

NOTICE

Decision filed 10/29/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 230644-U

NO. 5-23-0644

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 20-CF-365
	)	
DEVALE LORENZO JOHNSON,	)	Honorable
	)	Ralph R. Bloodworth III,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HACKETT delivered the judgment of the court.
Presiding Justice Cates and Sholar concurred in the judgment.

ORDER

- ¶ 1 *Held:* We reverse defendant’s conviction for first degree murder and remand for a new trial where the admission of the lead detective’s identification testimony was not harmless error.
- ¶ 2 A Jackson County jury found defendant, Devalé Lorenzo Johnson, guilty of three counts of first degree murder (720 ILCS 5/9-1(a)(1), 9-1(a)(2), 9-1(a)(3) (West 2018)), and one count of aggravated discharge of a firearm (*id.* § 24-1.2(a)(1)). Thereafter, the trial court merged defendant’s four convictions into one first degree murder conviction and sentenced defendant to 50 years, along with a 38-year firearm enhancement (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2018)), for a total of 88 years in the Illinois Department of Corrections (IDOC).
- ¶ 3 Defendant appeals, raising numerous arguments. Defendant argues that he should be given a new trial because (1) his trial counsel was ineffective by failing to redact portions of an audio

interview; (2) other-crimes evidence was improperly admitted; (3) improper identification testimony usurped the jury's function as fact finder; and (4) these first three errors, along with the presentation of lay witness testimony on scientific data and the admission of a jail visit video, constituted cumulative error. Alternatively, defendant argues that this court should reduce his sentence or remand for resentencing where his sentence was excessive. For the following reasons, we reverse defendant's conviction for first degree murder and remand for a new trial.

¶ 4

I. BACKGROUND

¶ 5 Following a drive-by shooting on August 17, 2020, in Carbondale, Illinois, Jamonte Allison, Sr. (Senior) was shot and killed. The subsequent investigation indicated that the crime was committed by defendant, along with Victor Purdiman (Purdiman) and Micah Williams (Williams), possibly as retaliation against Jamonte Allison, Jr. (Junior), Senior's son. On October 2, 2020, defendant and Victor Purdiman were jointly charged by information with three counts of first degree murder and one count of aggravated discharge of a firearm. Law enforcement arrested them in Florida. They were returned to Jackson County, Illinois, where the trial court severed their trials.

¶ 6

A. Pre-Trial Motions and Proceedings

¶ 7 Defendant filed a motion to suppress portions of an audio recording of his interview by Florida police, arguing that continued questioning after he asserted his right to counsel violated his rights. The trial court denied this motion, finding that defendant did not clearly invoke his right to counsel.

¶ 8 The State also filed a motion to admit other-crimes evidence pursuant to Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011), seeking to present events that occurred in December 2019 and January, March, April, July, and August 2020 to establish a continuing narrative of events

demonstrating that defendant and Junior had a “history of feuding and shooting at each other, each other’s houses, and families’ houses.” The December event concerned an altercation between Junior and defendant on a parking lot, during which defendant allegedly fired a handgun. The January event concerned a video Junior had shown a Carbondale police officer after his arrest on an unrelated driving charge, and Junior’s claim that the video depicted defendant threatening Junior with firearms. The March events concerned alleged shootings at defendant’s girlfriend’s house and Junior’s grandmother’s house within minutes of each other. The April event concerned an alleged shooting at Junior’s girlfriend’s house. The July events concerned alleged shootings at defendant’s girlfriend’s house and Junior’s grandmother’s house. The August events concerned alleged shootings at defendant’s girlfriend’s house prior to the shooting that resulted in Senior’s death.

¶ 9 Although the State sought to introduce the evidence under Rule 404(b), the State argued that the evidence did not require an exception under Rule 404(b), as it could be admitted as relevant and probative. The State argued the evidence was relevant because it involved the same people, places, and items as in the charged shooting, and the exclusion of the evidence would omit vital context necessary for the jury’s complete understanding of the case. Defendant argued that evidence of these events was unreliable, speculative, unfairly prejudicial, and of low probative value. Defendant contended that the incidents were prior bad acts being used to establish propensity. Defendant specifically objected to the July 9 incident, as the incident allegedly concerned defendant’s cousin, not defendant. The trial court barred only the July 9 incident, reasoning that the other incidents were part of a continuing narrative of events the jury needed to fully understand the circumstances of the present case.

¶ 10 At an August 2022 pretrial hearing, the State explained that there were approximately 125 hours of video evidence from the day of the crime in this case. For efficiency's sake, the State had condensed the evidence into a roughly 20-minute chronological presentation of the most relevant video clips. Due to the presentation's disjointedness, the State sought to elicit testimony from Detective William Bethel, who assisted in the investigation of this case and was thus very familiar with the videos. Defense counsel did not object to the video compilation but insisted on a *Thompson*¹ hearing regarding Detective Bethel's identification of individuals in the video. The trial court reserved the issue until Detective Bethel's testimony. Further details of this matter will be reviewed later in this order.

¶ 11 B. Jury Trial

¶ 12 Defendant's jury trial began on August 31, 2022, and the following evidence was presented. At the time of the incident, defendant was the boyfriend of India Martin (India), who was pregnant with his child. Defendant's cousin, Purdiman, was the boyfriend of India's sister, Alexis Martin (Alexis). India's prior boyfriend was Junior. Junior and defendant did not get along. Defendant and Junior were allegedly involved in many of the incidents included in the State's motion to admit other-crimes evidence, all of which occurred prior to the shooting in the instant case.

¶ 13 This case concerns the August 17, 2020, murder of Junior's father, Senior, at the home of Candice Wilson (Wilson). Junior lived at this home with his grandmother, Wilson. Witnesses to the murder included Senior's brother, James Allison (Allison); and Allison's friend, Jody Pullen (Pullen). On the day of the incident, defendant's aunt, Taniskia Morning (Morning), hosted a barbecue at her home which defendant, Williams, and Purdiman attended. Williams, a friend of

¹See *People v. Thompson*, 2016 IL 118667.

defendant, was dating defendant's cousin, Sharanee Morning (Sharanee), who was Morning's daughter.

¶ 14 India testified that, on March 11, 2020, she and Alexis went to a club. Junior and defendant were also at the club, but India did not recall any altercation between them. Shortly after returning home, shots were fired at her Larch Street residence. India confirmed that, at the time, she drove a white Kia Optima, and defendant owned a silver BMW.

¶ 15 India further testified that, by August 17, 2020, she moved to Almond Street. On that day, while outside with Alexis and Alexis's children, India saw Junior drive up to a stop sign, stop, and shoot out of his window in the direction of her home. Defendant was inside the house, but Purdiman, who was also there, chased after the car. India reported the incident to the police and identified Junior as the shooter. India testified that, later that day, she drove her Kia with Alexis to drop off defendant and Purdiman at Morning's residence for a barbecue. India testified that, around 5 p.m. that day, defendant called her to pick him up from Morning's residence. After she and Alexis picked up defendant and Purdiman, the four of them drove to Kentucky. She was going because "after the shooting on Almond," the police told her to stay at a hotel for a couple of nights until Junior was arrested, as they believed he would return. During this drive, she found out that Senior had been shot. At some point, defendant and Purdiman split off from India and Alexis, and the two sisters drove on to Florida, where they again met with defendant.

