MISSOURI COURT OF APPEALS

WESTERN DISTRICT

WD87996

STATE OF MISSOURI,
Respondent,

v.

DEION D. CRUM,
Appellant.

Opinion Filed: November 10, 2026

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Charles H. McKenzie, Judge

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge,
Cynthia L. Martin, Judge, and W. Douglas Thomson, Judge

Deion D'Wayne Crum appeals his conviction of unlawful use of a weapon and armed criminal action. Crum raises five points on appeal, arguing the trial court abused its discretion in excluding testimony from a detective that a National Integrated Ballistic Information Network ("NIBIN") hit connected shell casings from the scene of the offense to a firearm in someone other than Crum's possession, because (1) this fell within what Crum claims is the subsequent police conduct exception to hearsay, and (2) this was direct connection evidence to an alternate perpetrator. Crum also argues the trial court abused its discretion in excluding testimony from a detective that a firearm used in the

offense was located and linked to someone who was not Crum because (3) this fell within what Crum claims is the subsequent police conduct exception to hearsay, (4) this was direct connection evidence to an alternate perpetrator, and (5) this was relevant. Finding no error, we affirm.

This case ultimately centers on a NIBIN ballistics match of a shell casing found at the scene of the shooting Crum committed to a firearm found in the possession of D.F., a third party, months after the shooting in question. Crum sought to offer evidence attempting to connect D.F. as an alternate perpetrator through Detective, who did not possess direct knowledge of the ballistics matching process in this case. The trial court denied such questioning based on a hearsay objection, a relevancy objection, and because there was a lack of any other evidence directly connecting D.F. to the subject shooting.

Factual and Procedural History[1]

In the late evening of February 11, 2024, Victim and two friends parked in the parking lot of a Westport bar. Victim worked as a bartender in Westport. Once parked, Victim recognized B.O., a regular patron of the bars at which Victim worked, arguing with two other men. Victim approached the group, trying to diffuse the situation by convincing B.O. to go inside the bar with him. Instead, one of the men—who was wearing a red Kansas City Chiefs #17 jersey over a red hoodie—hit B.O. in the face and

[1] "We state 'the facts and all reasonable inferences derived therefrom in a light most favorable to the verdict, and we reject all contrary evidence and inferences.'" *State v. Williamson*, 729 S.W.3d 762, 764 n.1 (Mo. App. W.D. 2026) (quoting *State v. Foster*, 591 S.W.3d 518, 520 n.1 (Mo. App. W.D. 2019)).

the argument escalated. Victim then heard someone say "gun" and gunshots were fired between B.O. and the man in the Chiefs jersey. The next moment, that same man ran past Victim and shot Victim in the side. Victim made eye contact with the shooter, recognizing him as the same man who punched B.O. Following the gunshot, Victim fell to the ground, and the shooter went towards a white sedan parked nearby.

Surveillance video of the shooting depicted Victim's shooter wore a red Chiefs #17 "Hardman" jersey over a red hoodie, jeans, and white sneakers. The video also showed a white, Chevy sedan leaving the parking lot immediately after the shooting, with the shooter following closely behind on foot. The timestamp from the video indicated the shooting occurred around 11:40 p.m.

Research Hospital surveillance video depicted Crum arriving at the hospital in a white Chevy sedan, wearing a red Chiefs #17 jersey over a red hoodie, jeans, and white sneakers. The timestamp on the video indicated Crum arrived at 11:50 p.m. Research Hospital is roughly eight minutes and forty seconds away from the scene of Victim's shooting. Crum sought treatment for two gunshot wounds.

Police officers were dispatched to the crime scene shortly before midnight. There, the crime scene investigator collected five shell casings in three different locations. She located two 9-milimeter shell casings near where Victim was found lying on the ground and consistent with where the shooter had stood. No firearm was found at the scene.

In due time, Crum was arrested and subsequently, trial commenced. At trial, the surveillance video of the shooting was admitted into evidence. The surveillance video of

Crum arriving at Research Hospital was also admitted along with Crum's possessions and clothing, including a red Chiefs #17 "Hardman" jersey, red hoodie, jeans, and white Nike shoes. The State presented numerous witnesses, including Detective. It was the State's contention that the man in the bar surveillance video, shown wearing a red Chiefs #17 jersey over a red hoodie, jeans, and white sneakers was the same man identified as Crum in Research Hospital's surveillance video, wearing the exact same outfit.

