

2012 IL App (1st) 110451-U

FOURTH DIVISION
October 11, 2012

No. 1-11-0451

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 18393
)	
MICKEY MASON,)	Honorable
)	Marcus R. Salone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was found guilty beyond a reasonable doubt of first degree murder when the properly admitted prior inconsistent statements of the State's witnesses placed him at the scene shooting a gun at the car occupied by the victim.
- ¶ 2 After a bench trial, defendant Mickey Mason was convicted of first degree murder and sentenced to 45 years in prison. On appeal, he contends that he was not proven guilty beyond a reasonable doubt because the only evidence linking him to the offense consisted of the prior inconsistent statements of three witnesses. We affirm.

¶ 3 Defendant and codefendant Renwick Wells were arrested and charged with, *inter alia*, first degree murder after the victim Terry Morris was shot and killed in December 2003. The matter then proceeded to separate, but simultaneous, bench trials.¹

¶ 4 At trial, Cedric Hayes, who was in the custody of the Department of Corrections (DOC) and had prior convictions for drug offenses, testified that on the night in question he was driving around selling marijuana. The victim was in the car's passenger seat. At some point, Hayes was involved in an argument with Durrell Smith, which "probably" concerned the sale of marijuana on a certain block. Defendant was present for the argument. After the argument, Hayes drove to the other end of the street before making an u-turn. As he drove back down the street, someone shot at the car. Approximately 10 shots were fired as he was trying to drive around a double-parked van. Although he saw defendant on the street, he did not see defendant with a gun and believed that only one person was shooting at his car. Hayes then drove away. Although he was not injured, when he parked and looked at the victim, the victim appeared to be dead.

¶ 5 Hayes later clarified that he was driving, *i.e.*, looking straight ahead, when he heard the gunshots. Rather than look to see where the shots were coming from, he drove away. He saw defendant on the street and did not hear the shots until he had driven past defendant.

¶ 6 Durrell Smith, who was in the custody of the DOC at the time of trial, testified that he considered defendant and codefendant his cousins. Smith could have been with defendant and codefendant on the day of the shooting, but did not remember as it was so long ago. He further indicated that on the day on question he did what he did every day, that is, he smoked "a lot of weed." He did not see the shooting and did not see defendant with a gun. He denied speaking to police on the day of the shooting and also denied testifying before the grand jury.

¹Codefendant Wells is not a party to this appeal.

¶ 7 Reggie Gardner, who did not remember a prior narcotics conviction, testified that he did not live in the area, did not witness the shooting and did not know defendant, codefendant, or Smith. He did not remember speaking to the police and an Assistant State's Attorney (ASA) or making a written statement. When confronted with his written statement, Gardner acknowledged that the signature on the statement was similar to his and that he was the subject of the photograph attached to the statement, but asserted that he did not remember making or signing the statement. He did not remember testifying before the grand jury or being arrested a few days after his grand jury testimony. Gardner never contacted the police about this incident; rather, officers "hunted" him down. When he was located by officers and questioned about this incident, he indicated that he "truly" did not know anything about it.

¶ 8 Detective Allen Szudarski testified that he was present when Gardner identified the shooters from photographic arrays and when Gardner's statement was reduced to writing by an ASA. Gardner's statement was then published without objection.

¶ 9 In his written statement, Gardner stated that on December 23, 2003, he was in front of his house when he heard arguing down the block. As he walked toward the argument, he saw a burgundy car parked in the street and defendant and codefendant standing near a gangway. Defendant was yelling at someone in the passenger side of the car. Ultimately, defendant and codefendant pointed guns at the car and began shooting. The statement further indicated that Gardner had identified defendant from a photographic array

¶ 10 Latasha Danner, who had several previous felony convictions, testified that she was under the porch at her uncle's house "getting high" when she heard gunshots and saw people running. When she emerged, Danner did not see either defendant or codefendant on the street. Although she did not remember testifying before the grand jury, Danner asserted that whatever she said before the grand jury was a lie, she did not remember what she said, and that the police paid her

to say "whatever" it was she had said. She did not remember making a written statement.