¶ 16 Alexis confirmed that she was India's sister, and that, on August 17, Junior shot at India's house. Alexis knew Junior was India's ex-boyfriend and identified Junior as the shooter. At some point that day, Alexis went with India in her white Kia to pick up defendant. Afterwards, they left town and ultimately traveled to Florida.

¶ 17 Donna Glaub testified that she lived on Almond Street, and at approximately 3:20 p.m. on August 17, 2020, she heard gunshots. She looked out her front door and saw a dark-skinned male in khaki shorts walking in the yard several houses to the north. A small white car was parked in that house's driveway. At 3:33 p.m., Glaub took photographs from her doorway.

¶ 18 Jody Pullen testified that on August 17, he and Allison, the victim's brother, went to Allison's mother's (Wilson's) home. Pullen parked his black Kia on the street behind Allison's blue Chevy. Senior exited the house and stood by the driver's side window of the Chevy while Allison remained in the car. As Pullen shook Senior's hand, Pullen heard loud shots. Pullen hit the ground and felt a bullet hit his shoe and pant leg. He looked over and saw Senior on the ground, unresponsive. Pullen did not see who fired the shots, and he was unsure whether he heard any vehicles before the shooting.

¶ 19 Allison testified that while he, Pullen, and Senior were talking, a black SUV passed them, turned around, and came back. The SUV pulled up to Allison's driver's side window where the three were standing, stopped, and an occupant of the SUV "shot a lot of times," hitting Senior. The SUV then pulled forward, stopped, and an occupant "shot a lot of times" at the house. The SUV then "aggressively" drove away, heading south. Junior came out of the house and shot back at the SUV.

¶ 20 Allison told police that the front seat passenger shot a rifle and the backseat passenger shot "two handguns, one in each hand." Allison was about four feet from the SUV and immediately recognized the passengers, although he did not know their names at the time. Because of this, Allison was unable to give the passengers' names to responding police officers. Shortly after the shooting, however, Junior told Allison that the person Allison recognized as the rifle-shooting passenger was named "DV." Allison did not remember if Junior showed him photographs of

defendant. Around August 21, 2020, Allison identified defendant in a photo line-up as one of the shooters. In court, Allison identified defendant as the rifle-shooting passenger.

¶ 21 Wilson testified that at the time of the incident, Junior lived with her at her Stalls Avenue home. On August 17, 2020, Senior had just left her house through the front door when Wilson heard gunshots and saw a black truck driving fast. She jumped down on the floor and closed her main door. Once it was quiet, she went outside and walked toward the scene. However, before she got there, a lady told her, “You don’t need to see this.” Wilson returned to her house steps. Wilson did not recall speaking to Allison, and Wilson did not know where Junior was during the incident.

¶ 22 Earlier on August 17, Wilson called the Carbondale Police Department (CPD) because Junior received a phone call, and Wilson felt that she was in danger. She previously reported shootings at her house on March 11 and July 9, 2020, (both of which were incidents included in the State’s pretrial motion to admit other-crimes evidence). Although the trial court had barred evidence of the July 9 incident, defense counsel did not object to Wilson’s brief mention of that incident.

¶ 23 Officer Dylan Yost of the CPD testified that shortly after 6 p.m. on August 17, 2020, he responded to a report of shots fired near 1038 North Robert A. Stalls Avenue. Upon arrival, Officer Yost observed an unresponsive black male, who appeared to have been shot, lying face down near a blue sedan. Bystanders identified the male as Senior. Senior was transported to the hospital, where he died. Officer Yost received information at the scene that four black males in a black SUV shot Senior.

¶ 24 Dr. Marissa Feeney, testifying as an expert in forensic pathology, indicated that she performed Senior’s autopsy. Dr. Feeney observed two gunshot wounds, and that the amount of tissue destruction with one of the wounds was “consistent with that caused by a high-powered

firearm or ammunition.” Dr. Feeney opined that the cause of death was two gunshot wounds to the torso, which caused internal damage.

¶ 25 Morning testified that on August 17, 2020, she hosted a barbecue at her home at 513 South Rawlings, which defendant attended. Morning owned a black Ford Expedition, and at various times during the barbecue, she lent her Expedition to Jerome Smith, Williams, and defendant. When defendant borrowed the Expedition, he got it stuck in the road briefly. She testified that something caused damage that day to the area near the Expedition’s rear window.

¶ 26 Purdiman testified that he was awaiting sentencing in connection with the August 17 shooting of Senior. Purdiman confirmed that, at the time of the shooting, his cousin, defendant, was dating India, and Purdiman was dating Alexis. On August 17, Purdiman, defendant, India, Alexis, and the sisters’ children were shot at outside of India’s house. Purdiman did not see who fired the shots. At the time, India was walking toward the house, and defendant was standing in the front yard. Purdiman also confirmed that he was the man shown in Glaub’s photograph walking in the front yard of India’s house.

¶ 27 Purdiman did not know Junior, but defendant told Purdiman that Junior was the shooter at India’s house. Purdiman and defendant were “real close,” and Purdiman knew that defendant and Junior did not get along. After the shooting at India’s house, India drove Alexis, defendant, and Purdiman in her Kia to Morning’s house. Purdiman had a 9-millimeter gun, and defendant had an AR-15. Purdiman and defendant were upset about shots being fired at them.

¶ 28 In video footage played at trial, a Kia is shown dropping two people off at Morning’s house. Purdiman identified himself and defendant getting out of the vehicle. Purdiman confirmed that he was wearing cargo shorts and a black T-shirt, and that defendant wore a green Nike jogging outfit with a hood. Both men went inside Morning’s house, and defendant immediately asked Morning

to use the Expedition. Purdiman knew that he and defendant were going to use the Expedition to look for Junior and an individual named Turk.² In video footage of the Expedition leaving Morning's house, Purdiman identified defendant as the driver and himself as the passenger. No one else was with them.

¶ 29 In video footage of the Expedition later returning to Morning's residence, Purdiman identified himself getting out of the vehicle. In the next clip, Purdiman identified himself, defendant, and Williams looking at Williams's Malibu. Purdiman got into the Malibu's passenger seat, Williams drove, and defendant sat in the back. Purdiman noted that the three men drove around looking for Junior and Turk. Eventually, they saw Turk but did not shoot at him because children were present. The three men then returned to Morning's house. In video footage of the Malibu's return, Purdiman identified himself exiting the passenger side and defendant exiting the backseat. Since Turk had seen them in the Malibu, Williams asked to borrow Morning's Expedition.