Detective testified during the State's case-in-chief. On cross-examination, defense counsel asked Detective "about NIBIN hits [on the shell casings and the gun] that came back that were done." The State objected to this line of questioning as hearsay because Detective did not test the shell casings herself nor enter the shell casings into NIBIN; it was performed by other investigators.[2] Defense counsel countered that this testimony would qualify as subsequent police conduct, an exception to the hearsay rule. Specifically, defense counsel stated, "[Detective] did investigate . . . the NIBIN hit. She conducted a follow-up investigation; so it is subsequent action. . . . I'm not offering it for the truth. I'm indicating what she did as investigation afterwards." Defense counsel said, "I'm going to ask if it had any effect on her investigation, what the results were, what she did next."

The trial court determined this was not subsequent police conduct and sustained the State's objection. In making its determination, the trial court explained:

[2] The gun found in D.F.'s possession was not in evidence, nor was it relevant, as explained more fully in our ruling.

> Well, here's what subsequent-acts-type testimony provides. It provides for . . . a very general description of why somebody did something but not the import of what was said. Why did you go to 46th and Benton? I was dispatched there on a 911 call. You know, that kind of stuff. . . . But to go into the details of . . . another investigator's report . . . is actually and inherently hearsay because you're asking about . . . the truth of the matter of those reports. . . . [I]t's too much, and I don't think you can get into all that.

Defense counsel again sought to explain why this testimony fell under subsequent police conduct which she maintained was an exception to the hearsay rule, stating, "I would anticipate that the questions that I ask are about specific shell casings. . . . [Detective] utilized that NIBIN hit in furthering her investigation[,]" and "it does go further into the investigation. It goes into alternate suspects." Following extensive discussion, the trial court sustained the objection. The State then rested its case against Crum.

The following day, Crum's case in chief commenced and Detective was once again called. Detective testified that she was the lead detective for the shooting, that she investigates leads, and that no firearms were collected at the scene of the shooting. On cross-examination, defense counsel asked, "And you did later learn that one of the firearms in this incident was found—," at which point the State objected on hearsay grounds, stating defense counsel was "starting to get into the topic that was covered yesterday about a firearm that . . . [Detective] later learned was collected and matched with this casing that was through the NIBIN entry and NIBIN hit." Defense counsel responded, "The questions that I intend to ask are general. . . . I'm not asking about NIBIN. I'm just asking about . . . there was a firearm located. You investigated it. That

was it." In its reply, the State related several objections. First, it reiterated its hearsay objection, asserting Detective did not investigate the D.F. case, and had no knowledge of that investigation.[3] "There was no subsequent police conduct. This is hearsay." The State also asserted a relevance objection, stating such testimony would be "substantially more prejudicial than it is probative to this case. That will only serve to confuse the jury." Finally, the State asserted a lack of direct connection. After previously arguing there was no nexus, the State then asserted, "we're talking about months later, when this gun which was never recovered at the time of this shooting, was then . . . used in another crime."

The trial court asked defense counsel if she expected any other witness to afford additional nexus as to how D.F. or his criminal case had some bearing on Crum's case. Defense counsel responded with a request that the court take judicial notice of D.F.'s plea of guilty to unlawful possession of a firearm because the firearm involved in D.F.'s case was the firearm which was the subject of the NIBIN hit in the instant case. The trial court then asked, "What is the probative value that you intend to elicit from the witness for the purpose of the defense[?]" Defense counsel replied that, here, the proof that directly connected D.F. to the corpus delicti of the instant case is simply the firearm. "[A]s you stated earlier, . . . that evidence must be such proof that it directly connects another person with the corpus delicti. In this case, that is the firearm."

[3] D.F. was charged and convicted of a weapons charge in relation to possession of the firearm in question.

The trial court sustained the State's objections and walked through its reasoning for doing so as follows:

> [I]t does not satisfy the direct connection rule that this Court must consider in analyzing these type[s] of issues. There is no proof that directly connects [D.F.], with the corpus delicti[.] . . . [H]ere it means whether it's a gun or the incident or the event . . . it's clearly to point out someone besides the defendant as the guilty person. As a result, I am not going to permit this examination. I find the prejudicial impact of just describing: well, what was your entire investigation[,] to be outweighed by the probative value. Because the probative value of it is just explaining, well, this is what happened with our investigation. . . . That inanimate object can't control its own destiny. Clearly it wasn't recovered here. . . . The objection is sustained.

