No. 20-6843

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Cedryck Davis — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court Of Illinois (No 126131)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cedryck Davis Pro Se
(Your Name) Reg No M27481
Stateville Correctional Center
P.O Box 112 Route 53
(Address)

Joliet [Will County] Illinois 60434
(City, State, Zip Code)

N/A
(Phone Number)

Question(s) Presented

I. Whether Cedryck Davis's convictions for the attempt murder of Naja and Shawn Harringon should be reversed because the prosecution failed to sustain its burden of proving him guilty beyond a reasonable doubt where the evidence identifying him as one of the offenders was unreliable and inconsistent. 14

II. Whether Cedryck Davis's conviction for the attempt murder of Naja Harrington should be reduced to aggravated discharge of a firearm because the State failed to show that he had the specific intent to kill Naja beyond a reasonable doubt, and because the doctrine of transferred intent should not apply to this case, as Naja was both an unintended victim, and remained uninjured. 21

III. Whether Cedryck Davis was denied a fair trial where the prosecution was permitted to introduce other crimes evidence, ostensibly for the purpose of establishing identity, but which also unnecessarily informed the jury that Davis was investigated by officers for a shooting two days before the shooting in this case, based on a purported statement from a witness who denied his statement entirely when he testified at trial. 28

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts: N/A

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

[X] reported at People v. Thompson 154 NE3d 783 (5/30/20); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Appellate Court of Illinois First Judicial District court appears at Appendix A to the petition and is

[ ] reported at 2020 IL App (1st) 171265; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts: N/A

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was 9/30/20. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED*

* Due to the length of Constitutional and Statutory Provisions Involved, Petitioner has attached the same in Appendix "C" - "K" (A34-A46)

STATEMENT OF FACTS

Cedryck Davis and codefendant Deandre Thompson were indicted for attempt first degree murders (while personally discharging a firearm) of Shawn and Naja Harrington, and aggravated battery with a firearm to Shawn. (C. 25, 30, 31).

Pretrial proceedings

The trial court denied the defense's motion to quash arrest and suppress Shawn's and Naja's identification of Davis. (C. 95; R. 124). The trial court granted the prosecution's motion to admit other-crimes evidence that Davis and Thompson shot Darren Dear two days before the Harrington shooting over defense counsel's objection. (C. 105, 119; R. 144-49). At the hearing on the other-crimes motion, the prosecutor explained that, shortly after the Harrington shooting, Charles Molette told police officers that he had seen Thompson and Davis shoot at Dear two days before the Harrington shooting and "word on the street" was that Thompson and Davis also shot at the Harringtons (R. 139-40). Officers requested the crime lab to compare the fired bullets recovered from the Harrington shooting to the fired bullet recovered from the Dear shooting, and there was a match. (R. 142). Officers issued investigative alerts for Davis and Thompson, the men were arrested, and were later identified by the Harringtons. (R. 140). The State also told the court that one fired bullet from the Dear shooting matched fired bullets recovered from the Harrington shooting (R.273). The prosecutor argued the other-crimes evidence that Davis and Thompson shot Dear should be admitted on the issues of identity and the circumstances of their arrests. (R.

140-41). The prosecutor also noted that Molette, not Dear, would testify about the other-crimes evidence because Dear did not cooperate with the investigation. (R. 148). The trial court allowed the other-crimes evidence to be admitted solely on the issue of identity. (R. 149).

Jury Trial

Davis and Thompson were jointly tried by the same jury.

The State's case

Charles Molette, who at the time of trial was serving a 5-year prison sentence for a narcotics offense, denied discussing the Dear and Harrington shootings with the police. (R. 390, 392-409). He testified that, on January 28, 2014, at 7:55 a.m. he was not in the area of 1100 North Lawndale, that he did not know if Darren Dear was shot at that time, and that he did not know Dear. (R. 392-93). He also stated he did not know Davis or Thompson, and he could not recognize them in court (R. 392-93). He also denied meeting with officers at the 11th District police station on January 30, 2014, or telling them that he saw Davis and Thompson shoot Dear (R. 393). He denied telling the same story to Assistant State's Attorney ("ASA") Anthony Kenney or giving a written statement on February 3, 2014, at Area North. (R. 395). Molette was then confronted with State Exhibit 1, which the prosecutor asserted was a statement typed by ASA Kenney and signed by Molette. (R. 395).[2] Although his name was on the statement, Molette stated that it was not written in his handwriting. (R. 396). Two photo arrays containing Davis' and Thompson's photos, with Molette's name next to them, were attached to

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[2] A copy of Molette's written statement is included in the brief's appendix.

the statement, but Molette denied drawing a circle around their photos. (R. 408). He denied telling the prosecutor any of the information contained in the typed statement, and he denied identifying any persons in the photo arrays attached to the statement. (R. 399-409).

Detective Edward McGovern testified that he was assigned to the Dear shooting, and he received a fired bullet from medical personnel at a hospital. (R. 557-59).

Police Officer Steve Jaglarski testified that he knew Molette prior to the Dear shooting. (R. 647). On January 30, 2014, Officer Jaglarski was part of a team investigating the Dear shooting, and he encountered Molette in public. (R. 644). Molette had information about the Harrington shooting, and he voluntarily went to the 11th District to speak to detectives. (R. 645).

Detective Hector Matias testified that on January 30, 2014, at the 11th District, Molette told him that Davis and Thompson had shot at Dear on January 28, 2014. (R. 658-61). Molette also provided information about the Harrington shooting. (R. 660). Following Detective Matias's direct examination testimony, the trial court instructed the jury that the Dear shooing was admitted into evidence on the issue of identification and was to be considered by the jurors for that limited purpose. (R. 662).