¶ 30 In video footage played at trial, Purdiman identified himself, Williams, and defendant heading toward the Expedition at around 6:10 p.m. Purdiman confirmed that he and defendant were still armed at this time. Purdiman testified that on this trip, he rode in the front passenger seat, Williams drove, and defendant sat in the back. Purdiman indicated that they were looking for Junior. Purdiman saw Senior and another man standing in the road talking. The three drove around the block, passing by the men in the road once, and then came back around the block again. Purdiman saw a person that he believed to be Junior sitting in a car beside the two men standing in the road. When they drove up beside them, Purdiman and defendant fired shots. Purdiman heard

²This individual is an associate of Junior's. Because there is a separate police officer in this case with the last name of Turk, we refer to this individual as "Turk" and the police officer as "Officer Turk."

someone return fire. The Expedition sped away and returned to Morning's house, where both men abandoned their weapons. Defendant then called India.

¶ 31 From video footage of Morning's house after the Expedition's return, Purdiman identified defendant jumping the fence to get to India's Kia. Purdiman also jumped the fence and got into the Kia. India drove, defendant was in the front passenger seat, and Alexis and Purdiman were in the backseat. They drove to Paducah, where the other three dropped Purdiman off at his mother's home before going to a hotel. Shortly thereafter, the other three left for Florida, and Purdiman went to Tennessee. When Purdiman learned that Williams had been arrested, he joined the others in Florida. Purdiman was arrested in Orlando but refused to speak with officers. He was then returned to Jackson County, Illinois, where he eventually cooperated with law enforcement.

¶ 32 Purdiman testified that he "wanted anybody who shot at" Alexis's children. He confirmed that he was incarcerated on a first degree murder charge in this case for about 1½ years, until about three weeks before his February 2022 trial date. At that point, he agreed to plead guilty to second degree murder in exchange for an interview with detectives and testifying in defendant's case. He admitted that, if his sentencing hearing went well, he could get out of jail "in a month or two."

¶ 33 Williams identified himself from video footage from a Circle K and confirmed that on the day of the murder, he wore red shoes, jeans, and a white shirt. Williams confirmed that only he, "Bird" (Purdiman), and defendant were in the Expedition, and that he drove.

¶ 34 Testimony was then offered about defendant's arrest and his subsequent police interview. Specifically, on October 13, 2020, law enforcement arrested defendant at India's Florida apartment. Defendant was arrested in a silver Dodge Challenger in the apartment parking lot. Law enforcement also arrested Purdiman at the apartment. There was also a silver Jeep Liberty and a white Kia Optima at the apartment.

¶ 35 Christopher Gilberti, an Orlando County Sheriff's Office (OCSO) homicide detective, testified that on October 13, 2020, he assisted in executing a search warrant at India's apartment. In defendant's bedroom, Gilberti recovered a silver Apple iPhone, a brown wallet with defendant's identification, ammunition, and a Draco firearm. In Purdiman's bedroom, Gilberti recovered a black Apple iPhone; size nine Jordan black and yellow sneakers; .223 caliber ammunition; and three firearms, namely, a Bersa 9-millimeter handgun, a SCCY 9-millimeter handgun, and a Draco 5.56 rifle. In the kitchen, Gilberti recovered a second silver iPhone. After obtaining a search warrant, the iPhone was sent to the digital forensics unit to be examined.

¶ 36 John Nutting testified that he was a homicide team corporal at OCSO. On October 14, following defendant's arrest, Nutting interviewed defendant in an audio-recorded interview. Before the interview, Detective Bethel sent Nutting a probable cause affidavit. Nutting had no information about the case other than what he had gathered from a few conversations with Detective Bethel and the three-page probable cause affidavit.

¶ 37 Before questioning defendant, Nutting read defendant his *Miranda*³ rights. Nutting provided the following testimony about defendant's interview. Defendant said that Purdiman was his cousin and India was his pregnant girlfriend. Junior shot at India earlier on August 17 because he was jealous about her dating defendant. Defendant was not present for this shooting, but he told India to call the police. A cousin named "Quay" dropped him off that day for a barbecue at Morning's house. He borrowed Morning's black Ford Expedition to buy marijuana with Purdiman and other individuals. On the way, the Expedition broke down, and they returned to Morning's house. A cousin from Kentucky, "Nene or Noni," picked him up from the barbecue. After seeing social media posts about a shooting, defendant "felt it was prudent to leave the area." Defendant

³See *Miranda v. Arizona*, 384 U.S. 436 (1966).

claimed that he left Illinois hours before the murder. Defendant told Nutting that an unnamed cousin, Junior, and Williams had committed the shooting.

¶ 38 The State played the audio recording of defendant's interview. Defense counsel confirmed that he was making the "same objections." No limiting instruction was requested or given at this time.

¶ 39 In the audio-recorded interview, defendant confirmed that his cousin, "Nene," picked him up from Morning's residence. Nutting asked what kind of car she drove. Defendant then asked, "Um... should I just get a lawyer?" Nutting responded, "No, yeah, I can finish reading this stuff to you, and it's all here, we can go over this real quick." Defendant responded, "Yeah, absolutely." Nutting confirmed: "Cause that's the main thing, you want to see what's going on here?" Defendant responded, "Yes, yeah! Cause I wanted to know what happened." Nutting, apparently reading from the probable cause affidavit, stated that video showed defendant approaching the vehicle concealing something under his pant leg and holding something wrapped around his waistline with his hand. Defendant responded, "No way." Nutting then told defendant that the CPD collected various shell casings from the murder scene and asked defendant if any of the guns recovered at the Florida apartment would match those casings. Defendant denied this, explaining that India legally purchased the guns a few days prior in Orlando.

¶ 40 Nutting continued reading from the affidavit, detailing the observed path of the Expedition toward the crime scene. Defendant told Nutting that an apartment complex camera probably recorded the Expedition breaking down, corroborating his story. Defendant then suggested that Williams was responsible for the shooting, explaining that Williams and Junior had recently been "beefing." Nutting confirmed, "Micah, the driver of this, he was driving?" Defendant responded, "Yeah," and stated that, just two days prior to the shooting, Junior flashed a gun at and threatened

to kill Williams's younger brothers. Defendant denied knowing the phone number of a recovered phone he used, claiming that he had borrowed that phone.

¶ 41 Nutting continued reading from the affidavit: "Morning identified Micah Williams as being at her house before the shooting[;] *** Morning also identified [defendant] as arriving at her residence, and he asked to use the Expedition." When Nutting stated that defendant already admitted to using the Expedition, defendant insisted, "That was before, that was before, I just need to get a lawyer, cause the lawyer can prove I stopped the car—it broke down right there, and that happened, like, that was earlier in the day, it was broad daylight!" Nutting continued, "Yeah, and then it goes on to say, 'I offed that mother ***,' [apparently] that's what you guys were saying when you got back to the party." Nutting continued, "Junior identified you and [Purdiman] as the shooters," to which defendant responded, "How? I wasn't there." Defendant told Nutting that he had seen Facebook posts claiming that Junior had killed a man from Cairo, which prompted anger from Cairo residents toward Junior.