As defense counsel continued direct examination of Detective, the State continued to raise its earlier objections to hearsay and relevance. The trial court once again sustained these objections; specifically stating, any lead Detective received about the firearm in this case was more prejudicial than probative because "the jury would just be left wondering . . . what the results of all those events were, for which, there will be no answer for them, and it's . . . not relevant to the . . . case at hand." The trial court also stated, "without evidence directly connecting [D.F.] to the shooting itself, it's not admissible[.]"

Defense counsel concluded her direct examination of Detective by asking, "no firearm was ever found that connected to Mr. Crum, correct?" to which Detective agreed. This question was not objected to by the State.

Crum's counsel then made an offer of proof in which she questioned Detective on the excluded evidence. During such testimony, Detective described how bullet casings are categorized and the results of bullet case testing in this case. Detective stated that all

firearms leave a distinct imprint on a bullet casing that is fired from it. Those distinctive imprints for firearms are reported to the National Integrated Ballistic Information Network ("NIBIN"). The Kansas City Police Department ("KCPD") automatically tests all casings, including the ones found at the subject crime scene. Detective did none of this testing or reporting herself, but rather it was assigned to another department. The idea is to locate the firearm which left the imprint delivered to NIBIN. When this occurs, it is referred to as a "hit." With regard to this case, approximately three months after the shooting in question, KCPD was alerted by the Bureau of Alcohol, Tobacco, and Firearms of a hit on the firearm allegedly used in the subject shooting by Crum. This hit was traced to a third party, D.F. Detective could find no known ties between D.F. and Crum. During her investigation, Detective had learned that D.F. matched the general description (i.e., height, sex, and race) of the shooters involved in the shootout, but that she had not personally seen him. On cross-examination, Detective stated she did not perform the matching of the NIBIN casing and the firearm herself. Detective stated that it is "[e]xtremely" "common for firearms to change hands," "[e]specially after they're used in a crime[.]" Nothing tied D.F. to the location of the shooting on the night it occurred. At the conclusion of the offer of proof, the trial court affirmed its ruling excluding this evidence.

Crum was convicted of one count of unlawful use of a weapon and one count of armed criminal action for shooting Victim. The trial court sentenced Crum to 15 years of

imprisonment for unlawful use of a weapon and 8 years for armed criminal action, to be served consecutively. This appeal follows.

Standard of Review

"Our standard of review in addressing the admission or exclusion of evidence at trial is for abuse of discretion." *State v. Taylor*, 588 S.W.3d 632, 637 (Mo. App. W.D. 2019) (quoting *State v. Ellis*, 512 S.W.3d 816, 825 (Mo. App. W.D. 2016)). Trial courts have "broad discretion to admit or exclude evidence during a criminal trial, and error occurs only when there is a clear abuse of this discretion." *State v. Loper*, 609 S.W.3d 725, 731 (Mo. banc 2020) (quoting *State v. Hartman*, 488 S.W.3d 53, 57 (Mo. banc 2016)). "An abuse of discretion occurs only if the [trial] court's ruling admitting or excluding evidence 'is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.'" *Id.* at 731 (quoting *State v. Blurton*, 484 S.W.3d 758, 769 (Mo. banc 2016)). There is no abuse of discretion when reasonable minds could differ as to whether the trial court's action was justified. *State v. O'Keefe*, 681 S.W.3d 615, 633 (Mo. App. E.D. 2023) (quoting *State v. Sinks*, 652 S.W.3d 322, 346 (Mo. App. E.D. 2022)). "The burden is on the appellant to prove the trial court abused its discretion and prejudice resulted." *State v. Mills*, 623 S.W.3d 717, 730 (Mo. App. E.D. 2021) (citing *In re Bradley v. State*, 554 S.W.3d 440, 452 (Mo. App. W.D. 2018)).

