramirez incidents necessary to establish the existence of a *modus operandi*. The most compelling similarity is that all three victims were robbed at 2108 South Trumbull, which was defendant's admitted residence. Defendant attempts to diminish the importance of this fact – arguing that the crimes occurred in the "same general location" – and urges this court to rely on cases like *People v. Howard*, 303 Ill. App. 3d 726 (1999).

¶ 39 The appellate court in *Howard* held that the trial court improperly admitted evidence of a robbery which occurred two days prior to the charged robbery as evidence of a *modus operandi*. *Id.* at 727-28. Among other things, the *Howard* appellate court found that "there is nothing unique" regarding the location of both robberies, *i.e.*, next to the UIC college campus near Van Buren Street. *Id.* at 731. The court observed that "Van Buren is a busy thoroughfare and it

is not improbable that two robberies would occur within days of each other near that street." *Id.* Unlike *Howard*, the elected and unelected crimes herein all occurred in or directly outside of the exact same building, which also happened to be defendant's residence. Defendant's repeated and audacious practice of robbing individuals on the premises of his residence rises to the level of a "distinctive pattern of criminal activity" which "earmarks the crimes as the work of a particular individual." *Robinson*, 167 Ill. 2d at 65.

¶ 40 The Romero, Barriga and Ramirez robberies are similar in other key respects. Defendant robbed each man at gunpoint using a black metallic handgun. All three victims were Latinos of a similar age. At the time of the trial, both Romero and Barriga were 30 years of age, and Ramirez was 31 years old. All three victims testified that they were threatened with a handgun but were not physically injured during the robberies. The three robberies occurred within a short time frame, on May 7 (Barriga), May 8 (Romero), and May 12 (Ramirez). See *Colin*, 344 Ill. App. 3d at 126 n.2 (noting that the term "other-crime" evidence encompasses prior bad acts as well as subsequent acts). Although Romero did not voluntarily go to defendant's residence after meeting on a dating app like Barriga and Ramirez, the "similarity of the conduct as whole" (*Colin*, 344 Ill. App. 3d at 127) established *modus operandi* herein. *E.g.*, *Robinson*, 167 Ill. 2d at 65 (finding sufficient similarities to justify the inference that two victims were attacked by the same person where both attacks occurred in the same neighborhood within seven days of one another and in both attacks the assailant covered his face, selected older women as his targets, and attacked them as they exited their garage).

¶ 41 Even assuming *arguendo* that the more exacting standard to establish *modus operandi* was not satisfied, the other-crimes evidence was relevant to identify defendant as the offender in the Romero incident, to tie defendant to the scene of the crime, and to establish his possession of

a firearm and his intent to commit an armed robbery. See *People v. McDonald*, 62 Ill. 2d 448, 455 (1975) (noting "it has been broadly held that evidence of other offenses is admissible if relevant for any purpose other than to show propensity to commit a crime"). In each case, the victim testified that he viewed defendant during the armed robbery and identified him in a photo array shortly thereafter. During oral argument on appeal, defendant's counsel argued that "identity wasn't established as to those other crimes because Mr. Silas was not convicted as to them." We observe, however, that other-crimes evidence does not pertain solely to *convictions*. *Colin*, 344 Ill. App. 3d at 126 n.2. The proof that the defendant committed the crime, or participated in its commission, need not be beyond a reasonable doubt, but it must be more than a mere suspicion. *People v. Thingvold*, 145 Ill. 2d 441, 456 (1991). This standard was satisfied as to the other-crimes evidence presented herein.

¶ 42 Defendant next contends that even if the other-crimes evidence was relevant, it was "severely and unfairly prejudicial." We again reject this contention. The evidentiary details with respect to the Barriga and Ramirez incidents were limited to those necessary to illuminate the issues for which these other crimes were introduced. *Colin*, 344 Ill. App. 3d at 130. The proceedings did not devolve into "mini-trials" of these collateral offenses. *Robinson*, 167 Ill. 2d at 66-67; *People v. Nunley*, 271 Ill. App. 3d 427, 432 (1995). *E.g.*, *People v. Bedoya*, 325 Ill. App. 3d 926, 940-41 (2001) (reversing the defendant's conviction and remanding for a new trial where the State presented seven witnesses and 27 exhibits regarding the other crimes evidence). We further note that the jury was sufficiently apprised of the distinction between the elected offense (involving Romero) and the unelected offenses (involving Barriga and Ramirez) by both the trial court and the parties' respective counsel. See *Perez*, 2012 IL App (2d) 100865, ¶ 61. In any event, the trial court provided a limiting instruction regarding the other-crimes evidence

based on the Illinois Pattern Jury Instructions. "Faith in the ability of a properly instructed jury to separate issues and reach a correct result is the cornerstone of the jury system." *Colin*, 344 Ill. App. 3d at 132.

¶ 43 As noted above, an abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Baez*, 241 Ill. 2d at 106. For the reasons discussed above, we find that the trial court did not abuse its discretion in the admission of the other-crimes evidence in the instant case.

¶ 44 Harmless Error

¶ 45 Even if the trial court erroneously admitted the other-crime evidence, reversal is not warranted if it is unlikely that the error influenced the jury. *People v. Boyd*, 366 Ill. App. 3d 84, 91 (2006). The improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based on its admission. *Johnson*, 404 Ill. App. 3d at 818. Defendant contends that the fact that the jury found him not guilty of aggravated kidnapping, but guilty of armed robbery, strongly suggests that the jury was skeptical of Romero's account of events and thus indicates that the testimonies of Barriga and Ramirez likely swayed the jury to believe defendant's guilt. We decline to engage in such speculation. There is no evidence in the record that the jury's decision to find defendant not guilty of aggravated kidnapping is indicative of any skepticism regarding Romero's account of events. We also observe that defendant's trial counsel effectively cross-examined Romero (and the other witnesses) and capably argued to the jury regarding the purported evidentiary deficiencies with respect to the kidnapping charge, *e.g.*, the absence of fingerprint, DNA, or video evidence.

¶ 46 As to the armed robbery charge, the testimony of a single witness is sufficient to convict if the testimony is positive and credible. *People v. Gray*, 2017 IL 120958, ¶ 36. Among other

things, Romero testified that he viewed defendant's face as he was robbed at gunpoint, that he flagged down police officers and brought them to 2108 South Trumbull – defendant's residence – immediately after the robbery, and that he subsequently identified defendant in a photo array.

¶ 47 Defendant points to the inconsistency between the testimony of Romero and Officer Martinez regarding the exact location of the robbery, *i.e.*, inside or outside the lobby of the building. Even contradictory testimony, however, does not necessarily destroy the credibility of a witness, and it is the task of the trier of fact to determine when, if at all, he testified truthfully. *Id.* ¶ 47. The factfinder is charged with deciding how flaws in a portion of the testimony affect the witness's credibility. *Id.* In the instant case, there is nothing in the record indicating that the alleged inconsistencies cited by defendant render the whole of Romero's testimony unworthy of belief. Since the testimony of the victim set forth that he was robbed at gunpoint by defendant, and there was no other evidence to contradict said testimony with the exception of some minor inconsistencies, the evidence was overwhelming, and any error caused by the introduction of the other crimes evidence would be harmless error.

¶ 48 For the foregoing reasons, we cannot conclude that the outcome of the trial would have been different if the other-crimes evidence had been excluded. *Johnson*, 404 Ill. App. 3d at 819. Furthermore, even assuming *arguendo* that the trial court erred in admitting the other-crimes evidence, we conclude that such error was harmless.

¶ 49 CONCLUSION

¶ 50 The judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 51 Affirmed.