¶ 42 Nutting read from the affidavit that "Williams admitted to being the driver of the Expedition," and "identified [defendant] and Purdiman as the shooters." To this, defendant responded, "What?" Nutting continued reading: "[Williams] said you said 'we got him, we got him'; [that] you were in the backseat, and [Purdiman] was in the front seat. *** Said [defendant] and Purdiman were angry about having been shot at outside of Almond [Street] earlier that day." Defendant interjected, clarifying that he had not been at the Almond Street shooting.

¶ 43 Defendant indicated that he did not understand why individuals placed him at the scene of the murder since he was not in Illinois then. Nutting continued reading: "Said, 'Well, if we can't get the son, we'll get the dad.' [Defendant] and Purdiman yell, 'Yeah, n***, yeah,' from the vehicle, and both *** began shooting." Defendant commented, "This is a lot of BS, and I know I

can beat this, because the cameras seen me stop right there and get out the car and he was trying to fix it and all this and [Morning] had to come and get her car.” Nutting suggested that Williams was lying, trying to protect others who had been in the car with him, to which defendant responded that it was probably “his little cousins.” The audio recording ended. Nutting testified that India gave him information inconsistent with defendant’s story. On cross examination, Nutting admitted that, while defendant had freely spoken with Nutting, Purdiman “was not interested in speaking with” Nutting.

¶ 44 Pawel Sawicki, a CPD officer, testified that on October 31, 2020, he assisted an IDOC officer in conducting a compliance check. The IDOC officer had located a firearm inside the apartment of an individual named Glen Grissett. Immediately upon entering Grissett’s apartment, Sawicki saw an AR-15 Stag Arms brand rifle on the living room couch. The gun had a front sight but no rear sight and was fitted with an aftermarket Ruger brand stock.

¶ 45 Officer Dillon Turk of the CPD testified that, in the early morning on January 26, 2020, he arrested Junior for driving on a suspended license. Junior then showed Officer Turk a 14 second video on his phone which Junior claimed was related to a 2019 shooting. Officer Turk recorded this video on his own phone. Officer Turk testified to the contents of his own video:

“In that video you can observe [Junior] sitting at the processing bench, he’s holding his phone and he turns to show me the video. On the video I observe a hand, a left hand holding—well, at first it starts with four handguns on the couch, as you see the handguns, a male’s voice comes over the video while holding a rifle styled—sorry, a rifle in his hand, in his left hand, and you observe a tattoo on his left hand. As he’s doing this he said, ‘Smoke—’ ”

At this point, defense counsel objected to this testimony as hearsay, and the trial court sustained the objection. Officer Turk confirmed that his video showed a distinctively tattooed hand. Defense counsel did not object to this description of the visual aspect of Officer Turk’s video.

¶ 46 Officer Turk testified that he found a Facebook account for DV Johnson, which was a name Junior had given him. Officer Turk recognized the tattoo from his video in the account's profile photograph. In the subject's left hand, Officer Turk saw a rifle similar to the one in his video. Defense counsel objected on foundation grounds to the admission of the Facebook photographs and Officer Turk's video. The trial court admitted the photographs into evidence but denied admission of Officer Turk's video.

¶ 47 Dan Reed, a CPD evidence technician, testified that on August 17, 2020, at approximately 6:30 p.m., he was dispatched to 1038 North Robert A. Stalls Avenue for a shooting incident. This was the third time Reed had been at that residence for a shooting call; Reed had previously processed the residence on March 11 and July 9. On March 11, he found seven defects to the front of the house, three .223 rifle shell casings, one 9-millimeter Ruger shell casing, and five .40 shell casings. On July 9, he found 11 new bullet holes in the front of the house. After arriving at the residence on August 17, Reed found 13 shell casings in the street in front of the residence. Seven were 9-millimeter casings, and six were .223/5.56 rifle casings. On the sidewalk leading up to the porch, Reed found another 9-millimeter casing. Reed sent the casings to the crime lab for processing.

¶ 48 On August 19, Reed processed Morning's black Ford Expedition suspected to be involved in the shooting. He administered gunshot residue analysis kits to interior areas of the vehicle and sent the kits to the crime lab. Inside the vehicle, Reed found mail in Morning's name and a vehicle transaction tag listing Morning as the purchaser and defendant as the seller. On the area near the Expedition's rear window, which appeared to have been painted over, Reed observed a dent consistent with a bullet ricochet.

¶ 49 Reed recalled that on March 11, he processed India's former house on Larch Street after a shooting and recovered two projectiles that had penetrated the wall into the house's interior. Reed also processed a BMW that officers had seen leaving the Stalls Avenue area, and which they believed to be associated with the March 11 shooting there. Defense counsel objected "to the March and the July shooting incidents as irrelevant and also subject to [the] pretrial motions on the subject." The trial court overruled counsel's objection.

¶ 50 Inside the BMW, Reed found three handguns with distinctive features and two .223 rifle shell casings consistent with the shell casings found in front of Wilson's house. Reed testified that he recognized the handguns from a cell phone video. In that video, Reed described seeing a man with distinct hand tattoos holding a rifle, and three pistols or handguns in the background. Due to the guns' distinctive features, he identified the three guns in the video as the same guns from the BMW. Reed described the video's visual aspects without any objection.

¶ 51 Reed also found various documents in the BMW, including a bill of sale listing India and defendant as the BMW's buyers, credit cards in Morning's and defendant's names, a tax document listing India and defendant as the BMW's co-owners, and a current vehicle registration card in India's and defendant's names. On cross examination, Reed agreed that one of the guns found in the BMW was one of the most common revolvers in the United States. He admitted that .223 and 5.56 millimeter rounds were also extremely common. Reed was unable to identify serial numbers from the guns in the cell phone video he had seen.

¶ 52 Shan Mei Jones, a forensic scientist, testified as an expert in trace chemistry. Jones analyzed five primer gunshot residue test kits in this case. The first kit was from the victim's hands and tested inactive for primer gunshot residue. The remaining kits were from the interior of the Expedition. All the kits tested negative for primer gunshot residue except for the kit from the

Expedition's rear passenger door frame around the window. Jones thus concluded that the rear passenger door window frame was in the environment of a discharged firearm or had contact with a primer gunshot residue related item.

¶ 53 Lauren Vunetich and Timothy Johnson, forensic scientists at the Illinois State Police (ISP) crime lab, testified as experts in firearms examination and identification on the ballistics evidence recovered from Stalls Avenue on August 17. In Vunetich's opinion: (1) the six .223/5.56 caliber rifle casings were all fired from the same firearm, (2) the seven 9-millimeter caliber shell casings were all fired from a second firearm, and (3) the single 9-millimeter shell casing was fired from a third firearm. Johnson compared the six .223/5.56 caliber rifle casings to the Stag Arms rifle and concluded that all six had been fired from that rifle. Johnson also compared the two .223 rifle shell casings recovered from the BMW and the three .223 rifle shell casings recovered from Stalls Avenue on March 11 to the Stag Arms rifle and confirmed that all casings had been fired from that rifle.

¶ 54 James Montgomery, testifying as an expert in digital forensic examination, stated that he was an OCSO digital forensic investigator. On October 14, 2020, Montgomery performed a complete system data extraction on a silver Apple iPhone, during which he saw defendant's name in the user's account several times. Montgomery provided the extracted data to Detective Bethel. Montgomery testified that Cellebrite, a program used in data extraction, generated a report and analysis of the phone.