Analysis

Crum raises five points on appeal. In Point I, Crum argues the trial court abused its discretion when it sustained the State's hearsay objection in Crum's direct examination of Detective attempting to elicit testimony of a NIBIN hit which linked the firearm to someone other than Crum, because such testimony was admissible under the subsequent police conduct exception to hearsay. For the same reason, in Point III Crum asserts the trial court erred when it sustained the State's hearsay objection and excluded testimony that the firearm was located and linked to someone other than Crum. In Point II, Crum argues the trial court abused its discretion when it sustained the State's objection to lack of a direct connection of the NIBIN hit, which linked the firearm to someone other than Crum, because this testimony was direct connection evidence. Similar to Point II, in Point IV Crum claims trial court error in excluding direct connection evidence that another person was found in possession of the firearm. Finally, in Point V, Crum argues the trial court abused its discretion when it sustained the State's relevance objection that a firearm used in the offense was located and linked to someone who was not Crum because this testimony was relevant direct connection evidence.

For ease of addressing the arguments, we address Points I and III together, and Points II, IV, and V together.

Points I and III

"Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and depends on the statement's veracity for its value." *State v. Hollowell*, 643

S.W.3d 329, 337 (Mo. banc 2022) (citing *State v. Kemp*, 212 S.W.3d 135, 146 (Mo. banc 2007)). A hearsay statement is inadmissible unless it qualifies under one of the recognized exceptions to the rule against hearsay. *Id.* (citing *Kemp*, 212 S.W.3d at 146). If the out-of-court statement is not offered for the truth of the matter asserted, then it is not considered hearsay and thus, is not required to fit within a hearsay exception because it is non-hearsay. *Id.* (quoting *State v. Bell*, 62 S.W.3d 84, 89 (Mo. App. W.D. 2001) and citing *State v. Douglas*, 131 S.W.3d 818, 823-24 (Mo. App. W.D. 2004)).

For instance, out-of-court statements offered not for their truth, but to explain and provide context for subsequent police conduct are not hearsay and are admissible. *Id.* (citing *Bell*, 62 S.W.3d at 89 and *Douglas*, 131 S.W.3d at 824); *State v. Drisdel*, 417 S.W.3d 773, 787 (Mo. App. E.D. 2013) (citing *State v. Watson*, 391 S.W.3d 18, 22 (Mo. App. E.D. 2012)). Thus, "there is no basis for requiring the proponent of the testimony to fit within an exception to the hearsay rule[.]" *Hollowell*, 643 S.W.3d at 337 (alteration in original) (citations omitted). However, statements admitted as subsequent police conduct "must be used only for this limited purpose." *Id.* (citing *Douglas*, 131 S.W.3d at 824). "Because out-of-court statements admitted to explain subsequent police conduct are not offered for the truth of the matter asserted, such statements cannot be used as substantive evidence to prove or establish the truth of the matter asserted." *Id.* (citing *Douglas*, 131 S.W.3d at 824). "[W]hen such out-of-court statements go beyond what is necessary to explain subsequent police conduct, they are hearsay," and thus inadmissible. *Loper*, 609 S.W.3d at 738 (quoting *Douglas*, 131 S.W.3d at 824).

Initially we note that Crum's assertion that such testimony should be admissible under the subsequent police conduct exception to the hearsay rule is simply a misstatement of the law. Proper subsequent police conduct testimony is *not* hearsay, and therefore its use is not an exception to the hearsay rule. Out-of-court statements offered not for their truth, but to explain and provide context for subsequent police conduct are not hearsay and are admissible. *Hollowell*, 643 S.W.3d at 337. It is only when such out-of-court statements go beyond what is necessary to explain subsequent police conduct that they are hearsay. *Loper*, 609 S.W.3d at 738.

