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No. 1-13-1103
Opinion filed November 24, 2015

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LENDELL WILLIAMS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 09-CR-17192 The Honorable Maura Slattery-Boyle Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Presiding Justice Pierce and Justice Neville concurred in the judgment and opinion.

OPINION

¶ 1 Zachary O'Connor was shot and killed on the front porch of a house in Chicago's Pullman neighborhood. Also shot was Paul Rayon, who survived. Defendant Lendell Williams was indicted and convicted by a jury of two charges of first degree murder and of attempted murder and aggravated battery with a firearm. A jury convicted Williams on all counts. The trial court sentenced Williams to a total of 80 years' imprisonment.

¶ 2 Williams argues: (1) he raised a *prima facie* case of discrimination under *Batson v. Kentucky*, 476 U.S. 79, 96-98 (1986); (2) the trial court erred in granting the State's motion *in limine* to restrict reference to a shooting a few hours earlier at the same address as an "incident";

(3) the trial court unfairly limited cross-examination of the State's key eyewitness; and (4) the State did not prove beyond a reasonable doubt that Williams acted as one of the two shooters aiming at the people on the porch. We affirm, holding that defense counsel did not carry the burden of establishing a *prima facie* case of purposeful discrimination required by *Batson*; Williams' cross-examination of the key eyewitness to the shooting was not unfairly limited because the trial court reversed its ruling to allow questions regarding an earlier shooting on the same day and same location; and the State proved beyond a reasonable doubt by credible eyewitnesses that Williams was one of the shooters.

¶ 3 BACKGROUND

¶ 4 Shortly after 5 p.m. on the afternoon of June 8, 2009, Zachary O'Connor, Paul Rayon, Anthony Watts, and Nikita Davis were celebrating Davis' sister's eighth grade graduation when a car drove slowly past the house and then disappeared around the corner. A few minutes later, two individuals approached the house on foot, pulled out handguns, and began shooting. Ten bullets hit Zachary O'Connor, killing him. Bullets struck Paul Rayon about the face and shoulder causing the loss of vision in his right eye.

¶ 5 Six hours earlier, a shooting took place at the same address (first shooting) in which no one was injured. Williams was never identified as being involved in the first shooting. Davis, Rayon, and Watts identified Williams as one of the two shooters in the second shooting.

¶ 6 Pretrial Motions

¶ 7 Motion to Suppress Identifications

¶ 8 Williams filed a motion to suppress the pretrial eyewitness identification of all three witnesses. The hearing on the motion disclosed the following evidence.

¶ 9 Chicago police department detective Silvia Van Witzenburg met with Anthony Watts and Nikita Davis at Area 2 headquarters on June 9, 2009. They had come to inquire about Watts' car which police impounded after the second shooting as it had been damaged by bullets. Van Witzenburg called the detective assigned to investigate both shootings, Timothy Murphy, but he was unavailable. Murphy briefed Van Witzenburg on the case and asked her to show Watts and Davis photographs of suspects in the two shootings.

¶ 10 Van Witzenburg showed Davis two photo arrays; the first had five mugshots and the second had six; both contained Juan Crump's mug shot. Detective Murphy did not give Williams' name to Van Witzenburg as a possible offender and neither array included Williams' photograph. On the first array of five photos, Davis circled four, including Crump's, as being at the first shooting, and she wrote, "4 was at the shotting [*sic*]." Davis wrote first names on three photos, spelling Crump's first name "Wan." On the second array of six photos, Davis again identified Crump and the same three as being at the first shooting. Davis wrote "First shotter gunman Wan [*sic*]" with an arrow drawn to Crump's photo. Davis identified the last mug shot of the six (an individual named Travell Adams) and wrote "2nd shotter Lil-Nu [*sic*] main shotter [*sic*]" and signed "Nikita" on the photograph. Davis explained that at the second shooting, there were two shooters and the last photo showed the shooter who was trying to pull a gun out of his waistband. Davis said "Lil Nuk" was the main shooter, but did not identify any of the photos as being "Lil Nuk."

¶ 11 Watts, who was not present at the first shooting, viewed the same six-photo array that did not include Williams' photograph. Watts put an asterisk on Crump's photo and wrote, "Wayn [*sic*] was in the car." Watts did not view the five-photo array.