ASA Kenney testified that he spoke to Molette about the Dear shooting on February 3, 2014, at Area North. (R. 418-19). ASA Kenney stated that he typed out Molette's statement on February 3, 2014, read it with Molette, and had him sign each page to confirm it was correct (R. 419-21). Detective Mark Leavitt, who was "in-and-out of the room" during Molette's interview, also

testified that Molette signed the statement. (R. 601). Leavitt also admitted he did not remember the statement being typed by ASA Kenney, stating, "to tell you the truth, I thought this was a handwritten." (R. 627). Detective Matias also testified that Molette signed the statement and array photos. (R. 696)

The statement was published and read to the jury. (R.553). The statement said, in pertinent part, that Molette was standing outside with his friends on January 28, 2014, at 7:55 a.m. on Lawndale Avenue, when he saw a burgundy van with two men inside come to a stop (R. 422-23). He observed the driver of the van, Thompson, whom he knew as "Stay-high," get out of the van and fire a gun at Dear. (R. 423-24). He saw Davis, whom he also knew, reach his hand out of the front passenger seat of the van and fire a gun at Dear. (R. 424-25). The gun Thompson shot "sounded like a .40 caliber" to Molette. (R. 424). Deandre returned to the van's driver's seat and sped off. (R. 425). Dear suffered gunshot wounds to both arms and a graze wound to his chest. (R. 425). A friend called an ambulance, and Molette ran to his aunt's house. (R. 425). The statement was a summary of what Molette had said, not a word-for-word recitation. (R. 423). Molette also identified both defendants in photo arrays and signed his name next to their photos. (R. 424, 427). When asked why the statement was not videotaped, Kenney stated that he asked Molette whether testified he preferred to do a typed or videotaped statement, and Molette picked typed, and also stated that it was not procedure to videotape statements in aggravated battery cases. (R. 438-41). Following ASA Kenney's testimony, the trial court instructed the jury that the Dear shooing was admitted into evidence on the issue of identification and was to

be considered by the jurors for that limited purpose. (R. 443-44).

After Kenney's testimony, defense counsel moved for a mistrial, stating that the other crimes evidence was improperly admitted, and incredible (R. 445-46). The court denied the motion (R. 446).

Shawn Harrington testified that on the morning of January 30, 2014, he was driving with his 15-year-old daughter, Naja Harrington. (R. 448-449). He was following his normal routine of dropping Naja at school before driving to his job at another high school. (R. 448-449). Shawn was driving a rental car because a student at his school had stolen his car. (R. 449, 478). He drove south on Hamlin Avenue and stopped for a red light at the intersection of Hamlin and Augusta Boulevard. (R. 449-450). Another car stopped for the light in front of his car. (R. 450). He testified that he saw man he later identified as Davis near the corner: "He caught my attention because he was gesturing towards me, so that's what drew my attention to him." (R. 477). He estimated watching the man for five to ten seconds before the car's rear window shattered. (R. 450). He heard several gunshots and looked back and saw another man standing alongside the car and shooting. (R. 450). The window shattering was loud and frightening, and he instinctively pulled Naja down and covered her with his body. (R. 471). He lost feeling in his legs, his foot slipped off the brake petal, and the car rolled through the intersection, coming to a stop when it hit the curb. (R. 452-53). Shawn narrated for the jury a video of the shooting captured by a security camera. (R. 461-63).

Shawn told Naja and a pedestrian who offered assistance to call 911. (R. 452-53). An ambulance transported him to the hospital, where he learned

that he suffered two gunshot wounds and was paralyzed from the waist down. (R. 454, 463).

Shawn provided the police with descriptions of the mens' jackets, but not their complexions, hairstyles, or heights. (R. 473-74). He told the police that the man standing near the corner wore a dark hoodie with light sleeves. (R. 476). Three months after the shooting, he identified Davis in a lineup in which Davis was the only individual wearing a dark hoodie. (R. 476, 479).[3]

Naja Harrington testified she saw two people on the sidewalk, facing the passenger side of the car, when the car was stopped at the traffic light. (R. 487). The man closer to the corner wore a black vest over a gray hoodie, and the other man wore an orange hoodie. (R. 489). The men had their hoods up, but she could see their faces. (R. 489-90). The man wearing the orange hoodie was 15 feet away and alongside the car, and the other man, who was closer to the intersection, was 20-25 feet away. (R. 490-92). She observed the men for a few seconds. (R. 492). She heard gunshots, bullets striking the car, and breaking glass, but she did not know from which direction the shots were being fired. (R. 492-93, 518). She was scared. (R. 518). She was not looking at the men when the shooting began and did not see the two men with guns or shooting at the car. (R. 498). Shawn pulled her down and covered her with his body. (R. 494). She went with her father to the hospital. (R. 498). She described the shooters as two young African-American males, around 17-years old, one wearing an orange hoodie and the other wearing gray and

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[3] Copies of the photos of Davis's and Thompson's lineups are included in the brief's appendix. The trial exhibits are part of codefendant Deandre Thompson's record in appellate case number 1-17-1265.

black hoodie. (R. 522-23). She did not describe their faces, heights, hairstyles, pants, or shoes. (R. 522, 531).

Four days after the shooting, at Area North, Naja identified Thompson in a lineup in which all the participants wore hoodies with the hoods up and were seated in order to remove height variations from the identification process. (R. 499-503). On April 8, 2014, over three months after the shooting, she identified Davis in a lineup, again, he was the only person wearing a dark hoodie–and the hood was down and the participants were standing. (R. 520-21, 692).

Officer Abraham Lara testified that he responded to the scene of the shooting and seized a fired bullet from Shawn's clothing. (R. 536). He followed the ambulance to the hospital, where he received another fired bullet from medical personnel. (R. 537-38).

Evidence Technician Adam Aranowski testified that he processed the crime scene by photographing the area and collecting evidence. (R. 563-64). He found three fired bullets inside the car and six .40 caliber shell casings, one .380 casing, and one .380 live round on the sidewalk. (R. 583-540).

Detective Mark Leavitt testified that he was assigned to the shooting and learned that the shooting was recorded by a security camera of the store on the northwest corner of Hamlin Avenue and Augusta Boulevard. (R. 592). He instructed other officers to secure the video. (R. 593). He returned to Area North and learned that two days earlier, Molette had told Detective Matias that Davis and Thompson shot at Dear at a location two blocks from the Harrington shooting. (R. 595-96). A request was made to the Illinois State

Police Crime Laboratory to rush a comparison between the Dear bullet and the Harrington bullets. (R. 598-99).