Hollowell provides an example of testimony which went too far. There, in providing testimony as to his subsequent conduct in proceeding to Hollowell's home, a detective testified that Hollowell's wife had told him there were firearms owned by Hollowell located at the home, so he went to the couple's home. *Hollowell*, 643 S.W.3d at 335-36. In reversing Hollowell's conviction for unlawful possession of firearms, our Supreme Court stated, "the State's direct examination allowed [the detective] to testify beyond what was necessary to explain why he went to Hollowell's home and searched the safe." *Id.* at 339. The Court noted that the detective's testimony could have been properly limited to the fact that Mrs. Hollowell "told him something that made him have reason to go to the residence and search the safe without referencing Hollowell's possession of the guns." *Id.*

Similarly, in *Douglas*, a police officer responded to a dispatch concerning a parked vehicle. 131 S.W.3d at 824. The officer testified that the dispatcher reported a person

was "slumped over the wheel" of the car. *Id.* Although the dispatch prompted the officer to investigate the vehicle, this Court concluded that the challenged statement "went beyond what was necessary to explain the officers' subsequent conduct." *Id.* The statement did not merely explain why the officer went to investigate the vehicle—because he had received a dispatch about a parked vehicle—it supplied evidence bearing directly on the disputed issue of whether the defendant had been operating the vehicle. *Id.* We explained "[t]he added evidentiary detail concerning a 'party slumped over the wheel' or a 'party was behind the wheel' was totally unnecessary in explaining the officers' conduct in going to [the scene] and therefore, was hearsay." *Id.* at 824.

Here, during Crum's direct examination of Detective, the following colloquy occurred:

> Crum's counsel: And, obviously, at this point, we all know that this case involved firearms. Were there any firearms collected at 306 Westport on February 11th, of '24?
>
> A: No, there were not.
>
> Crum's counsel: And you did later learn that one of the firearms in this incident was found—
>
> State: Your Honor, may we approach?
>
> Court: You may.
>
> State: Your Honor, my objection is to hearsay.

Crum then argued to the trial court, as he does here, that Detective's testimony that she received an email from an ATF agent that a NIBIN hit matched some of the crime

scene's shell casings to a firearm in possession of D.F. (someone unconnected to Crum) was admissible as subsequent police conduct. Crum reasons Detective's role requires her to follow leads in the case, and that the NIBIN result explained Detective's decision to investigate whether there was a connection between D.F. and Crum. However, the fact that the ATF agent's communication prompted Detective to pursue that investigative lead does not make the *substance* of the communication, and all that Detective did as a result of such communication, admissible as subsequent police conduct. Based on the explanation Crum proffered, the question posed would have "allowed [Detective] to testify beyond what was necessary to explain why" she proceeded in her investigation in a certain manner. *Hollowell*, 643 S.W.3d at 339.[4] The additional detail that the ATF agent reported a NIBIN hit connecting shell casings to D.F.'s firearm was not necessary to explain why Detective pursued that investigative lead. Rather, it conveyed the substance and truth of the ATF agent's out-of-court statement, thereby rendering it hearsay.[5] "[W]hen such out-of-court statements go beyond what is necessary to explain subsequent police conduct, they are hearsay," and are thus inadmissible. *Loper*, 609 S.W.3d at 738 (alteration in original) (quoting *Douglas*, 131 S.W.3d at 824).

[4] In so stating, we do not suggest a more restricted question would have then given counsel free reign to ask a multitude of follow-up questions; it would only allow counsel to clear the hurdle of asking what led Detective to do whatever she did next. One could surmise objections such as those addressed in Points II, IV, and V, or others, may then come into play.

[5] Notably, Crum's counsel appears to have realized this mid-trial and issued a subpoena to an ATF employee. However, the subpoena was not ever served.

In Point III, Crum asserts the trial court abused its discretion when it sustained the State's objection to hearsay to testimony that a firearm used in the offense was located and linked to someone other than Crum because this testimony was admissible as subsequent police conduct.

As discussed above, the State objected to defense counsel's question, "And you did later learn that one of the firearms in this incident was found—," arguing that this was "starting to get into the topic that was covered yesterday about . . . the NIBIN entry and NIBIN hit." In an attempt to pivot, defense counsel sought to forego discussion of the NIBIN hit, and instead elicit testimony that, "there was a firearm located. You investigated it. That was it."

However, similar to Point I, the fact that the firearm was located and linked to D.F. by some out-of-court declarant was not necessary to explain subsequent conduct of Detective—it *was itself* the conduct Crum sought to prove. Thus, the challenged testimony did not merely provide context or continuity to explain Detective's subsequent conduct; it supplied substantive information concerning the firearm and D.F. in an effort to exculpate Crum. Said simply, it was an out-of-court statement offered for its truth and is thus hearsay.