¶ 55 Prior to Detective Bethel's testimony, outside the presence of the jury, the trial court held a hearing under *Thompson*⁴ regarding his testimony. At that hearing, Detective Bethel testified that he was a CPD officer who led the investigation and collected videos in this case. He believed

⁴See *Thompson*, 2016 IL 118667.

defendant was one of the individuals in the videos. When asked whether this meant he would be testifying as to defendant's identity in the videos, Detective Bethel clarified that his opinion was not an "official ID," as he had not recognized defendant by sight in the videos from prior encounters, but it was rather a conclusion he had reached "based on multiple factors." When asked to expound on those factors, Detective Bethel testified:

"Well, I mean, you look at body size, hairstyle, facial hair, you know, tall, slender, complexion; talk about, you know, a host of factors, who dropped them off, based on people we talked to during the investigation. We've got pretty much a roster of people that were at this barbecue at 513 Rawlings, which is right across the street from where [the] video is; and so, you know, you got a process of elimination going on as well. It's okay, who's here during the barbecue, who's still here when the SUV leaves, and—excuse me—all that, and so then we end up with three people and, and we believe we identified all three of those people."

¶ 56 Detective Bethel was unable to, without investigating further, identify defendant from the videos, as he had never met defendant in person. Detective Bethel had acquainted himself with defendant's appearance by viewing photos from various police departments, social media, and search warrants. Detective Bethel learned that India dropped off defendant and Purdiman at Morning's residence on the day of the murder. Morning gave Detective Bethel a list of barbecue attendees, and he familiarized himself with their appearances. Although Detective Bethel could not identify them in videos by their faces alone, he could identify them through their heights, weights, builds, clothing, and even walking styles. After identifying Williams as the driver and Purdiman as the front passenger during the Expedition's consequential trip, and learning that defendant was also in the car, Detective Bethel compared the barbecue attendees' appearances to identify defendant as the backseat passenger.

¶ 57 Defense counsel moved to suppress Detective Bethel's identification testimony since he could not identify defendant from the videos alone and instead relied on information from other witnesses and a process of elimination. Counsel contended that the video quality was too low for

identification. Counsel emphasized that Detective Bethel “did not have a general level of familiarity with [defendant] before he began this investigation.” Counsel argued that the probative value of Detective Bethel’s identification testimony, therefore, was outweighed by its prejudicial effect. Counsel asked the trial court to prohibit Detective Bethel from viewing the videos and “testifying that, ‘I recognize that as [defendant],’ or ‘That’s [defendant].’ ”

¶ 58 The State asserted that Detective Bethel’s identification would not prejudice defendant precisely *because* of his prior unfamiliarity with defendant. Instead of testifying that he recognized defendant “from prior occasions,” thereby implicating defendant as an individual familiar to police, Detective Bethel would testify that he only identified defendant after an exhaustive investigation. The State argued that to prohibit Detective Bethel from definitively testifying that the backseat passenger was defendant was “to insult the jury’s intelligence.” The State commented that the jury could view the videos and make its own determination on the third passenger’s identity, regardless of Detective Bethel’s testimony. The State argued that Detective Bethel’s testimony that the backseat passenger was defendant was “not a matter of identification,” but “a matter of solid police work,” which was “not prejudicial.” Defense counsel disagreed, asserting that Detective Bethel’s testimony that the backseat passenger was defendant *was* identification testimony, would prejudice defendant even without mentioning “prior arrests or police contact,” and would invade the jury’s province.

¶ 59 The trial court noted that it had heard the arguments of the attorneys, considered the testimony presented, and weighed whether the probative value of the proposed testimony would be substantially outweighed by the danger of unfair prejudice. The trial court ruled that Detective Bethel’s identification testimony would be allowed. However, the court assured defense counsel that, at defense counsel’s request, limiting instructions would be read to the jury during pertinent

parts of the testimony and at the end of the trial.

¶ 60 The jury returned, and Detective Bethel testified at trial. Detective Bethel's testimony proceeded as follows. While reviewing surveillance videos from near the scene of the murder, Detective Bethel observed a black Ford Expedition matching the description of the car involved in the shooting. The Expedition sped southbound on Stalls Avenue. Detective Bethel tracked the Expedition until it eventually arrived at 513 South Rawlings Street, Morning's residence. Detective Bethel reviewed surveillance camera footage from across the street.

¶ 61 Detective Bethel testified that Morning told officers that several friends and family members, including Williams, defendant, and Purdiman attended her barbecue. Morning did not know who had left in the Expedition, so officers asked her to recount which attendees had *not* left. Officers were then left with Williams, Purdiman, and defendant as the most probable passengers of the Expedition. On the day of the murder, Williams, who Detective Bethel described as "tall, thin, [and] dark complected," wore his hair in a bun, a white or light-colored T-shirt, jeans, and red shoes. Purdiman was "shorter [and] darker complected" with a "close cropped haircut," and on the day of the murder, he wore a black T-shirt, khaki shorts, and yellow and black sneakers. The last passenger of the Expedition was tall, slender, and of light complexion, with facial hair and a "poofed out" hairstyle. On the day of the murder, he wore a long-sleeved hooded sweatshirt and long pants. No other attendee at Morning's barbecue matched this description except for defendant. Detective Bethel utilized photographs, surveillance videos, and interviews to ultimately determine that Williams was the Expedition's driver, Purdiman was the front seat passenger, and defendant was the backseat passenger.

¶ 62 Detective Bethel sought search warrants for several phone records. He had been trained in analyzing phone records and had taken a 40-hour class in the operation of ZetX, an analytical tool

officers used to plot out and investigate mobile phone data. Officers uploaded the phone records to ZetX, which plotted the data onto Google Earth maps. ZetX also calculated International Mobile Equipment Identifier (IMEI) numbers, which are identification numbers for cell phones. From these maps, Detective Bethel determined the general area where certain devices were at any time.

¶ 63 In India's most common contacts list, Detective Bethel found a phone number with a 404 area code, a Georgia area code. Knowing that defendant had previously lived in Georgia, Detective Bethel obtained phone records for that number. The OCSO extracted data from the Florida iPhone and found that the associated phone number had a 470 area code and was registered to "Dymin Johnson." Detective Bethel believed Dymin to be defendant's relative as defendant's parents appeared to be listed on Dymin's account. The Cellebrite report also listed the phone as "Devale's iPhone." The phone's IMEI number was associated with the 470 area code number and the Georgia number, indicating that the same phone had been used with both numbers at different times.

¶ 64 Having determined that both phone numbers used the same silver iPhone, Detective Bethel used ZetX to plot the phone's pathway. In Tennessee, the Georgia number went silent, and the 470 area code number began. The 470 area code number then continued to Florida. Based on this data, Detective Bethel concluded that defendant changed his original Georgia number to the new 470 area code number in Tennessee. Detective Bethel also used ZetX to plot geolocation data recovered from Snapchat and Google. Defense counsel objected that Detective Bethel had not been qualified as an expert and was offering improper opinion testimony. The State disagreed, insisting that any layperson could plot such data on a map. The trial court overruled defense counsel's standing objection to Detective Bethel's opinion testimony.