Illinois State Police Forensic Scientist Mark Pomerance, a firearm and toolmark evidence specialist, testified that he expedited the comparison of the firearm evidence collected in the Dear and Harrington cases. (R. 699-708). He concluded that the four fired bullets from the Harrington case and the single fired bullet in the Dear case were fired by the same gun. (R. 718-23). The six fired .40 caliber shell casing from the Harrington case were all fired by the same gun. (R. 725).

Detective Leavitt further testified that when he received Pomerance's report, investigative alerts were issued for Davis and Thompson. (R. 599, 603). Thompson was arrested on February 4, 2014, and Davis was arrested on April 8, 2014. (R. 604, 607).

The State rested, and the trial court denied defense counsel's motion for a directed finding. (R. 735). Davis's defense counsel rested without presenting evidence. (R. 742).

Closing arguments

The prosecution's closing and rebuttal arguments stressed that both Shawn and Naja identified Davis as the shooter near the corner. (R. 781, 831). The prosecutor also argued, "It is going to be up to you to determine whether [Molette] was telling the truth when he said he wasn't at the scene of any shooting on the 1100 block of Lawndale on the morning of January 28th of 2014." (R. 784). The prosecutor argued, "The Darren Dear shooting absolutely establishes that these two men are the men that shot and shot at

Sean and Naja Harrington two days later on January 30th of 2014." (R. 788).

Defense counsel asserted in closing argument that neither the Harringtons' identifications nor Molette's statement were reliable and police officers used this suspect evidence to wrongfully accuse Davis :

> In a chaotic circumstance, shooting, broken glass, being pulled down, being afraid, it makes you incapable of being able to point out faces. And how do we know that? We know that because the only thing they can say to the police is a dark hoodie and an orange hoodie, maybe a Bears jacket. This is not enough to find someone guilty of an attempted murder. (R. 817).
>
> . . .
>
> In a circumstance where people want someone to pay, we have no idea what they're capable of saying or doing. And you'll see the photograph of the lineup of Cedryck Davis when you go back in that jury room. You will see how suggestive it is. You will see the difference between the Cedryck Davis lineup and the Deandre Thompson lineup and how much more thorough the Thompson lineup was versus the one for Mr. Davis. Pay attention to that. (R. 818).
>
> . . .
>
> I also want you to look at the choices the police made during the identification process that were geared toward making these two cases link up. I want you to look at those photo arrays I talked to you about that will be sent back. And I want you to see that it is extremely troubling that all they did in my client's lineup, Mr. Davis, he is the only one in a dark hoodie, the only one. (R. 823).
>
> . . .
>
> Ask yourself why the State puts a witness on the stand in Mr. Molette that calls their own police officers liars. They have to. And why do they have to? Because even they know those IDs by the

> Harringtons are not enough. They're not enough. If they were enough, there's no reason to put a witness up there to say, I never spoke to the police. (R. 821).

Verdicts

The jury convicted Davis and Thompson of the attempt first degree murders of Shawn and Naja and aggravated battery of Shawn. (R. 868-69). The jury also found that both Davis and Thompson discharged firearms during the commission of the offenses. (R. 869).

Posttrial proceedings

Defense counsel filed a motion for a new trial alleging the prosecution's evidence failed to prove Davis guilty beyond a reasonable doubt and Molette's testimony/statement concerning the Dear shooting should not have been admitted. (C. 180-81).

After hearing evidence in mitigation and aggravation, the trial court merged the aggravated battery conviction into the attempt murder conviction and sentenced both Davis and Thompson to 31 years' imprisonment (11 years plus the 20-year firearm enhancement) for the attempt murder of Shawn and 28 years' imprisonment (8 years plus the 20-year firearm enhancement) for the attempt murder of Naja. (C. 334; R. 914-15). The trial court found that Shawn suffered severe bodily injury and ordered the sentences to run consecutively for a total of 59 years' imprisonment. (C. 334; R. 915). The trial court denied Davis' motion to reconsider sentence, and Davis appealed. (C. 199; R. 921).

Reasons For Granting The Petition

I. Cedryck Davis's attempt murder convictions should be reversed because the evidence establishing his identity as one of the two shooters was unreliable and inconsistent.

The police investigation following the Harrington shooting yielded skeletal descriptions of the two shooters from the two complainants, and the security video that captured the shooting did not show the shooters' faces. Three months after the incident, Shawn and Naja identified Davis as the shooter closer to the corner, but the identifications followed suspiciously suggestive procedures. Further, the shooter near the corner fired a .380 caliber handgun, while the shooter who fired while standing alongside the Harrington's car used a .40 caliber handgun, the same .40 caliber handgun used two days earlier in the Darren Dear shooting, which was admitted on the issue of the shooters' identities at the Harrington trial. Thus, no physical evidence connected the shooter near the corner to the Dear shooting. In addition, Charles Molette at trial recanted his prior statement to law enforcement tying Davis to the Dear shooting. Together, the poor initial descriptions, the suggestive lineup procedures, the lack of objective physical evidence connecting Davis to the crime, and Molette's recantation raise a reasonable doubt of guilt, warranting reversal of Davis's convictions.

Due process requires the State to introduce sufficient evidence to prove beyond a reasonable doubt all of the elements of the charged offense. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2. When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, a reviewing court usually must determine whether, after viewing the

evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill.2d 237, 261 (1985). Under *Jackson*, the fact finder's factual determinations are entitled to great deference, but they are not conclusive and do not bind the reviewing court because the fact finder's determinations may not be reasonable, and a reviewing court should not accept unreasonable inferences. *People v. Smith*, 185 Ill.2d 532, 541 (1999). Thus, a reviewing court should reverse outright when the State's evidence was so unsatisfactory that it raises a reasonable doubt of guilt. *People v. Evans*, 209 Ill.2d 194, 209 (2004).

Davis's convictions were secured solely through the lineup identifications by Shawn and Naja and the purported statement of Molette, which was recanted at trial. However, as discussed below in turn, the identifications and Molette's statement are unreliable.