¶ 12 Detective Murphy, the lead detective on the murder investigation, interviewed "multiple witnesses," including Watts, Davis, and Rachelle Carson the day of the shootings. The next day, when Davis was at the police station, she told Murphy by telephone that she knew the nickname of one of the shooters. A few days later, on June 15, Murphy met with Davis and showed her a sequential photo array of five separate mugshots, one of them Williams' photograph. Davis identified Williams, using his real name that she had learned in the meantime.

¶ 13 On June 15, Murphy showed Paul Rayon**,** who was still in the hospital, a photo array of five mugshots that did not include Williams' photograph. He had a bandage over his eye due to the gunshot wound and told Murphy that he wanted to see a physical lineup. Two days later, Rayon viewed a photographic array that included Williams. Rayon tentatively identified Williams but requested to view a lineup.

¶ 14 On June 24, Murphy met with Watts and showed him the six-photo array that included a mug shot of Williams. Watts identified Williams and wrote "shooter" above his signature. Watts also identified Crump but only circled his mug shot, indicating Crump's presence.

¶ 15 On August 28, Davis, Watts, and Rayon separately viewed a physical lineup and each selected Williams as one of the shooters.

¶ 16 Murphy testified that bullet casings and cartridges found at the scene indicated that two types of guns had been fired, corroborating the involvement of two shooters.

¶ 17 After hearing arguments, the trial court denied the motion to suppress.

¶ 18 Motion *In Limine* Regarding First Shooting

¶ 19 The State filed a motion *in limine* requesting that both parties refer to the earlier shooting as "an incident" rather than "a shooting," arguing that allowing evidence of the earlier "shooting" would be more prejudicial than probative. The State also requested that the parties

stipulate that Davis identified Crump in a photographic array presented to her on June 9, 2009, the day after the incident, and that the photographic array did not include a photograph of Williams. In opposition, Williams argued that the evidence about the earlier shooting would inform a jury about all the events on June 8, possibly reflecting on the witnesses' credibility. The trial court granted the motion, finding "no nexus" between the first shooting and the second relating to Williams as well as prejudice.

¶ 20 Jury Selection

¶ 21 In the initial round, the trial court *voir dired* a panel of 14 members. The trial court addressed all 14 prospective jurors together, then asked a series of questions to each juror. After questioning, the trial court excused two potential jurors for cause, defense counsel exercised three peremptory challenges, and the prosecution exercised five peremptory challenges. Four jurors out of the 14 member venire were seated. Of the five members excused by the State, the first was a white male, and the next four were African Americans, one male and three females.

¶ 22 Defense counsel immediately raised a *Batson* challenge, stating: "Basically all the African Americans that have come before the jury pool as of right now have been struck." A short time later, after accepting the four jurors who were then seated, the trial court asked both sides: "Is there anything else that needs to be addressed at this time?" Defense counsel responded, "I'm thinking about it. We would raise the *Batson* [*sic*]." The trial court immediately ruled that the defense had not made a *prima facie* case, stating "I am not even going to ask for a response because they've also excused a Caucasian male. Yes there are four African Americans, but they have accepted one African American female. So if [the African American female] had been excused, then maybe you had met that threshold. At this time I don't find the threshold has been met. *Batson* is rejected."

¶ 23 Pertinent Trial Testimony

¶ 24 During her sister's graduation party, at about 5 p.m., Nikita Davis and others had congregated outside on the front porch when she saw a car with four occupants being driven slowly down the block, and slowing even more in front of her house. Davis identified the driver as Williams, whom she knew by his nickname, "Lil' Nuk." She recognized Crump in the front passenger seat, but did not recognize the two people in the back seat. She had a clear view of the car as it turned the corner. Davis went inside, turned off her mother's computer in the dining room, and then went to the front room and sat in a swivel chair near the front window. The chair knocked the vertical blinds open, and Davis saw Williams walking with another black male along the next-door neighbor's fence. Davis could not see the second person's face. Williams was trying to pull a gun out from under his shirt, although Davis only could see the gun's handle. When she heard shots, she ran into a bedroom with her brother. After the shooting stopped, she went to the front porch where O'Connor was lying with her mother and her aunt.

¶ 25 The next day, Davis went to the police station with Watts to inquire about his car that had been towed the day before. While there, detectives asked her to view an array of five photos that did not include Williams' photograph. From the five-photo array, Davis identified Crump as one of the shooters; in the six-photo array, she did not identify any photo as Williams. On June 15, police showed her an array that included Williams' photograph. She identified Williams as one of the shooters. On August 28, Davis viewed a lineup and selected Williams as the shooter.