Accordingly, the challenged testimony raised in Points I and III went beyond what was necessary to explain subsequent police conduct. Because the testimony exceeded the limited purpose for which evidence of subsequent police conduct may be admitted, it was hearsay, and the trial court did not abuse its discretion in excluding the testimony as such.

See Loper, 609 S.W.3d at 738-39; *Douglas*, 131 S.W.3d at 824-26. Points I and III are denied.

Points II, IV, and V

In Points II and IV, Crum claims the trial court abused its discretion when it sustained the State's objection to lack of direct connection during defense counsel's direct examination of Detective to testimony of (1) a NIBIN hit connecting a firearm in possession of someone other than Crum with shell casings found at the crime scene, and (2) that this firearm was located and linked to someone other than Crum because this testimony was direct connection evidence.

"Missouri follows the 'direct connection rule' to determine the admissibility of evidence that another person is guilty of the crime charged." *State v. McKay*, 459 S.W.3d 450, 458 (Mo. App. E.D. 2014). This means that, "a defendant may introduce evidence tending to show that another person committed the offense, if a proper foundation is laid, unless the probative value of the evidence is substantially outweighed by its costs (such as undue delay, prejudice or confusion)." *State v. Williamson*, 729 S.W.3d 762, 767 (Mo. App. W.D. 2026) (quoting *State v. Barriner*, 111 S.W.3d 396, 400 (Mo. banc 2003)). Therefore, this type of evidence is only admissible when it "establish[es] 'a clear link' between the alleged alternative perpetrator and a 'key piece of evidence' in the crime." *State v. Whirley*, 698 S.W.3d 716, 725 (Mo. App. W.D. 2024) (quoting *State v. Benedict*, 495 S.W.3d 185, 191 (Mo. App. E.D. 2016)); *Williamson*, 729 S.W.3d at 767 ("Such evidence may be admissible, provided the defendant can satisfy the so-called 'direct

connection rule.'" (citation omitted)). In other words, "evidence of an alternative perpetrator is admissible only if there is proof that the other person committed some act directly connecting that person with the crime[;]" the evidence must "clearly point out someone besides [the] accused as the guilty person." *State v. Bowens*, 550 S.W.3d 84, 99 (Mo. App. E.D. 2018) (second alteration in original) (quoting *State v. Shegog*, 521 S.W.3d 628, 636 (Mo. App. W.D. 2017) and *McKay*, 459 S.W.3d at 458). Admissibility under this rule is firmly limited to prevent evidence of disconnected or remote acts that are more likely to confuse or misdirect the jury. *Williamson*, 729 S.W.3d at 767 (quoting *State v. Bowman*, 337 S.W.3d 679, 686 (Mo. banc 2011)); *State v. Culpepper*, 505 S.W.3d 819, 828-29 (Mo. App. S.D. 2016) (quoting *Bowman*, 337 S.W.3d at 686); *State v. Wright*, 551 S.W.3d 608, 617 (Mo. App. E.D. 2018) (quoting *Bowman*, 337 S.W.3d at 686).

First, Crum argues the direct connection rule is outdated and should not be used when weighing the admission of alternate perpetrator evidence. We do not decide that, however, as our Supreme Court has ruled that the direct connection rule provides the proper analysis in determining whether to admit alternate perpetrator evidence. *State v. Nash*, 339 S.W.3d 500, 514 (Mo. banc 2011) ("Missouri's 'direct connection rule' is constitutional because it prevents confusion of the issues and reduces the potential to mislead the jury. It is not arbitrary to exclude evidence that does not directly connect a third person to the charged crime."); *see also Williamson*, 729 S.W.3d at 768 (applying the direct connection rule).