First, eyewitness testimony is fallible, especially in circumstances such as were present in the Harringtons' case. *See People v. Lerma*, 2016 IL 118496, ¶ 26 (factors contributing to misidentifications include stress and the wearing of a partial disguise). As the Innocence Project documents, "Eyewitness misidentification is the greatest contributing factor to wrongful convictions proven by DNA testing, playing a role in more than 70% of convictions overturned through DNA testing nationwide." Innocence Project, Eyewitness misidentification, *available at* https://www.innocenceproject.org/causes/eyewitness-misidentification/ (last visited Mar. 12, 2019). As discussed below, Shawn and Naja's identifications

do not constitute overwhelming evidence of Davis's guilt as the mens' hoods, the enormous stress generated by the shooting, the short duration of the offense, and suggestive identification procedures raise a reasonable doubt of guilt. Further, these substantial infirmities in the prosecution's case cannot be saved by Molette's recanted statement.

Stress The Harringtons were following their daily routine of commuting to work and school when suddenly two men who had been in their frames of vision for only a few seconds fired on their car, striking Shawn twice. (R. 450-52, 454, 492-93). This terrifying incident likely eroded their ability to accurately identify the shooters. The New Jersey Supreme Court in *State v. Henderson*, 27 A.3d 872, 884, 904 (N.J. 2011), surveyed decades of scientific and judicial findings regarding eyewitness identifications and concluded, *inter alia*, "[e]ven under the best viewing conditions, high levels of stress can diminish an eyewitness' ability to recall and make an accurate identification." *See also* Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/high Profile Events*, 66 J. Air L. & Com. 1421, 1457 (2001) (a witness under stress is less likely to accurately identify the subject). Both Shawn and Naja were exposed to a situation that could not have been more stressful. They were in a car stopped at a stop light, their car was boxed in by other vehicles positioned in front and behind their car, and two men wearing hoods on the adjacent sidewalk, whom they had observed for a matter of seconds, suddenly began shooting into the car. (R. 450-52, 487-93). The aftermath of the shooting and Shawn's serious injury no doubt interfered with their ability to process what they had seen. Studies "have

shown consistently that high degrees of stress actually impair the ability to remember." *Henderson*, 27 A.3d at 894. Shawn and Naja were able to provide the police with only skeletal descriptions of the shooters, two young African American men, one wearing an orange hoodie and the other wearing a dark vest over a gray hoodie or a dark hoodie with gray sleeves. (R. 474, 476, 522-23). These identifications, made in the line of gunfire and in the midst of trauma, do not provide overwhelming proof of guilt.

The mens' hoods Both shooters wore hoods. (R. 474, 489). And although Shawn and Naja claimed to have seen the mens' faces, "'[d]isguises (e.g., hats, sunglasses, masks) are confounding to witnesses and reduce the accuracy of identifications." *Henderson*, 27 A.3d at 907; (R. 450, 489).

Brief duration of the offense Studies of identifications show that "'a brief or fleeting contact is less likely to produce an accurate identification than a more prolonged exposure.'" *Henderson*, 27 A.3d at 905. Both Shawn and Naja said they had the opportunity to see the men for only five to ten seconds before the shooting began, and thereafter they did not see the men. (R. 477, 490). Further, studies show "that witnesses consistently tend to overestimate short durations, particularly where much was going on or the event was particularly stressful." *Henderson*, 27 A.3d at 905; *see also* Elizabeth F. Loftus et al., *Time Went by So Slowly: Overestimation of Event Duration by Males and Females*, 1 Applied Cognitive Psychol. 3, 10 (1987).

Suggestive identification procedures The identification procedures utilized by Detective Matias are recognized to be suggestive, thereby increasing the likelihood of misidentification. First, Detective Hector

Matias himself, rather than an officer who did not know that Davis was the subject, conducted the lineups. (R. 684). A "blind" officer should conduct an array or lineup because "lineup administrators familiar with the suspect may leak that information 'by consciously or unconsciously communicating to witnesses which lineup member is the suspect.'" *Henderson*, 27 A.3d at 896 (*quoting* Sarah M. Greathouse & Margaret Bull Kovera, *Instruction Bias and Lineup Presentation Moderate the Effects of Administrator Knowledge on Eyewitness Identification*, 33 Law & Hum. Behav. 70, 71 (2009)). Second, Detective Matias did not sequentially show the lineup participants to Shawn and Naja. (R. 687-88). "Witnesses shown a sequential lineup are more likely to compare each person in it only with their memory of the offender, rather than choose whichever person looks the most like what the witness remembers." *U.S. v. Ford*, 683 F.3d 761, 765 (7th Cir. 2012) (citing studies). Third, the lineup itself was overtly suggestive because only Davis wore a dark hoodie, the same attire worn by the shooter. (R. 688). Moreover, unlike Thompson's lineup in which all the participants were seated and wearing hoodies with the hoods over their heads, the individuals in Davis's lineup were standing, their heads were not covered with anything, and only Davis wore a hoodie. *See Foster v. California*, 394 U.S. 440, 442-43 (1969) (defendant in lineup "stood out from the other two men by the contrast of his height and by the fact that he was wearing a leather jacket similar to that worn by the robber"); (R. 691-92). Wrongful identifications "are more likely to occur when the suspect stands out from other members of a live or photo lineup." *Henderson*, 27 A.3d at 897-98. The suggestive lineups utilized by the

police in this case created a real danger of misidentification because "the witness thereafter is apt to retain in his memory the image of the [lineup participant] rather than of the person actually seen." *Simmons v. United States*, 390 U.S. 377, 383-84 (1968). The flawed identification procedures used in Davis's case raise a reasonable doubt of the prosecution's evidence.