¶ 26 During cross-examination, Davis testified that about 11:30 a.m. the same day, she witnessed an "incident" involving Crump. Williams was not present. The only person from the second shooting that she could identify as being at the earlier "incident" was Crump.

¶ 27 On cross-examination, Davis was asked, "That person in position No. 6 [of the six-photo array], you identified that person as having been involved in the shooting" whereupon the State objected. Following an off-the-record discussion, the trial court did not rule on the objection but instructed defense counsel to ask another question. Davis then stated that she did not see the face of the second shooter and could only identify Williams as one of the shooters.

¶ 28 Paul Rayon testified that he arrived at the party sometime after 4 p.m. While smoking a cigarette and talking on his phone at the bottom of the porch stairs, a white car drove slowly down the street. The front windows of the car were down and he saw someone in the back seat but did not pay too much attention to that person. After the car passed by, he heard gunshots that seemed to be coming from the next block. He looked up and saw O'Connor fall, so he ran up the porch stairs. At the top, he turned around to look back at the street only to face Williams with both arms extended pointing a gun at him. Rayon focused on Williams because Williams was pointing a gun at his face. He did not focus on the second shooter standing slightly behind Williams. He heard glass break and saw a flash from Williams' gun, before feeling as though someone punched him in the face; the force knocked him down. O'Connor was on the porch floor. Rayon grabbed O'Connor's foot but O'Connor said, "Let me go, I got it." Then Paul grabbed the door and felt like someone pushed him in the door. At the hospital, he learned the push he felt was from a gunshot to his right shoulder. Ultimately, he lost vision in his right eye.

¶ 29 Chicago police department detective Timothy Murphy arrived at the Davis home around 6 p.m. He noticed shell casings in the street and bullet damage to the house. He interviewed Davis, her mother, and Watts, who was "uncooperative." Watts told Murphy that a white car with "Lil Nuk" driving and Crump in the passenger seat passed slowly in front of the house. Watts told him they made eye contact and referred to "mean mugging." The car turned the corner

and then Lil Nuk and a passenger from the back seat returned and started shooting. Watts refused to let the investigators recover evidence from his car for ballistics testing. Murphy obtained a search warrant and had the car towed and impounded. Police found a bullet lodged in the fender and a loaded handgun underneath the back seat.

¶ 30 According to Murphy, on June 24, Watts again was uncooperative when he was brought to Area 2 police headquarters under arrest for possession of the gun found in his car. Watts viewed the photo array and identified Williams and wrote "shooter" above his photo. Watts also circled Crump's photograph.

¶ 31 On June 15, police detectives came to the hospital to show Paul Rayon a photographic array. Paul did not recognize anyone in the photographs. On June 17, Paul viewed a different photograph array. This time, Paul recognized the shooter and was "75% sure." He told the police he wanted to see a lineup. On August 28, he viewed the lineup and identified Williams.

¶ 32 After Paul Rayon was excused and before court recessed for the night, defense counsel renewed their objection to the cross-examination of Davis regarding her identification of the sixth photo. Specifically, Davis testified at trial that she could not identify anyone other than Williams as being at the second shooting. The trial court reiterated that its ruling was to refer to the first shooting on June 8 as an "incident" and reserved ruling on the issue of whether defense counsel could question Davis regarding the sixth photo.

¶ 33 Chicago police officer Walter Barney testified that on February 3, 2010, he was assigned to the narcotics unit. That afternoon, Barney and his team executed a search warrant on South Seeley based on information from a confidential informant. They confiscated a gun and charged Anthony Mattix with possession of the firearm.

¶ 34 Anthony Watts testified that he grew up in the same neighborhood; his mother's house was on the same block as the shooting. Watts did not know Williams personally but knew of him from conversations with nephews. On June 8, Watts arrived at the party around 4 p.m. and was ready to leave around 5 p.m., but stayed to talk to O'Connor, his brother-in-law, who had just arrived. Watts, O'Connor, Rayon, and another individual, "Bam," were on the front porch. Watts saw a dark green car driven by Crump go past the house slowly. Watts could see one of the passengers was "light-skinned." The car drove around the corner. A short time later Watts saw Williams and another man approach the house on foot. They each pulled out guns and started shooting. Watts dove into the house through the front door, yelling to everyone inside to get down. By the time the shooting stopped, he was in the back yard and ran around the house to the front where he saw O'Connor lying in the doorway, and Rayon bleeding from his eye. Police and ambulances arrived. Watts' car was towed away for evidence. The next day, Watts went to the police station to check on his car. The police asked him to view a photographic array of six photographs. Watts identified Crump as the driver.