¶ 65 The State then offered a compilation of the relevant clips from the previously admitted surveillance video footage from various sources. The clips were arranged chronologically for

easier comprehension. As the video played, Detective Bethel provided context, which included identifying defendant in the video verbally and, after being prompted by the State on three occasions, circling defendant in the still image on the screen. The first two clips showed Williams exiting Circle K, and a silver Chevy Malibu at the station. The third clip showed the white Kia pulling up to Morning's residence at 5:20 p.m. and two people exiting the back. The clothing of the person on the passenger side matched the description of Purdiman's clothing, and the person on the driver's side wore a backpack and a matching, long-sleeved, hooded tracksuit. Detective Bethel identified this passenger as defendant. The next two clips showed the white Kia leaving and the Expedition departing Morning's residence at 5:23 p.m. In this clip, the driver had facial hair and a hood on and was consistent in appearance with the passenger who had exited the Kia three minutes prior. Behind the Expedition, an individual wearing clothing consistent with that worn by Williams remained close to a silver Malibu.

¶ 66 The next several clips tracked the Expedition's path through the city. At one point, defendant's Snapchat location data matched the Expedition's location. Detective Bethel only saw two people, both in the front. The passenger wore darker clothing and a necklace while the driver wore lighter clothing. Clips of Morning's residence showed the Malibu leaving Morning's residence at 5:41 p.m. and returning at 5:51 p.m. The Expedition returned to Morning's residence at 5:53 p.m., and someone wearing clothing and shoes consistent with Purdiman's exited the vehicle. When the Expedition returned, the individuals Detective Bethel identified as defendant and Purdiman stood near the Malibu while Williams walked toward the residence. At 5:55 p.m., the Malibu left again. Defendant's Snapchat location data matched the Malibu's location. The Malibu returned at 6:07 p.m., and Detective Bethel asserted that the clip showed Purdiman exiting the front passenger seat, and defendant exiting the rear passenger seat.

¶ 67 The same three subjects then walked toward the Expedition. Detective Bethel believed that this clip showed Purdiman about to open the Expedition's front passenger door and Williams approaching the driver's side door. The Expedition left Morning's residence for its second trip at 6:11 p.m., and a clip showed the driver, who Detective Bethel identified as Williams. Detective Bethel showed the clip of the driver to Centralia officers, who confirmed that the driver was Williams. The Expedition drove through the city, and Detective Bethel observed that there was not yet any observable damage to the area near the Expedition's rear passenger window. Another clip showed the Expedition in the Stalls Avenue area heading in the direction of Wilson's house. At 6:22 p.m., the time of the report of shots fired, the Expedition sped through the 700 block of Stalls Avenue. Video clips tracked the Expedition's path back to Morning's residence at 6:26 p.m. The whole trip took about 15 minutes.

¶ 68 Detective Bethel testified that the next clip showed defendant exiting the rear passenger seat and Purdiman exiting the front passenger seat. Detective Bethel did not believe Williams exited the Expedition at this time. The last time Detective Bethel got any location data from defendant's phone was sometime before the Expedition left on this trip, and the data only picked back up at 6:23 p.m. Detective Bethel did not know why there was such a long gap in defendant's mobile traffic but noted that the phone could have been off or in airplane mode.

¶ 69 Detective Bethel testified that cell phone data revealed that the Georgia number called India's number at about 6:31 p.m. The next clip, at 6:33 p.m., showed the white Kia turning into an apartment complex just south of Morning's residence on the other side of a fence. At 6:35 p.m., an individual Detective Bethel suspected was defendant jumped the fence and jogged to the Kia's rear driver's side. The Kia then left. A later clip now showed observable damage to the area near the Expedition's rear passenger window.

¶ 70 Detective Bethel admitted that there were gaps in the Expedition's trip for which video footage was unavailable, and that there was no video footage of the Malibu's trip. Detective Bethel admitted that the footage of Morning's house was "too far away for initial identification."

¶ 71 Detective Bethel concluded, based on India's, and the Georgia number's, cell phone records, that the Kia traveled southbound to Kentucky. In Tennessee, the 470 area code number began, and the records established a path from Tennessee to Tampa, Florida. On August 31, law enforcement arrested Williams. The next day, the 470 area code number left Tampa for Orlando, and within a couple of days, Purdiman's number also traveled from Kentucky to Orlando.

¶ 72 Throughout Detective Bethel's testimony, defense counsel objected to Detective Bethel's explicit identification of the individual in the videos by defendant's name. However, these objections were overruled.

¶ 73 At this point, the trial court read the following instructions to the jury:

"First, folks, evidence has been received that the Defendant has been involved in offenses other than those charged in the information. This evidence has been received on the issues of his identification and motive and may be considered by you only for that limited purpose.

It is for you to determine whether the Defendant was involved in those offenses and if so, what weight should be given to this evidence on the issues of identification and motive.

Folks, you also have before you evidence that a law enforcement officer made an identification of the Defendant from a video recording. It is for you to determine what weight, if any, should be given to that evidence.

In determining the weight to be given to this evidence, you should not draw any inference from the fact that the witness is a law enforcement officer."

The trial court then recessed for lunch. After the lunch break, the jury returned, and the trial court read the same instructions it had gone through before lunch. The court also read the following additional instructions:

“Folks, you also have before you evidence that a law enforcement officer made an identification of an individual or individuals from a video recording. It is for you to determine what weight, if any, should be given to that evidence.

In determining the weight to be given to this evidence, you should not draw any inference from the fact that the witness is a law enforcement officer.”

¶ 74 Detective Bethel then resumed his testimony. Detective Bethel testified that he examined the Florida iPhone’s Cellebrite report and found an iCloud account under the name “dvthegod7496.” A search of this account produced photographs, videos, and other media. Detective Bethel testified that metadata from the photographs revealed that they had either been taken or uploaded to iCloud in July 2019. However, Detective Bethel could not be sure that the photographs had not been modified or taken years prior. The photographs depicted an individual with several firearms, including an AR-15 rifle, a silver revolver, and a black semiautomatic handgun. Several features of the rifle were consistent with those of the Stag Arms rifle recovered from Glen Grissett’s apartment on October 31. Upon evaluating close-up photographs of two of the firearms found in the BMW, Detective Bethel testified that they were consistent with the firearms from the iCloud photographs. One photograph showed a tattoo on the individual’s left hand which appeared consistent with the tattoo in a photograph of defendant’s left hand.

¶ 75 Also, in the Cellebrite report of the Florida iPhone, Detective Bethel saw that the phone had multiple TextNow accounts. One of these accounts was named “johnjohn102396.” Detective Bethel noted that the numbers matched defendant’s birthdate, October 23, 1996. The “johnjohn” account texted Junior’s cell phone number on the day of the murder in a conversation from 2:50 p.m. to 3:22 p.m. These messages included accusations from both parties of the other being associated with police, references to a shooting at Junior’s grandmother’s house, and threats to kill each other. Police received India’s call at 3:32 p.m. that Junior had fired shots at her residence. Also, at 3:32 p.m., the “johnjohn” account texted Junior, “U ain’t hit nun lol.”