Recanted other-crimes evidence of identification

The police investigation showed that the shooter near the corner fired a .380 caliber handgun, while the shooter who fired while standing alongside the Harringtons' car used a .40 caliber handgun, the same .40 caliber handgun used two days earlier in the Darren Dear shooting, which was admitted on the issue of the shooters' identities at the Harrington trial. (R. 574-84). Thus, no objective physical evidence connected the shooter near the corner to the Dear shooting. In addition, Molette at trial recanted his prior statement to law enforcement tying Davis to the Dear shooting. Molette's purported statement was completely inconsistent with his trial testimony. Molette allegedly gave a statement to Chicago police officers claiming that he saw Davis and Thompson shoot at Dear. (R. 422-27). That statement prompted officers to compare a bullet from the Dear shooting to bullets from the Harrington shooting, and when the bullets matched, Davis and Thompson were arrested for the Harrington shooting. (R. 595-98, 603). At trial, Molette denied seeing the Dear shooting, stated that he did not recognize and could not identify Davis and Thompson in court, and denied meeting with the officers and telling them about Davis and Thompson's involvement in either shooting. (R. 392-93). Furthermore, Molette denied

making the statement entirely at trial, the prosecutor who took the statement admitted that it was a "summary" of Molette's comments, not word-for-word, and, although the prosecutor and detectives testified that Molette signed the statement, Molette denied doing so. (R. 396, 421-22, 601, 696).

Aside from Molette's purported statement, there was no evidence that Davis played any role in the Dear shooting, nor that the gun used in the Dear shooting belonged to him, or that he fired the .40 caliber handgun at the Harringtons. In other words, although the ballistics evidence connected one gun to both shootings, it did not show Davis shot that gun in either incident. The fact that a single bullet from the Dear shooting matched bullets from the Harrington shooting at most implies that one individual was involved in both shootings, and the trial evidence showed that the individual that Harringtons identified as Davis fired a .380 caliber handgun. (R. 574-84). Because of this, Molette's purported statement, even combined with the ballistics evidence matching the bullets from both shootings, is not enough to show beyond a reasonable doubt that Davis was the shooter.

Based on the totality of the evidence presented at trial, the State failed to show beyond a reasonable doubt that Davis shot at the Harringtons. The Harringtons' identifications of Davis Harrington are unreliable, and Molette's purported statement did not sufficiently connect Davis to the Dear shooting or, by extension, the Harrington shooting. Accordingly, Davis's convictions should be reversed.

II. Cedryck Davis's conviction for the attempt murder of Naja Harrington should be reduced to aggravated discharge of a firearm because the prosecution failed to show that Davis had the specific intent to kill Naja beyond a reasonable doubt, and because the doctrine of transferred intent should not apply to this case, as Naja was both an unintended victim and was not injured.

Cedryck Davis was convicted of the attempt murder of Naja Harrington, who remained uninjured during the shooting forming the basis of his conviction. (R. 868). The prosecution failed to meet its burden of proving that Davis had the requisite intent to commit attempt first degree murder. In particular, the prosecution never showed that Davis knew the Harringtons or that he had any motive to shoot them. The State also did not present any evidence to show that Davis knew that Naja was in the car at the time of the shooting. In light of these facts, the State did not prove that Davis had the specific intent to kill Naja, either directly, or through the doctrine of transferred intent—a requirement for securing an attempt murder conviction. Here, the evidence established only that Davis committed the offense of aggravated discharge of a firearm, in that he discharged a firearm in the direction of a person or in the direction of a vehicle he knew or should have reasonably known to be occupied by a person. 720 ILCS 5/24-1.2(a)(2) (West 2014). Accordingly, Davis's conviction for attempt murder of Naja should be reduced to aggravated discharge of a firearm.

This claim raises legal challenges to the prosecution's evidence, and thus review is *de novo*. *People v. Smith*, 191 Ill.2d 408, 411 (2000).

A. The prosecution failed to meet its burden of proving beyond a reasonable doubt that Thompson had the specific intent to kill Naja Harrington.

In order to uphold a conviction for attempt murder, the prosecution must show that Davis acted with the specific intent to kill Naja. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014); *People v. Hill*, 276 Ill.App.3d 683, 687 (1st Dist. 1990) ("Proof of a specific intent to kill is an indispensable element of attempt first degree murder"). Illinois courts have held that the mental state of specific intent to kill means that mere knowledge that an act may result in death or grave bodily harm does not suffice; nor does the intent to do bodily harm to someone. *People v. Mitchell*, 105 Ill.2d 1, 9-10 (1984); *People v. Jones*, 194 Ill.App.3d 412, 430 (1st Dist. 1989); *People v. Winters*, 151 Ill.App.3d 402, 405 (2nd Dist. 1986).

This Court has observed that "[i]ntent is a state of mind and thus is usually difficult to establish by direct evidence. Accordingly, specific intent to kill may be, and normally is, inferred from the surrounding circumstances, such as the character of the attack, the use of a deadly weapon, and the nature and extent of the victim's injuries." *People v. Parker*, 311 Ill.App.3d 80, 89 (1st Dist. 1990). In the case of a shooting, the reviewing court may consider the range, number of shots, and general target area when considering whether a defendant had the intent to kill. *See People v. Bryant*, 123 Ill.App.3d. 266, 274 (1st Dist. 1984). The fact that a firearm was used is not dispositive; there must still be evidence that the shots were fired with the specific intent to kill. *People v. Henry*, 3 Ill.App.3d 235, 238 (1st Dist. 1971). The character of the attack must be considered in determining whether specific intent to kill has been proven. *People v. Ephraim*, 323 Ill.App.3d 1097, 1110 (1st Dist. 2001).

In the present case, a review of the facts demonstrates that the prosecution did not establish that Davis had the specific intent to kill Naja. The prosecution did not present any evidence regarding Davis's intent to kill Naja. The prosecution never showed any possible motive that Davis had to shoot either of the Harringtons, let alone Naja. The prosecution never presented evidence that Davis knew the Harringtons. Notably, the prosecution also failed to demonstrate that Davis knew Naja was in the car at the time of the shooting. In fact, because Shawn pushed Naja down before Naja even had a chance to see a gun, it is entirely possible that she was never even seen by the shooters. Finally, further undercutting the finding of specific intent is the fact that Naja was not hit during the shooting.

In sum, the State's evidence regarding Davis's intent to kill Naja did not establish his guilt for attempt murder beyond a reasonable doubt. Accordingly, this court should reduce Thompson's conviction for the attempt murder of Naja Harrington to aggravated discharge of a firearm, which has a lesser mental state than attempt murder. 720 ILCS 5/2-9(a) (West 2014).