¶ 35 On June 24, Watts met with Detective Murphy.

¶ 36 On cross-examination, Watts again identified Crump as the driver of the car but he could not see the passenger. In the days following, Watts heard around the neighborhood that "L'il Nuk" was one of the shooters.

¶ 37 On August 28, Murphy conducted a live lineup of five persons, including Williams. Davis, Rayon, and Watts each viewed the lineup separately and each identified Williams. Williams was then charged.

¶ 38 Aimee Stevens, forensic specialist in firearms identification, testified about the ballistics of the recovered bullet fragments, bullets, and cartridge casings, concluding that they had not been fired from two guns that were recovered.

¶ 39 The parties stipulated that O'Connor died from multiple gunshot wounds and the manner of death was homicide.

¶ 40 At the end of the State's case, the trial court revisited the issue of whether defense counsel could question Davis regarding the sixth photo that she circled and marked. The trial court ruled that Williams could recall Davis and cross-examine her regarding the prior "incident" and her identification, or lack of identification, of the sixth photo. The trial court then decided that if Williams chose to recall her and elicit an explanation of her note "2nd shotter Lil Nuk," the trial court notations on the photo array would be redacted. Defense counsel did not recall Davis.

¶ 41 ANALYSIS

¶ 42 Jury Selection

¶ 43 Williams first argues that he established a *prima facie* case of discrimination under *Batson v. Kentucky*, 476 U.S. 79, 89 (1986), in that, during *voir dire*, the State used its first four peremptory strikes to release four African American jurors. The trial court rejected the challenge, finding that the defense had not met the threshold for a *prima facie* case because the State had excused one white male and four African-Americans, yet had accepted one African-American male. While the presence on the jury of African Americans does not dispel *Batson* violations (*People v. Andrews*, 146 Ill. 2d 413 (1992)), the party asserting a *Batson* claim has the burden to prove a *prima facie* case and preserve the record, and any ambiguities in the record will be construed against that party. *People v. Davis*, 231 Ill. 2d 349, 365 (2008).

¶ 44 Once a defendant alleges his or her rights have been violated because the State has used its peremptory challenges in a racially discriminatory way, *Batson* requires the trial court conduct a three-part inquiry: (1) determine whether the defendant has established a *prima facie* case of purposeful discrimination; once a *prima facie* case is shown, (2) the State has the burden to articulate a nondiscriminatory, race-neutral explanation based on the facts of the case; and considering the State's explanation, (3) the court then must determine whether the defendant has shown purposeful discrimination. *People v. Rivera*, 221 Ill. 2d 481, 500 (2006). "The existence of a *prima facie* case is prerequisite for the court to demand an explanation." *Id*. at 510. A trial judge's determination of whether a *prima facie* case has been shown will not be overturned unless it is against the manifest weight of the evidence. *Id*. at 502.

¶ 45 When determining whether the defendant has demonstrated a *prima facie* case of discrimination against African-Americans, a trial judge should consider these seven factors: (1) the racial identity between the party exercising the peremptory challenge and the excluded venirepersons; (2) a pattern of strikes against African-American venirepersons; (3) a disproportionate use of peremptory challenges against African-American venirepersons; (4) the number of African-Americans in the venire as compared to the jury; (5) the prosecutor's questions and statements during *voir dire* examination and while exercising peremptory challenges; (6) the shared characteristics of the excluded African-American venirepersons compared to the venirepersons accepted by the prosecution; and (7) the racial make-up of the defendant, victim, and witnesses. *Id*. at 512-13 (quoting *People v. Williams*, 173 Ill. 2d 48, 71 (1996)).

¶ 46 The general rule is that "the mere number of black venire members peremptorily challenged, without more, will not establish a *prima facie* case of discrimination." *People v.*

Garrett, 139 Ill. 2d 189, 203 (1990). In *Rivera*, the Illinois Supreme Court added that a pattern of discrimination does not develop "anytime a party strikes more than one juror of any race or gender." *Rivera*, 221 Ill. 2d at 514. A *prima facie* showing of discrimination under *Batson* requires the defendant to demonstrate that relevant circumstances raise an inference that the prosecutor exercised peremptory challenges to remove venirepersons based on their race. *Batson*, 476 U.S. at 96.