"A direct connection cannot be drawn from the mere fact that it would be impossible to definitively rule out an individual as a potential suspect—a direct connection requires much more." *Williamson*, 729 S.W.3d at 770. In *Williamson*, the court concluded that the defendant failed to establish a direct connection between an alleged alternate perpetrator and the victim's murder. *Id.* at 768. The defendant proffered evidence that the alternate perpetrator had been in an intimate relationship with the victim, had previously been investigated as a suspect in the murder, and had allegedly struck the victim shortly before her death. *Id.* at 767-68. The defendant also argued that the possibility the alternate perpetrator could have been near the victim's home at the time of the murder supported a direct connection. *Id.* at 768. This Court rejected these arguments, making the distinction that, "[a]lthough the evidence may establish a connection between [the alleged alternate perpetrator] and [the] *[v]ictim*, none of the proffered evidence 'directly connects' [the alleged alternate perpetrator] to the *murder*." *Id.* at 767-68 (citing *Whirley*, 698 S.W.3d at 722). Without evidence directly connecting the alternate perpetrator to the crime itself, evidence which only serves to cast a bare suspicion on another, or to raise a conjectural inference as to who committed the crime is "precisely the sort of evidence Missouri courts consider inadmissible." *Id.* at 768 (quoting *State v. Whittier*, 591 S.W.3d 19, 24 (Mo. App. E.D. 2019). For example, in *State v. Whittier*, 591 S.W.3d 19, 23-24 (Mo. App. E.D. 2019) the court held,

> Appellant wished to introduce [victim's brother's] testimony that [alternate perpetrator] was violent towards [the victim] in the past, possessed a gun, and continued to stalk [the victim] after they broke up. None of this evidence

> directly connects [alternate perpetrator] with the shooting. . . . Without evidence directly connecting [alternate perpetrator] to the shooting itself, evidence he was violent towards [the victim] in the past, threatened her, or was otherwise abusive and hostile is precisely the sort of evidence Missouri courts consider inadmissible.

In contrast, in *State v. Whirley*, 698 S.W.3d 716, 725-26 (Mo. App. W.D. 2024), this Court concluded that the defendant established a direct connection between an alleged alternate perpetrator and the charged shooting. There, the defendant proffered evidence that his twin brother, the alternate perpetrator, possessed a firearm arguably used in the shooting, possessed a bag arguably the same as the bag in which the murder weapon was found, and wore clothing consistent with the shooter's clothing. *Id.* at 725. The evidence further established that the alternate perpetrator had used the same type of ammunition in another shooting, was in the area when and where the charged shooting occurred, and was present at the defendant's residence when police found the murder weapon there. *Id*. Importantly, "[t]hese things all occurred close in time to the shooting at issue in the current case." *Id.* Considered together, this evidence directly tied the alternate perpetrator to the murder weapon and other evidence associated with the charged offense, establishing more than mere suspicion or conjecture. *Id.* at 725-26. (holding the trial court abused its discretion in excluding evidence that demonstrated "a clear link between [the alleged perpetrator] and key evidence from the shooting in the current case").

Unlike the evidence in *Whirley*, Crum's proffered evidence established only that the firearm possessed by D.F. months after the shooting ballistically matched shell

casings recovered at the scene of the charged offense. The proffered evidence did not directly connect D.F. to the shooting, its location, or Victim. It did not, without more, establish that D.F. participated in the crime or was at the scene of the offense. And, most notably, this tangentially related, single, fact of possessing the firearm is not temporally related to Victim's shooting.

Finally, as *Williamson* explains, the possibility that an individual cannot be definitively ruled out as a suspect does not establish the direct connection required for admission of alternate-perpetrator evidence. 729 S.W.3d at 770; *see also Culpepper*, 505 S.W.3d at 828 ("Disconnected and remote acts, outside the crime itself cannot be separately proved for such purpose; and evidence which can have no other effect than to cast a bare suspicion on another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (citation omitted)); *Wright*, 551 S.W.3d at 618 ("Alternate-perpetrator evidence that only demonstrates a third party's opportunity to commit the crime does not establish the required direct connection to the crime, and is inadmissible." (citing *Bowman*, 337 S.W.3d at 688)); *McKay*, 459 S.W.3d at 458 (explaining that "evidence that another had opportunity or motive is admissible *if there is also proof that the other person committed some act directly connecting him with the crime*" (emphasis added) (citation omitted)).

Crum directs us to *State v. McKay*, 459 S.W.3d 450 (Mo. App. E.D. 2014), and *State ex rel. Koster v. McElwain*, 340 S.W.3d 221 (Mo. App. W.D. 2011), but neither alters our analysis. In both cases, substantial and multiple connections linked the

alternate perpetrator to the commission of the crime. Here, however, Crum cannot, and does not, point to such substantial and multiple connections that would directly connect D.F. to the crime.[6]

Direct connection and alternate perpetrator issues naturally dovetail with the relevance of such testimony. In Crum's Point V, he argues the trial court abused its discretion when it sustained the State's objection to relevance that a firearm used in the offense was located and linked to someone other than Crum because this testimony was relevant direct connection evidence.