¶ 76 Detective Bethel also reported reviewing a video in which a tattooed left hand held an AR-15 similar in appearance to the Stag Arms rifle. Detective Bethel described a revolver, a semiautomatic pistol with distinctive features, and another handgun on a couch in the video's background. Defense counsel did not object to Detective Bethel's description of the visual aspects of the video.

¶ 77 Detective Bethel testified that he received copies of videos of defendant's jail visits. In one video visit with India from October 31, the same day of Grissett's arrest and the Stag Arms rifle's recovery, a conversation occurred regarding an AR being found. This portion of the conversation was played over defense counsel's objections. During the conversation, defendant told India that someone "got caught with an AR." Defendant seemed to have named someone, but the name is unintelligible. India did not respond and changed the subject. At the conclusion of Detective Bethel's testimony, the trial court read to the jury the same set of instructions it had read after the lunch break.

¶ 78 The State's next witness, Michael Fegely, had prepared a demonstrative exhibit of the previously admitted geolocation evidence. Defense counsel indicated that his standing objection remained, but he would not object further as long as Fegely did not offer expert opinion testimony. Fegely testified that he was self-employed at his company, CellX Analytics, where he conducted geolocation analysis, which he described as taking location data from different sources and mapping that data onto Google Earth files for easier visualization. Defense counsel objected that Fegely was offering improper expert opinion testimony, but the trial court overruled this objection. Fegely used the records associated with defendant's and Purdiman's phone numbers and Snapchat accounts, India's phone number, and Williams's Google account, to plot geolocations onto Google Earth maps. The mapping display was admitted over defense counsel's objection.

¶ 79 The State rested, and defendant did not present any evidence. Several jury instructions were given at this time, including the following:

“Evidence has been received that the Defendant has been involved in offenses other than those charged in the information.

This evidence has been received on the issues of the Defendant’s identification and motive and may be considered by you only for that limited purpose.

It is for you to determine whether the Defendant was involved in those offenses and if so, what weight should be given to this evidence on the issues of identification and motive.

* * *

You have before you evidence that a law enforcement officer made an identification of the Defendant from a video recording. It is for you to determine what weight, if any, should be given to that evidence.

In determining the weight to be given to this evidence, you should not draw any inference from the fact that the witness is a law enforcement officer.”

¶ 80 Following deliberations, the jury found defendant guilty of three counts of first degree murder and one count of aggravated discharge of a firearm.

¶ 81 C. Posttrial Proceedings

¶ 82 On September 28, 2022, defendant filed a motion for a new trial or for judgment of acquittal notwithstanding the verdict. In his motion, defendant made several claims of error. Relevant to this appeal, defendant claimed that the trial court improperly granted the State’s motion to admit other-crimes evidence, defendant’s jail video visit lacked foundation and was improperly admitted, Detective Bethel’s identification testimony was unfairly prejudicial to defendant, and Detective Bethel and Fegely offered improper opinion testimony.

¶ 83 Defendant’s posttrial motion and sentencing hearing took place on June 28, 2023. The trial court denied all motions. In its ruling, the trial court noted that it had “considered the motion for new trial on each and every paragraph,” as well as counsels’ oral arguments. The hearing then proceeded to sentencing.

¶ 84 Several of the victim’s family members read victim impact statements for the court. In aggravation, the State argued that defendant had a history of criminal activity, which included a prior Georgia charge involving defendant shooting into a dwelling. This prior Georgia charge was a first offender plea which did not result in a conviction. Defense counsel objected to the Georgia charge being considered as an aggravating factor, as defendant had not been proven guilty and was placed on probation. In mitigation, defense counsel argued that defendant’s acts were in response to Junior shooting at him and his loved ones. Counsel also argued that defendant did not have a “bad criminal history,” and had no prior felony convictions.

¶ 85 The trial court indicated that it considered the presentence investigation report; a need for deterrence; and defendant’s previous criminal activity, including “a situation regarding [defendant] down in Georgia,” which the trial court understood to be “essentially probation without a conviction.” Specifically in mitigation, the trial court noted it had considered that defendant acted under a strong provocation, had a limited criminal history, had engaged in criminal conduct that was the result of circumstances unlikely to recur, and was the father of a young child.

¶ 86 The trial court merged defendant’s four convictions into one conviction and one enhancement on first degree murder and sentenced defendant to 50 years on the murder conviction and 38 years on the enhancement for a total of 88 years in the IDOC.

¶ 87 On July 27, 2023, defendant filed a motion to reconsider sentence, alleging that the trial court did not adequately consider several mitigating factors, and that his sentence was excessive. On August 30, 2023, the trial court denied that motion. Defendant appeals.

¶ 88 II. ANALYSIS

¶ 89 On appeal, defendant raises numerous arguments. First, he contends that his trial counsel was ineffective in failing to redact portions of the Florida police interview. Second, he argues that

improper other-crimes evidence was admitted without being sufficiently linked to him. Third, he contends that Detective Bethel's improper identification testimony invaded the jury's province. Finally, he argues that these three errors, along with the admission of lay witness testimony on geolocation data and a jail visit video, together rose to the level of cumulative error denying defendant a fair trial. Alternatively, defendant argues that his sentence was excessive.

¶ 90 Defendant argues that Detective Bethel's testimony constituted improper identification that invaded the jury's province and denied defendant a fair trial. The State counters that Detective Bethel's testimony was investigative testimony necessary to contextualize the evidence in this case, which would have been confusing without such testimony.

¶ 91 At the outset, we note that defendant did not challenge Detective Bethel's general testimony regarding Detective Bethel's investigation. Defendant specifically objected only to Detective Bethel's identification of defendant in the videos. Thus, we will address defendant's concerns regarding that issue here.

¶ 92 "The admission of evidence is ordinarily within the sound discretion of the trial court; however, whether it was proper for the State's witness to narrate the contents of a video when he had no personal knowledge of the events portrayed on the video is a legal issue which does not require an exercise of discretion, fact finding, or evaluation of credibility. Thus, we review this issue *de novo*." *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 30.

¶ 93 Detective Bethel admitted that he had never met defendant but had acquainted himself with defendant's appearance through photographs. Thus, we review whether it was proper for him to identify an individual in the videos by defendant's name. Detective Bethel's testimony was identification testimony, as Detective Bethel did not "merely [refer] to the individual as the

‘subject,’ ” but clearly and repeatedly “identified [the] defendant as the individual depicted in the video.” *Thompson*, 2016 IL 118667, ¶ 61.