¶ 47 In the first round, the trial court *voir dired* a panel of 14 members. Two of the 14 potential jurors were excused for cause; defense counsel exercised three peremptory challenges and the prosecution exercised five peremptory challenges. Of the five excused members of the venire, the first was a Caucasian male, and the next four were African-Americans, one male and three females. Defense counsel raised a *Batson* challenge by stating, "Basically all the African-Americans that have come before the jury pool as of right now have been struck." A short time later, defense counsel again mentioned *Batson* briefly, but his statement seemed equivocal regarding whether he was raising an objection. In any event, the trial court found Williams failed to establish a *prima facie* case of discrimination.

¶ 48 Regarding the first circumstance, racial identity exists between Williams and four of the five excluded venirepersons, which weighs in favor of a *prima facie* case. Nevertheless, this is not dispositive. See *People v. Williams*, 173 Ill. 2d 48, 72 (1996). As to the second circumstance, a pattern of strikes arguably develops, but the court must consider "the totality of the relevant facts" and "all relevant circumstances" surrounding the strikes. (Internal quotation marks omitted.) *People v. Davis*, 231 Ill. 2d 349, 360 (2008). In the first round, the State exercised a total of five peremptory strikes, of which four were African-American. After striking four, the State accepted an African-American juror. This does not present the whole picture as it includes

only the first of the three rounds of voir dire. The first round had 14 venirepersons; the second round had 14, and the third had 4. In the second and third round, the State used two more strikes but the record does not reflect the race of those individuals. Looking at only the first round does not represent the totality of relevant facts and circumstances. See *People v. Gutierrez,* 402 Ill. App. 3d 866, 894 (2010) (improper to consider only prosecutor's final four peremptory challenges; proper for trial court to consider entire jury selection process). Accordingly, with an incomplete record, we are unable to find a racial pattern to the State's exercise of its peremptory challenges.

¶ 49 Regarding the third factor—the disproportionate use of peremptory challenges against African-American venirepersons—the State used a total of seven peremptory strikes, four of which were against African-Americans, but the race of the remaining three is unknown. This record provides no basis for us to conclude that using at least four of seven strikes was disproportionate, especially when the jury had a total of six persons "of color." We cannot engage in guesswork or surmise the meaning of the term "of color," as Williams' counsel suggested during oral argument. Moreover, without the record indicating the racial makeup of the second and third venire, we cannot find a violation of *Batson* principles.

¶ 50 As to the prosecutor's questions and statements during *voir dire* examination and while exercising peremptory challenges, the trial court essentially conducted the *voir dire* without questioning from the State. Also relevant is whether the excluded African-American venirepersons were a heterogeneous group sharing race as their only common characteristic. Our review of the record shows that three of the four had common characteristics: they were teachers, had graduate level degrees, and were single. Thus, these three were nondiverse in respects other than race. See *People v. Easley*, 192 Ill. 2d 307, 324 (2000) ("A race-neutral explanation is one

based upon something other than the race of the venireperson."). The fourth venireperson was also single, with two years of college and employed as a bank teller. Her nephew was incarcerated for murder. Viewing the dismissal of this venireperson in the totality of the circumstances, we cannot say that the balance tipped in Williams' favor.

¶ 51 The final factor involves the race of the defendant, victim, and witnesses. Williams and both victims were African-American. And while the record does not affirmatively establish that the eyewitnesses were African-American, nothing indicates otherwise nor were there racial overtones in the case. See *People v. Evans*, 125 Ill. 2d 50, 65-66 (1988) (any racial issue inherent in selection of jury was minimal where case did not involve "an interracial crime in which specific racial groups would be prone to take sides of prejudice").

¶ 52 No actual disproportion in challenges or in representation can be shown without evidence. We find defense counsel's unsubstantiated assertion an insufficient basis for the trial judge to find that a *prima facie Batson* case had been established. See *People v. Garrett*, 139 Ill. 2d 189, 204 (1990) ("The mere fact that some black venire members are challenged and others accepted by the State, without more, cannot be said to constitute even a pattern of such challenges."). Finally, the trial judge relied on her own observation as to the racial makeup of the jury, the number of African-American venire members challenged by the defense and by the prosecution, and the characteristics of those members challenged by the State.