B. The doctrine of transferred intent should not be applied in this case, as Naja Harrington was both an unintended victim, and remained uninjured.

Normally, a "conviction for attempt murder requires proof of the specific intent to kill someone." *People v. Brown*, 2015 IL App (1st) 134049, ¶ 42. However, this Court has established that the doctrine of transferred intent applies in cases where the defendant intends to kill a specific person but kills an unintended third person instead. *People v. Thompson*, 313 Ill.App.3d 510, 516 (1st Dist. 2000); *People v. Valentin*, 347 Ill.App.3d

946,953 (1st Dist. 2004). Furthermore, the same doctrine has been applied in cases where the unintended third person is injured, rather than killed. *Hill*, 276 Ill.App.3d at 688 (noting, "the doctrine of transferred intent is applicable in attempt murder cases"); *Ephraim*, 323 Ill.App.3d at 1108.

This court should hold that the doctrine of transferred intent cannot support the attempt murder conviction of Naja, who was both an unintended and an uninjured victim. First of all, a contrary holding would be against this Court's precedent. This Court has consistently applied transferred intent to attempt murder cases that involve an unintended and *injured* victim. *See e.g., Valentin*, 347 Ill.App.3d at 953 ("The specific intent to kill [an unintentional victim] can be substantiated through the doctrine of 'transferred intent,' which applies when a third person is injured as a result of a defendant's assault upon another person"); *Ephraim*, 323 Ill. App. 3d at 1108 ("It is well established that in Illinois the doctrine of transferred intent is applicable to attempt murder cases where an unintended victim is injured").

For instance, in *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 1, this Court upheld a defendant's conviction where the defendant shot and killed one intended victim and injured another unintended victim. The two victims were driving in the same car when the defendant pulled up behind them and began shooting. The defendant mistakenly thought that the owner of the car, a different man, was in the car. *Hensley*, 2014 IL App (1st) 120802, ¶ 1. In explaining its reasoning, this Court noted, "The doctrine of transferred intent

applies when a third person is injured as a result of a defendant's assault upon another person." *Hensley*, 2014 IL App (1st) 120802, ¶ 83.

The Supreme Court of Illinois and this Court, however, have been silent as to whether the doctrine of transferred intent applies in situations, like the present case, where the third person is both an unintended and uninjured victim. This distinction is an important one because, to hold a defendant liable for attempt murder where the unintended victim is not injured would risk a miscarriage of justice. It would allow the prosecution to charge an indefinite amount of attempt murder counts based on the number of people in the vicinity, regardless of the presence of actual damage and whether the defendant actually knew of their presence. This topic has been discussed in several other states in recent years, yet the states have been divided in the interpretation of the transferred intent doctrine.

Maryland, for instance, has repeatedly affirmed "there can be no transferred intent when the unintended victim is neither killed nor injured." *Pettigrew v. State*, 175 Md.App. 296, 308 (2007). The court previously declined to expand the doctrine of transferred intent where a thrown hammer missed both the intended victim and a nearby infant in a crib, reasoning that it is unsound to hold a person accountable for potential injuries that did not, in fact, occur. *Harrod v. State*, 65 Md.App. 128, 137 (1985). Similarly, in Mississippi, there must be a "an injury nexus" for the doctrine of transferred intent to apply to the similar crime of attempt assault. *Craig v. State*, 201 So. 3d 1108, 1113 (Miss. App. 2016) (holding that the defendant was not liable for attempt assault where the unintended third-party victim was unharmed).

California, likewise, has stated that transferred intent does not apply in situations where someone shoots into a crowd intending to kill one person; rather, a conviction can only be secured for attempt murder of uninjured persons "if the evidence shows the defendant intended to kill everyone in the victim's vicinity in order to kill the intended victim." *People v. Falaniko*, 1 Cal.App. 5th 1234, 1243 (2016).

By contrast, Pennsylvania's Supreme Court held that unintended victims do not have to be injured in order for the doctrine of transferred intent to apply. *Commonwealth v. Thompson*, 559 Pa. 229, 241 (1999). This decision, however, has been criticized by Pennsylvania's lower courts. The state's appellate courts are urging the Supreme Court to reconsider the ruling and to follow Maryland's interpretation of the doctrine because it "retains the sound and commonly understood notion that the unintended victim must be actually injured before the doctrine of transferred intent may apply." *Commonwealth v. Jackson*, 955 A.2d 441, 450 (Pa. Super. Ct. 2008)

Moreover, applying transferred intent to cases where the unintended victim remains uninjured has the potential for dangerously overbroad charging. For instance, if this Court was to hold that a defendant was liable for any uninjured crime victim through the doctrine of transferred intent, the State could charge for 500 counts of attempt murder simply because there were 500 unintentional victims in the vicinity of a specified victim, even when none of the 500 were in fact injured. On the same basis Davis was charged with the attempt murder of Naja, he could have been charged with attempt murder for people walking down the street, waiting in their cars for

the stoplight to change color, or walking their dog on the nearby sidewalk. As the Maryland courts have noted, "[t]he absurd result [of extending the doctrine] would be to make one criminally culpable for each unintended victim who, although in harm's way, was in fact not harmed by a missed attempt towards a specific person." *Harrod*, 65 Md.App. at 137.

Likewise, the breadth of applying transferred intent to uninjured, unintended victims is precisely why Pennsylvania appellate courts have criticized the decision of the state's supreme court; the Pennsylvania courts are obligated to apply the doctrine of transferred intent in cases where the defendant merely raised his gun in the direction of a potential victim without actually shooting. *Jackson*, 955 A.2d 441, 445-46. To avoid such absurd results, this Court should instead apply a narrow reading of the transferred intent argument, and reduce Davis's conviction for attempt murder of Naja to the lesser offense of aggravated discharge of a firearm, as she was an unintended victim and was not injured.