¶ 94 In *Thompson*, the supreme court provided a framework to address the admissibility of lay opinion identification testimony and whether law enforcement may offer such testimony. *Id.* ¶¶ 50-59. In that case, our supreme court held that lay witness identification testimony is admissible if “(a) the testimony is rationally based on the perception of the witness and (b) the testimony is helpful to a clear understanding of the witness’s testimony or a determination of a fact in issue.” *Id.* ¶ 50. Identification testimony is ‘helpful’ where there is some basis to conclude that the witness is more likely than the jury to correctly identify defendant in the video. *Id.* “A showing of sustained contact, intimate familiarity, or special knowledge of the defendant is not required.” *Id.* Instead, the witness must demonstrate a level of “contact with the defendant, that the jury would not possess, to achieve a level of familiarity that renders the opinion helpful.” *Id.*

¶ 95 To determine whether the testimony is helpful, courts view the totality of the circumstances and consider the following: (1) the witness’s familiarity with defendant, (2) the witness’s familiarity with defendant at the time of the recording or where the witness observed defendant dressed similarly to the recorded individual, (3) whether defendant was disguised in the recording or changed his appearance before trial, and (4) the clarity of the recording and extent to which the individual is depicted. *Id.* ¶ 51. If one or more of these factors is present, there is some basis to conclude that the witness is in a superior position to the jury to identify the defendant from the image in question. *Id.* ¶ 49. The absence of any particular factor, however, does not render the testimony inadmissible. *Id.*

¶ 96 To safeguard a defendant’s rights, *Thompson* determined that when the State seeks to introduce lay opinion identification testimony from a law enforcement officer, like in this case, the

trial court should, outside of the presence of the jury, afford defendant an opportunity to examine the officer and explore the level of the officer's familiarity as well as any bias or prejudice. *Id.*

¶ 59. In addition, "to lessen any concerns regarding invading the province of the jury or usurping its function," the supreme court also mandated that the circuit court instruct the jury, both before the testimony and in the final charge to the jury, that it need not give any weight at all to such testimony and also that the jury is not to draw any adverse inference from the fact the witness is a law enforcement officer. *Id.*

¶ 97 In this case, although the trial court held a *Thompson* hearing, the record fails to show that the trial court adequately considered the helpfulness factors concerning Detective Bethel's familiarity with defendant. The trial court opined that the purpose of a *Thompson* hearing was to allow defendant "the opportunity to explore the witness's familiarity with the [d]efendant, as well as any bias or prejudice that they may have," but at no point did the trial court address Detective Bethel's familiarity with defendant. The record also does not show that the trial court made any determination concerning whether Detective Bethel was more likely than the jury to correctly identify defendant.

¶ 98 However, upon our review, we find that Detective Bethel lacked a level of familiarity with defendant that would have rendered his identification testimony "helpful." Detective Bethel admitted that he could not make an identification from the videos alone. In addition, we note that a hearing pursuant to *Thompson* usually relates to a witness's prior knowledge of a defendant. However, in our case, Detective Bethel based his identification on his investigatory work rather than on any prior knowledge of defendant. Detective Bethel first stated that he did not know defendant because of prior interactions, but that he had viewed photos and videos, reviewed or conducted interviews, and, by deduction and elimination, resolved that defendant was the

individual in those videos. However, given all of the personally descriptive and circumstantial evidence concerning defendant at the time of the murder, in addition to the extensive video footage and witness identifications, we believe that, if informed of the investigative process taken by the detective, the jury may have had a sufficient basis on its own to identify defendant without the detective's specific conclusions as to identification. Thus, we find that Detective Bethel's identification testimony usurped the jury's function as fact finder. Accordingly, we find that the trial court erred in allowing Detective Bethel's identification testimony at trial.

¶ 99 Having determined that the trial court erroneously admitted Detective Bethel's identification testimony, we must now determine whether the error is harmless. An error in the admission of evidence is subject to a harmless error analysis. *People v. Heineman*, 2023 IL 127854, ¶ 95. "To determine whether an error such as this is harmless beyond a reasonable doubt," courts examine whether "the error contributed to the defendant's conviction and whether the other evidence in the case overwhelmingly supported the defendant's conviction." *People v. Lerma*, 2016 IL 118496, ¶ 33. However, the State must prove beyond a reasonable doubt that the jury verdict would have been the same without the error. *Id.*

¶ 100 In this case, defendant admitted, in his police statement, to attending the barbeque and driving the Expedition on the day of the murder, but he denied any involvement in the shooting. There was also no physical evidence directly establishing that defendant committed the murder. Thus, the State's case relied on testimony from two witnesses, Purdiman and Williams, who were also involved in the shooting. However, the only one who identified defendant as a shooter was Purdiman, an individual who was awaiting sentencing in connection with this case. In addition, although Allison, four days after the shooting, identified defendant as the shooter in a photograph line up, Allison testified that Junior had previously told him that the person that he recognized as

the rifle-shooting passenger was named “DV,” and Allison could not remember if Junior showed him photographs of defendant before the line up.

¶ 101 Moreover, a substantial portion of the State’s case featured surveillance videos played for the jury, which depicted the occupants of the Expedition near the time of the shooting. However, the videos were not of high quality, and it may have been difficult to positively identify the various individuals from the videos alone without further information developed in the investigative process. Nevertheless, having Detective Bethel, the lead detective in the case, upon repeated questioning by the State, specifically identify defendant in the videos, while at the same time, narrating the videos, emphasized the detective’s improper identification testimony and strengthened the accomplice witnesses’ testimony. See *People v. Crump*, 319 Ill. App. 3d 538, 542 (2001) (a police officer is a figure of authority whose testimony may be prejudicial if the officer informs the jury that the jury should believe a portion of the State’s case). Therefore, based on the above, we cannot confidently say beyond a reasonable doubt that the jury verdict would have been the same had the identification testimony not been admitted. Accordingly, we find that this error was not harmless beyond a reasonable doubt and defendant is entitled to a new trial.

¶ 102 In addition, we have considered all of the evidence presented at trial with regard to defendant’s first degree murder conviction and find it sufficient to support a conviction. Thus, double jeopardy does not prevent the retrial of defendant. See *People v. Jamison*, 2014 IL App (5th) 130150, ¶ 18 (if evidence was sufficient to convict the defendant, principles of double jeopardy do not preclude retrial). We reach this conclusion because when we consider whether double jeopardy bars a retrial, the relevant question before us is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime or crimes beyond a reasonable doubt. *People v. Lopez*, 229 Ill. 2d

322, 367 (2008). We have set out the evidence against defendant in this case in extensive detail above. Considering this evidence in the light most favorable to the State, we conclude the evidence was sufficient to sustain a conviction and therefore remand for a new trial.

¶ 103 As we find that the admission of Detective Bethel's identification testimony was error warranting a new trial, we need not address defendant's numerous remaining arguments on appeal. However, even though we are not fully addressing defendant's argument that defense counsel was ineffective for failing to redact portions of defendant's police interview video, we note that the video arguably contains inadmissible hearsay statements about defendant's involvement in the shooting. Consequently, upon retrial, if the video is admitted into evidence, defendant's trial counsel should give this matter a careful review.

¶ 104 III. CONCLUSION

¶ 105 For the above reasons, we reverse defendant's conviction and remand for a new trial.

¶ 106 Reversed and remanded.