However, when shown the statement, she admitted that she had made the statement and signed it.

¶ 11 During cross-examination, Danner testified that her written statement and grand jury testimony were lies. She admitted that she was high on cocaine, pills and heroin on the night of the shooting. When she was taken into custody on a possession charge that night, the officer told her that if she gave him someone for the shooting, she would be paid and released. Danner did not want to go to jail, so she told the officers what they wanted to hear.

¶ 12 Although Danner admitted that she "probably" told an investigator from the Office of the Public Defender that she saw defendant and codefendant on the street the night of the shooting, she asserted that she was "dope sick" at that time, knew she would be paid for the information, and told the investigator what she believed the investigator wanted to hear.

¶ 13 The parties stipulated that Terrence Garnett, if called to testify, would state he was getting high with Danner when he heard gunshots and saw people running. The parties also stipulated that Kimberly Miller, an investigator with the Office of the Public Defender, if called to testify, would state that during a conversation in December 2009, Danner indicated that she was under a porch when she heard gunshots and when she crawled out she saw defendant shooting a gun at the car containing the victim.

¶ 14 ASA Mary Anna Planey testified that in 2008, she met with Durrell Smith, Reggie Gardner, and Latasha Danner prior to their grand jury testimony. Smith was in custody at that time. Each witness was willing to testify before the grand jury and did so. The grand jury testimony of Smith, Gardner and Danner was then published without objection.

¶ 15 Before the grand jury, Smith testified that he was out riding around with defendant, codefendant and some other men when they saw Hayes and another man in a car. After Hayes indicated that he had marijuana for sale, an argument broke out between Hayes, defendant and

codefendant. Ultimately, Hayes was told to get off the block. Hayes drove away, and Smith went into his aunt's house. When he was preparing to leave about 20 minutes later, he heard gunshots. He saw shots coming from a gangway on the right side of his aunt's house.

Codefendant was in the gangway firing into the street where Hayes's car was located. Defendant was standing in the street firing into the car. Defendant and codefendant then ran away. When Smith later found defendant and codefendant, he asked them why they had shot at the car. Codefendant and defendant indicated that Hayes had " 'pulled back up ' " as though he was armed.

¶ 16 Gardner testified before the grand jury that he was in front of his mother's house when he observed an argument between a man in a car and a group consisting of defendant, codefendant, and others. He began to walk toward the argument. Gardner then saw codefendant "dip" into a gangway, come back out, and speak to defendant. Shots then rang out. Gardner saw both defendant and codefendant with guns. Both men were firing toward the passenger side of the car containing the man they had argued with. As the car drove away, defendant and codefendant followed it on foot and continued to shoot at it.

¶ 17 Before the grand jury, Danner testified that as she was getting high on the night in question, she saw some boys in a little red car selling drugs. A van then drove up and defendant emerged. He walked over to Danner and asked her whether the boys in the car were selling drugs. When she answered in the affirmative, defendant indicated that he was " 'gonna be on some bullshit tonight.' " Danner understood that to mean that "they" were going to be fighting or shooting. She then saw defendant and codefendant near the car asking its occupants whether they were selling drugs and stating that they could not sell on the block. The car's occupants replied that they could sell wherever they pleased. Although the red car left the block, it later returned. As the car passed a double-parked truck, she saw defendant and codefendant exit a

gangway. Although both men had pistols, Danner was paying attention to defendant. Therefore, she only saw defendant shooting. Danner spoke to an ASA the next day and gave a written statement. Danner did not indicate in her written statement that codefendant had a gun because she had been "jumped on" by codefendant in the past and was afraid of him.