In summary, the prosecution provided no evidence of Davis's specific intent to kill Naja offered no motive in their case whatsoever, and provided no evidence that Davis even knew that Naja was in the car at the time of the shooting. Because the prosecution did not prove beyond a reasonable doubt Davis had the specific intent to kill Naja, and because the doctrine of transferred intent should not apply to Naja, an unintended third party who was not injured, Davis's conviction for attempt murder of Naja should be reduced to aggravated discharge of a firearm.

III. Cedryck Davis was denied a fair trial where the prosecution was permitted to introduce other-crim. evidence, ostensibly for the purpose of establishing identity, but which also unnecessarily informed the jury that Davis was investigated by officers for a shooting two days before the Harrington shooting, based on a purported statement from a witness who denied his statement entirely when he testified at trial.

Prior to trial, the prosecution moved to admit evidence that Cedryck Davis and Deandre Thompson had shot at Darren Dear two days before the Harrington shooting (C. 125). The prosecution's other-crimes motion explained that, on January 30, 2014, officers interviewed Charles Molette, who stated that he saw Davis and Thompson shoot Darren Dear on January 28, 2014. (C. 125). The State compared a bullet from the Dear shooting to bullets from the Harrington shooting, determined that they were fired from the same gun, and arrested Thompson and Davis based on this evidence. (C. 125-27). Charles Molette's statement was highly prejudicial, and, due to its unreliability, was not probative. Thus, it should not have been presented to the jury, and Davis's conviction should be reversed and remanded for a new trial where he is not unfairly prejudiced by this improper evidence.

A defendant is entitled to have his guilt or innocence determined solely with reference to the crime with which he is charged. *People v. Gregory*, 22 Ill.2d 601, 602-03 (1961). Improperly admitting evidence of other-crimes evidence violates a defendant's right to due process and a fair trial by an unbiased jury. U.S. Const., amends. V, VI, XIV; Ill. Const. 1970, art. I, §§2, 8, 13; *People v. Lindgren*, 79 Ill.2d 129, 141-44 (1980). Generally, other-crimes evidence is inadmissible if it is meant to demonstrate a defendant's propensity to engage in criminal activity. *People v. McKibbins*, 96 Ill.2d 176,

182 (1983). Evidence of other-crimes may be admissible for another relevant purpose, including identity. *McKibbins*, 96 Ill.2d at 182.. For other-crimes evidence to be admissible, it must be relevant and the probative value must outweigh the prejudicial effect. *People v. Bedoya*, 325 Ill.App.3d 926, 937 (1st Dist. 2011); *People v. Nunley*, 271 Ill.App.3d 427, 431 (1st Dist. 1995). It is the duty of the trial court to take care to protect against prejudice and guard against overkill when admitting other crimes evidence. *People v. McCray*, 273 Ill.App.3d 396, 402-03 (1st Dist. 1995); *People v. Olson*, 96 Ill.App.3d 196, 197-198 (2nd Dist. 1981) (the court must balance relevance of evidence against its tendency to inflame and prejudice the jury). The trial court abuses its discretion by admitting improper other-crimes evidence in a defendant's trial. *People v. Maxwell*, 148 Ill.2d 116, 131 (1992).

Here, the trial court should not have admitted Molette's statement because it was highly prejudicial, and was not probative. The Darren Dear shooting evidence had very limited probative value because Molette denied making the statement regarding the shooting at trial, and because there was little other evidence that this shooting had even occurred, aside from this alleged statement. The jury was presented with the following statement, purportedly from Molette, but which Molette denied ever making:

> Charles states that on January 28, 2014, at 7:55 AM, he was standing outside with 5 other people on Lawndale at the intersection with Thomas. Charles states that he was standing on the West side of Lawndale with his friends. Charles states that a van drove East on Thomas and made a right turn onto Lawndale. Charles states that the van was a burgundy Montana van. Charles states that he saw two men inside the van, one in the

front driver seat and one in the front passenger seat.

Charles states that the van came to a stop once it turned onto Lawndale. Charles states that he observed the driver of the van exit and run to the back of the van. Charles states that the driver was wearing a black hooded sweatshirt and had his hood pulled up on his head.

Charles states that he recognized the driver of the van as Deandre Thompson. Charles states that he knows Deandre as "stay-high." Charles states that he has known Deandre since the summer of 2012. Charles states that he saw Deandre everyday from the time he met him until the shooting. Charles identified Exhibit #1 as a photo of Deandre.

Charles states that he saw Deandre stand at the back of the van and fire a gun, which sounded like a 40 caliber. Charles states that Deandre was shooting at Darren Dear, who he knows as "Lil D." Charles identified Exhibit # 2 as a photo of Darren. Charles states that he heard bullets strike the gate behind him.

Charles states that he saw the passenger of the van reach his right hand out of the vehicle and fire a gun at Darren Dear. Charles states that he saw the van's passenger's face and recognized him as Cedryck Davis, who he knows as Little Ced. Charles states that he had seen Cedryck around his neighborhood, but has never spoken to him. Charles states that he saw Cedryck first in 2004 and saw him every day since then up until the shooting. Charles identified Exhibit No. 3 as a photo of Cedryck.

Charles states that Cedryck was shooting at Darren. Charles states that Darren was shot in his left and right arms and a bullet grazed Darren's chest. Charles states that Deandre ran back into the driver's seat of the van and drove at a fast speed south on Lawndale. Charles states that Deandre made a right on to Augusta. Charles

> states that he ran northbound on Lawndale, then ran back to his friend Darren.
>
> Charles states that one of his friends called for an ambulance. Charles states that he ran west on Thomas until he reached his aunt's house on Karlov. Charles states that since the shooting, he has not seen Deandre or Cedryck.
> (R. 422-28).

When confronted with this statement at trial, Molette denied it entirely. Molette told the jury that, on January 28, 2014, at 7:55 a.m. he was not in the area of 1100 North Lawndale, that he did not know if Darren Dear was shot at that time, and that he did not know Darren Dear, Thompson or Davis. (R. 392-95). He did not identify Thompson or Davis in court (R. 392). He also denied making any statements about the shooting, or identifying either defendant in a lineup (R. 392-95, 409). Further, the statement was typed, not handwritten by Molette, and Assistant State's Attorney (ASA) Anthony Kenney testified the statement was a summary of what Molette had said, not word-for-word. (R. 423). The prosecution then introduced ballistics evidence showing that a bullet from the Dear shooting matched bullets from the Harrington shooting to argue that Davis was involved in both crimes. (R. 723-25).