"Evidence must be relevant to be admissible. In Missouri, the general rule is that relevance is two-tiered: logical and legal." *State v. Anderson*, 306 S.W.3d 529, 538 (Mo. banc 2010) (citation omitted). "Evidence is logically relevant if it tends to make the existence of a material fact more or less probable." *State v. Collings*, 450 S.W.3d 741, 756 (Mo. banc 2014) (quoting *State v. Tisius*, 362 S.W.3d 398, 407 (Mo. banc 2012)).

[6] During argument, Crum directed us to *State v. Barriner*, 111 S.W.3d 396 (Mo. banc 2003), where only one connection linked an alternate perpetrator to the crime. While we grant Crum that there was but a single connective link in *Barriner*, there it was a strand of a third-party's hair found on the thigh of one murder victim and another hair intertwined in the rope binding the other murder victim. *Id*. at 399-400. Further, the Court found significance in the fact that the hairs were "not disconnected or remote[,]" but rather were "physical evidence that could indicate another person's interaction with the victims at the crime scene." *Id*. at 400. Further, the Court noted that "physical evidence obtained from murder victims' bodies lacks the same potential for confusion or misdirection caused by evidence found at a remote location . . . ." *Id*. at 400 n.3. Here, the firearm, an inanimate object, was discovered in the possession of a third-party months after the shooting, not from the body of Victim. Rather, the firearm was discovered in a disconnected and remote location, which is the direct antithesis of the *Barriner* case. Accordingly, the *Barriner* precedent is inapposite to the factual scenario presented to the trial court and analyzed in today's ruling.

"Legal relevance weighs the probative value of the evidence against its costs—unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness." *State v. Prince*, 534 S.W.3d 813, 818 (Mo. banc 2017) (quoting *Anderson*, 306 S.W.3d at 538 (Mo. banc 2010)). Therefore, "logically relevant evidence is excluded if its prejudice outweighs its probative value." *Anderson*, 306 S.W.3d at 538.

Crum argues evidence of a firearm used in the offense was relevant and more probative than prejudicial. While this evidence may support Crum's theory that someone other than him committed the charged offense, its probative value is outweighed by its prejudicial effect. As the trial court noted, "[t]hat inanimate object can't control its own destiny," and Detective testified that it is "extremely" "common for firearms to change hands[,]" "[e]specially after they're used in a crime[.]" Therefore, the fact that a firearm matching the ballistic information of the shell casings found at the location of the instant shooting was recovered and linked to D.F. three months later provides minimal inference that D.F., not Crum, committed the charged offense. Further, to inject such a tangentially related piece of evidence into the case would only serve to confuse the jury.

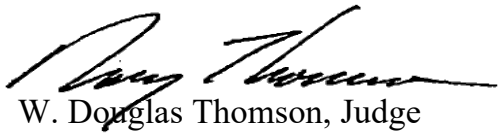
Moreover, our discussion in Point IV identifies that this evidence was not proper direct connection evidence. Without the requisite evidence directly connecting D.F. to the commission of the offense, the prejudicial impact of this testimony is further emphasized. The trial court explained that without a proper direct connection, the prejudicial impact is outweighed by the probative value. "The trial judge is also in the

best position to weigh the probative value of the evidence against its prejudicial effect." *State v. Peal*, 393 S.W.3d 621, 625 (Mo. App. W.D. 2013) (citation omitted).

Because Detective's testimony about the NIBIN hit, and that the firearm used in the offense was located and linked to D.F., would not have directly connected D.F. to the commission of the charged shooting, the trial court did not abuse its discretion in excluding it on this ground. Points II and IV are denied. Given the limited connection between D.F. and the charged offense, the trial court properly concluded that the evidence's probative value was outweighed by the risk of confusing the issues or inviting the jury to speculate about D.F.'s involvement based on his later possession of the firearm. Therefore, the trial court did not abuse its discretion in excluding the evidence on this additional ground. Point V is denied.

Conclusion

The judgment is affirmed.



W. Douglas Thomson, Judge

All concur.