¶ 18 Detective John Foster testified that after he was assigned the case he spoke to Hayes, among others. Although Hayes indicated to Foster that he was involved in a "conversation" with Smith over drug sales, Smith was not located until 2008. When Foster arrived at the scene of the shooting, he learned Danner's name and arranged for her to be transported to a police station. During a subsequent conversation, Danner identified a photograph of defendant as the person who shot at the car. She also indicated that codefendant was present. Although defendant later turned himself in, he was released when certain witnesses could not be located.

¶ 19 Ultimately, defendant was convicted of first degree murder and sentenced to 25 years in prison. He was sentenced to an additional 20 years because he personally discharged a firearm during the course of the offense.

¶ 20 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the evidence against him consisted solely of the recanted prior inconsistent statements of Smith, Gardner, and Danner. In his opening brief, defendant contends that the trial court erred when it credited the pretrial statements of Gardner and Danner over the "consistent" trial testimony of Hayes because the statements were incredible due to duress and coercion. He also contends that Smith was an unreliable witness because he was motivated to blame defendant and codefendant for the shooting in order to escape prosecution. However, in his reply brief, defendant changes the focus of his argument, and asserts that even accepting the prior inconsistent statements of Smith, Gardner, and Danner as credible these statements were

inadequate to prove him guilty beyond a reasonable doubt because no evidence or motive linked him to the victim's death.

¶ 21 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (it is the trier of fact's responsibility to determine the appropriate weight to afford each witness's testimony, resolve any conflicts or inconsistencies in the evidence, and draw reasonable inferences from the testimony). A defendant's conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 22 A conviction, supported by a prior inconsistent statement admitted as substantive evidence pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963 (the Code), may be upheld even though the witness recants the prior statement at trial. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 23; 725 ILCS 5/115-10.1 (West 2002); see also *People v. Island*, 385 Ill. App. 3d 316, 347 (2008) (a recanted prior inconsistent statement admitted pursuant to section 115-10.1 of the Code can support a conviction even in the absence of other corroborative evidence). When a prior inconsistent statement meets the requirements of section 115-10.1 of the Code, "a finding of reliability and voluntariness is automatically made. * * * Accordingly, no additional analysis is needed. * * * [I]t is the jury's decision to assign weight to the statement and to decide if the statement was indeed voluntary, after hearing the declarant's inconsistent

testimony.' " (Omission in original). *People v. Morrow*, 303 Ill. App. 3d 671, 677 (1999), quoting *People v. Pursley*, 284 Ill. App. 3d 597, 609 (1996). A trier of fact may consider a prior inconsistent statement introduced as substantive evidence pursuant to section 115–10.1 to be the same as direct testimony from that witness and is free to afford weight to a properly admitted prior inconsistent statement based upon the same factors used when assessing direct testimony. *McCarter*, 2011 IL App (1st) 092864, ¶ 23.

¶ 23 Initially, this court rejects defendant's argument that the trial court erred when it relied upon the prior inconsistent statements of Smith, Gardner, and Danner, when finding defendant guilty of first degree murder. The prior inconsistent statements, in the form of grand jury testimony, were admitted without objection at trial and defendant does not now argue that this was improper. Rather, defendant appears to argue, initially at least, that the statements were not reliable because they were recanted at trial and may have been made under duress or coercion. He also contends that Smith, who defendant argues was the actual shooter, was motivated to blame defendant and codefendant for the shooting.

¶ 24 Here, there is no dispute that the prior inconsistent statements of Smith, Gardner, and Danner were properly admitted pursuant to section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2002)), and, consequently, could support defendant's conviction even in the absence of other corroborative evidence (see *Island*, 385 Ill. App. 3d at 347). Once these statements were admitted, it was for the trial court, as the trier of fact, to determine the weight to be assigned to these statements and after hearing the witnesses' inconsistent testimony, to determine whether the prior statements were voluntary. *Morrow*, 303 Ill. App. 3d at 677. Therefore, the trial court could consider the prior inconsistent statements of Smith, Gardner, and Danner admitted pursuant to section 115–10.1 to be the same as direct testimony from those witnesses and was

free to afford weight to those statements in the same manner that it would when analyzing direct testimony. *McCarter*, 2011 IL App (1st) 092864, ¶ 23.