In *People v. Martin*, 408 Ill.App.3d 44, 46 (1st Dist. 2011), this Court allowed evidence of a previous shooting where the same gun was used in both shootings, but the other crimes evidence was much more probative than in Davis's case. First of all, the previous shooting evidence in *Martin* was introduced through testimony from the victim of the previous shooting, who actually testified to having been shot by the defendant, and identified the

defendant at trial. *Martin,* 408 Ill.App.3d at 47-48. Furthermore, there was a surveillance video presented at trial depicting the defendant as the shooter. *Martin,* 408 Ill.App.3d at 47.

Martin is readily distinguishable. In this case, as in *Martin,* ballistics evidence revealed that the same gun was used in both the Dear and Harrington shootings, but there was no supporting information here about the Dear shooting indicating its reliability. Darren Dear did not cooperate with the police investigation, much less testify at Davis's trial, and thus he never indicated either Davis or Thompson shot him. (R. 665). Thus, the only evidence presented at Davis's trial concerning the Dear shooting was Molette's recanted statement. Whereas the other-crimes evidence presented in *Martin* was presented through live testimony of the actual victim of the other crime, the prosecution in Davis's case presented this evidence only through the purported statement of Molette, who recanted the entire statement. Furthermore, whereas the other-crimes evidence in *Martin* was corroborated by a videotape, here, aside from Molette's purported statement, there was no evidence that Davis was involved in the Dear shooting. Although one gun was part of the Dear shooting and the Harrington shooting, nothing aside from Molette's recanted statement indicated that Davis or Thompson fired at Dear. Thus, this evidence had very limited, if any, probative value.

According to the prosecution, the probative value of the evidence arose when a bullet from the Dear shooting was found to match bullets from the Harrington shooting. (C. 126-27). Contrary to the prosecution's assertions,

however, this evidence has little value in terms of Davis's identity. As discussed in Argument I, the Dear shooting and the Harrington shooting both allegedly involved two perpetrators, and two guns. Thus, the fact that a single bullet from the Dear shooting matched bullets from the Harrington shooting fired by the man identified as Thompson, the Dear bullet does nothing to directly implicate Davis in the Harrington shooting. Furthermore, it is possible for a gun to have been used in two shootings, but by different people. The Darren Dear ballistics evidence was not probative of Davis's identity as a shooter in the Harrington case.

Any probative value that this other-crimes evidence did have was far outweighed by the prejudicial effect. The fact that the jury heard evidence that Davis was identified as having committed another violent shooting, just two days prior to the Harrington shooting, was highly prejudicial and could have been used by the jury as propensity evidence. Finally, the statement included Molette's opinion that the gunshot in the Dear shooting "sounded like a .40 caliber" which, although completely unsubstantiated and speculative, is highly prejudicial, as one of the guns in the Harrington shooting was a .40 caliber. (R. 424, 713).

Without the introduction of Molette's statement, the jury would only have had to decide the guilt of Davis based only on the strained identifications of Shawn and Naja Harrington, who had only a few seconds to view the perpetrators before being placed under extreme duress. With the unreliable Darren Dear evidence, however, Davis was portrayed as an individual who perpetrated two violent shootings in broad daylight, just two

days apart from one another. This evidence was too prejudicial to have been admitted, and without it, there is a high probability that Davis would not have been convicted. Accordingly, this matter should be reversed and remanded for a new trial.

This issue is fully preserved. Defense counsel filed a response to the State's other-crimes motion asking for the Darren Dear evidence to be barred, and argued at a pre-trial hearing that the State's motion should be denied (C. 119; R. 144-45). Defense counsel also argued that the Dear evidence should not have been admitted in its motion for a directed verdict, and raised this issue in Davis's motion for new trial. (C. 179; R. 422). This claim is therefore reviewed for harmless error. *See, e.g., People v. Maldonado*, 398 Ill.App.3d 401, 414-15 (1st Dist. 2010) (holding that an issue was preserved for appellate review where the defendant "raised it in both his reply to the State's motion *in limine* and in his posttrial motion"); *People v. McLaurin*, 235 Ill.2d 478, 495 (2009) (holding that "where the defendant has made a timely objection and properly preserved an error for review, the reviewing court conducts a harmless-error analysis in which the State has the burden of persuasion with respect to prejudice").

The Illinois Supreme Court has held that "the erroneous admission of evidence of other crimes carries a high risk of prejudice and ordinarily calls for reversal." *Lindgren*, 79 Ill.2d at 140. "In a case in which other-crimes evidence is erroneously admitted, the conviction should only be upheld where the properly admitted evidence is so overwhelming that no fair-minded jury could have voted for acquittal." *Lindgren*, 79 Ill.2d at 141; *People v. Thigpen*,

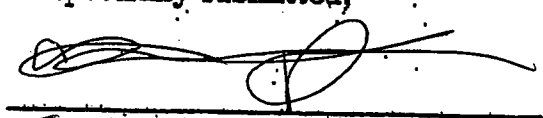
306 Ill.App.3d 29, 39 (1st Dist. 1999) (holding that the improper admission of other-crimes evidence "calls for reversal unless the record affirmatively establishes that no prejudice occurred").

The evidence in the instant case was not strong enough to overcome this high burden of showing harmless error, without the inadmissible Darren Dear other crimes evidence. Without the statement, the prosecution could not have linked the bullets from the Dear shooting to those in the Harrington shooting, and the only remaining evidence linking Davis to the Harrington shooting would have been Shawn and Naja Harrington's suggestive lineup identifications and their tainted in-court identifications. As discussed in Argument I, this evidence was unreliable in light of narrow opportunity for Shawn and Naja to view the offenders. Given the sparsity of evidence tying Davis to the shooting, the improper admission of the other-crimes evidence of the Dear shooting was not harmless error. Thus, this Court should remand for a new trial without the improper other-crimes evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Cedrick Davis Pro se

Date: December 21, 2023