¶ 53 The exercise of a *Batson* challenge should never be lightly invoked or minimized. Neither occurred here. Nevertheless, due to the nature of the challenge it would have assisted our review if the record had demonstrated the *Batson* factors more precisely. Once a *Batson* claim has been made, the trial court should make a record indicating the race or ethnicity or both of each venireperson to facilitate review. Even though a defendant has the burden to establish a violation,

the better practice would be for the trial court as well as the parties to insert this information in the record.

¶ 54 In light of the totality of circumstances presented in the incomplete *voir dire* record, we find the trial court's conclusion that the defendant failed to establish a *prima facie* case of a *Batson* violation was not against the manifest weight of the evidence. The State's exercise of five peremptory challenges against one Caucasian and four African-Americans in the first panel of 12 venirepersons (two were excused for cause), with the incomplete *voir dire* record did not show purposeful discrimination.

¶ 55 Evidence of Earlier Shooting on the Same Day

¶ 56 Williams next argues that the trial court improperly granted the State's motion *in limine*, thereby restricting testimony about a shooting five hours earlier at the same address. The only limitation on the evidence of the earlier event was the trial court's ruling that any reference to it should be as an "incident" rather than a "shooting." This ruling pertained only to Davis' testimony, as she was the only witness to the earlier shooting. Williams asserts that the restriction imposed by the trial court barred him from presenting an alternate suspect theory and Davis' identification of Williams had "serious flaws and contradictions." We disagree.

¶ 57 "A defendant has the right to prove any fact or circumstances tending to show that someone else committed the crime. [Citation.] This right is limited by the further rule that the evidence offered may not be speculative, irrelevant, or immaterial." *People v. Luigs*, 96 Ill. App. 3d 700, 706 (1981). To be relevant, testimony must, if believed, tend to make any fact in issue more or less probable than it would be without the testimony. *People v. Gonzalez*, 142 Ill. 2d 481, 487-88 (1991).

¶ 58 A trial court is charged with the responsibility of determining whether evidence is relevant and admissible. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). Evidence is deemed relevant "if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence." *Id*. at 455-56. The trial court possesses discretion to reject remote, uncertain or speculative evidence. *Id*. at 456; *People v. Kraybill*, 2014 IL App (1st) 120232, ¶ 42 ("Evidence is considered speculative if an insufficient nexus exists to connect the offered evidence to the crime."). A reviewing court will not reverse the trial court's ruling on a motion *in limine* absent an abuse of discretion. *People v. Kirchner*, 194 Ill. 2d 502, 539 (2000).

¶ 59 "Although a defendant in a criminal case may offer evidence that tends to show that someone else committed the offense with which he is charged, such evidence should be excluded on the basis that it is irrelevant if it is too remote or too speculative. [Citations.]" *Id*. at 539-40. See *Kraybill*, 2014 IL App (1st) 120232, ¶ 47 **(**evidence tending to show that another individual committed offense inadmissible if too remote or speculative). Nothing in the excluded evidence would have made this argument any more persuasive or any less speculative. The record reveals that Williams vigorously challenged the identifications in cross-examining Davis, Rayon, and Watts. The jury considered and rejected Williams' theory that all three eyewitnesses were mistaken.

¶ 60 The fact of the earlier shooting at the same address does not tend to prove or disprove Williams' guilt, and, certainly, referring to the earlier event as an "incident" rather than a "shooting," would not hamper defense counsel. Davis testified that she did not see Williams at the earlier "incident," but consistently placed him at the second shooting, beginning with her first interview with the responding officers. In June 2009, Davis knew Williams only by his nickname

but recognized his photograph as someone she had met before and had seen around the neighborhood. Davis even knew where he went to high school and who were his friends. About one week later, Davis identified Williams in another photographic array, and in August, she picked Williams out of a lineup.

¶ 61 Williams theorizes that Davis having seen Crump, but not Williams, at the earlier shooting, and Davis and Watts both placing Crump in the car that drove past later, somehow exculpates him. This qualifies as raw speculation. No abuse of discretion occurred when the trial court disallowed mention of the earlier shooting as a "shooting," and ruled that instead it could only be referenced as an "incident."

¶ 62 Sixth Amendment Right to Confront Witnesses

¶ 63 Williams' third argument relates to his argument involving the earlier "incident." He argues that the trial court should have given him wide latitude on cross-examination of Davis to exploit the "flaws, inconsistencies and flat-out contradictions" in Davis' testimony. Williams asserts: "[b]y limiting the cross examination of Nikita Davis as to the second shooting, the Court kept the defense from impeaching her with her identification of a shooter with a similar appearance as Lendell Williams."