¶ 25 Setting aside momentarily the issue of credibility, we find that the case for conviction in the instant case is strong. Viewing the evidence in the light most favorable to the State, as we must, Smith, Gardner and Danner testified before the grand jury that after defendant and codefendant argued with Hayes over drug sales defendant shot at the car containing Hayes and the victim. Although defendant is correct that Hayes testified that he did not see defendant with a gun, defendant ignores Hayes's additional testimony that when he heard gunshots he was looking forward because he was driving. Although Hayes saw defendant on the street and did not hear gunshots until he had passed defendant, Hayes did not look to see where the shots were coming from. However, Hayes's testimony at trial that he did not see defendant with a gun that night, in and of itself, was not fatal to the State's case. It was for the trial court, as the trier of fact, to resolve this conflict in the evidence (*Sutherland*, 223 Ill. 2d at 242). Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty when he was seen shooting at the car containing the victim. *Ross*, 229 Ill. 2d at 272.

¶ 26 Defendant, on the other hand, argues that no evidence placed him at the scene of the shooting, and he had no reason to shoot the victim. However, defendant fails to cite any authority for the proposition that a defendant must be linked to a crime by physical evidence; to the contrary, identification by a single witness is sufficient to sustain a conviction when that witness viewed the defendant under circumstances which permitted a positive identification (see *People v. Tatum*, 389 Ill. App. 3d 656, 661 (2009)). With regard to defendant's argument that Smith had a reason to shoot the victim and the subsequent motivation to identify defendant and codefendant as the shooters, there is no requirement that the State prove a defendant's motive for

committing a crime. Where the evidence is sufficient to establish a defendant's guilt beyond a reasonable doubt, the failure of the State to prove motive does not necessitate reversal. *People v. Reed*, 23 Ill. App. 3d 686, 693 (1974). Additionally, our supreme court has held that speculation that another person might have committed the offense does not necessarily raise a reasonable doubt as to the guilt of the accused. See *People v. Manning*, 182 Ill. 2d 193, 211 (1998). In the instant appeal, this court's task is to determine whether defendant's guilt was proven beyond a reasonable doubt, not to examine alternative theories of the offense.

¶ 27 Finally, defendant argues that Smith, Gardner, and Danner were not worthy of belief because they did not go to the police voluntarily, and, consequently their statements may have been the products of coercion and duress. Although it is true that all three gave statements after they were located by the police, in Smith's case several years after the shooting, defendant points to nothing in the record to support his position. The fact that neither Smith, Gardner, nor Danner came forward voluntarily certainly affected each witness's credibility and the weight that the trial court afforded to his or testimony (*Sutherland*, 223 Ill. 2d at 242). However, a trier of fact is free to accept or reject "as much or as little" as it likes of a witness's testimony (*People v. Logan*, 352 Ill. App. 3d 73, 82 (2004)). Here, the trial court clearly found the grand jury testimony of Smith, Gardner, and Danner, in its entirety, to be credible; this court will not substitute its judgment for that of the trial court on this issue. *Ross*, 229 Ill. 2d at 272.

¶ 28 Ultimately, this court cannot say that Smith, Gardner, and Danner's properly admitted prior inconsistent statements were "so wholly incredible or so thoroughly impeached" that they were incapable of being used as evidence against defendant. *People v. Sanders*, 2012 IL App (1st) 102040, ¶15. Although the credibility of the State's witnesses was certainly affected by the recantation of their prior statements at trial, a trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a

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defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51 (May 1, 2012). This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Siguenza-Brito*, 235 Ill. 2d at 225); this is not one of those cases. Accordingly, we affirm defendant's conviction.

¶ 29 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.