¶ 64 But, the record shows that the court reversed its earlier ruling and decided to allow Williams to recall Davis for further cross-examination. The trial court then informed defense counsel that if Williams recalled Davis and cross-examined her regarding her identification, Williams' photograph with Davis' notations on it would then be allowed to go to the jury. Williams declined to continue their cross-examination of Davis. Therefore, Williams forfeited this argument because the trial court would have permitted the defense to recall Davis for further cross-examination. In any event, no prejudice occurred. See *California v. Green*, 399 U.S. 149,

158 (1970) ("the Confrontation Clause is not violated by admitting a declarant's out-of-court statements, as long as the declarant is testifying as a witness and subject to full and effective cross-examination" (citing U.S. Const., amend.VI)).

¶ 65 Further, citing no authority, Williams argues that the court's limitation of evidence of the first shooting denied him the opportunity to attack the reliability of the identification. Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) states that the argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Williams offers only speculation that Davis must have been under stress after experiencing a shooting earlier in the day and then seeing one of the shooters, Crump, drive past. Williams complains that the jury had no way to fully assess the facts and circumstances of Davis' identification of Williams. We agree that this incident must have been a "chaotic and frenzied situation." We do not agree, however, that the trial court placed any meaningful limit on Williams' cross-examination of Davis. Additionally, this argument assumes that Davis' testimony would be impeached if a jury heard about the first incident because the jurors would assume it so stressed Davis that her credibility suffered as a result. This argument seems tenuous, at best, and is without citation to legal authority.

¶ 66 Proof of Guilt Beyond a Reasonable Doubt

¶ 67 Finally, Williams contends that the State did not prove his guilt beyond a reasonable doubt, arguing that only the "highly flawed and compromised" identification by three eyewitnesses linked him to the murder. Williams claims the photographic spreads were unduly suggestive and the witness identifications unreliable. The trial court denied Williams' pretrial motion to suppress the photographic identifications. At trial, Williams vigorously challenged the

identifications in cross-examining Davis, Rayon, and Watts. The jury heard Williams' theory that all three eyewitnesses were mistaken and rejected it.

¶ 68 The trier of fact resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences. *People v. Brown*, 2013 IL 114196, ¶ 48. When reviewing the sufficiency of evidence, we decide "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." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). We also resolve all reasonable inferences in favor of the prosecution (*People v. Bush*, 214 Ill. 2d 318, 326 (2005)) and may not substitute our judgment for the judgment of the trier of fact regarding the weight of the evidence or the credibility of the witnesses. *People v. Cooper,* 194 Ill. 2d 419, 431 (2000). Unless the evidence is deemed so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt, we will not set aside a criminal conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 69 Where the finding of the defendant's guilt depends on eyewitness testimony, we decide whether the fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). "A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 70 Generally, we assess identification testimony based on the factors presented in *Neil v. Biggers*, 409 U.S. 188 (1972), which include: (1) the opportunity the witness had to view the offender at the time of the crime; (2) the degree of attention given by the witness; (3) the accuracy of the witness' prior description of the offender; (4) the level of certainty the witness

demonstrated when identifying the perpetrator in person; and (5) the amount of time that lapsed between the crime and the in-person identification. *Slim*, 127 Ill. 2d at 307-08.

¶ 71 When the shooting started, Davis was sitting inside the house looking out through an opening in the window blinds. Davis stated she turned away from the window when she heard the first shot fired. But, a few minutes before that, Davis had an unobstructed view of Williams driving slowly past the house with the drivers' side window down. She then saw Williams on the sidewalk with another person. There was ample time to observe the occupants of the car before anyone approached on foot and the shooting started. The next day, Davis identified a photo of a man with a hairstyle similar to Williams' as the shooter, but said it was not Williams (Williams' photograph was not included in this first array).

¶ 72 Rayon had been sitting on the bottom step of the porch and had his back to the shooter. Rayon looked at the shooter for a split second before he was shot in the eye. On June 17, Rayon tentatively identified Williams in a photographic lineup but could not definitively state that Williams shot him. Three months later, he identified Williams in a lineup. While Rayon's testimony was inconsistent in part, he was certain when he identified Williams at the trial.

¶ 73 Watts was sitting in a chair on the porch talking to O'Connor when a four-door car drove slowly down the street. Crump was driving. The people in the car stared at Watts and O'Connor. Watts stated the shooter was "light-skinned" with dreadlocks. He was not paying attention to the shooter when the shooting started and was the first to run into the house. While Watts' testimony is less compelling than either Davis' or Rayon's, he knew of "Lil Nuk" and identified him at trial, despite his reluctance to be a witness.

¶ 74 Under these circumstances, the brevity of the moment does not necessarily impair the eyewitness accounts. All three eyewitnesses testified that just before the actual shooting,

Williams drove slowly past the house and they saw Williams staring at them. Davis knew of Williams by the name "L'il Nuk" and had met him "on multiple occasions" over the previous two or three years. See *People v. Robinson*, 42 Ill. 2d 371, 375-76 (1969) (person identified known to trial witness before crime; identification independent of and uninfluenced by any pretrial confrontation); *People v. Nelson*, 40 Ill. 2d 146, 151 (1968) (defendants known to eyewitnesses before commission of offenses). Each of them saw two shooters and identified Williams as one of them. There were some inconsistencies such as the number of occupants in the car (Davis saw four, Rayon and Watts saw three), who was driving the car (Davis identified Williams as the driver, Watts identified Crump as the driver). Although the entire tragedy took place in a matter of minutes, the witnesses' opportunity to observe what happened goes to the weight and credibility of their testimony. See *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 32 (citing *People v. Parks*, 50 Ill. App. 3d 929, 932-33 (1977) (incident lasting five to ten seconds sufficient to support conviction). In sum, the eyewitnesses had sufficient opportunity to observe defendant on June 8, and all three testified they were attentive to the two individuals walking toward them.

¶ 75 Within a few weeks of the shooting, both Davis and Watts identified Williams' photograph. Rayon, though tentative in his identification, wanted to see a lineup, and when he did, he identified Williams. Where the witness makes a positive identification, precise accuracy in the preliminary description is not necessary. *People v. Williams*, 221 Ill. App. 3d 1061, 1068 (1991).

¶ 76 Williams' final argument is that the witnesses' identifications were too unreliable to sustain a conviction. Williams characterizes the pretrial identification procedure as "grossly

suggestive" because only he appeared in both the photo array and the lineup and the witnesses' identifications lacked an independent basis of reliability.

¶ 77 Defendant bears the burden of proving a pretrial identification as impermissibly suggestive. *People v. Brooks*, 187 Ill. 2d 91, 126 (1999). To challenge an identification procedure, "the defendant must prove that the confrontation was so unnecessarily suggestive and conducive to irreparable misidentification that the defendant was denied due process of law." *People v. Ramos*, 339 Ill. App. 3d 891, 897 (2003). Even if a defendant meets this burden, the State may show by clear and convincing evidence that the witness based his or her identification on an independent recollection. *Brooks*, 187 Ill. 2d at 126.

¶ 78 Regarding Williams' argument of the suggestive nature of the identification procedure, *People v. Daniel*, 2014 IL App (1st) 121171 provides us with fresh guidance. In *Daniel*, the defendant challenged his conviction and identification on the basis that he was the only person to appear in both the photo array and lineup. The defendant argued that the chance of the witness identifying him as the offender increased and therefore rendered the identification procedure unduly suggestive. *Id*. ¶¶ 6-10. The *Daniel* court rejected the defendant's claims, noting that Illinois courts have repeatedly rejected this argument: " '[l]ineups are not rendered inadequate *** merely because the defendant is the only individual in the lineup who was also in the' photo array. [Citations.]" *Id*. ¶ 17. Based on *Daniel*, Williams cannot meet his burden of showing the pretrial identification was impermissibly suggestive.

¶ 79 Additionally, defense counsel argued to the jury that in February 2010, eight months after the shooting, a gun found in the possession of an arrested drug dealer matched the ballistics of the bullet casings found at the scene. While this is a curious development in the investigation, the fact of the gun's possession by another individual eight months later tends neither to prove nor

disprove Williams' involvement. The few inconsistencies identified in the eyewitnesses' accounts, individually and together, do not usurp the role of the jury in resolving questions of fact and credibility of witnesses. Viewing the totality of the evidence in the light most favorable to the State, we conclude sufficient evidence exists on which reasonable minds could find guilt beyond a reasonable doubt.

¶ 80 CONCLUSION

¶ 81 Affirmed.