

No. 1-11-2369

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 6422
	)	
ALLEN ROBINSON,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Harris and Justice Connors concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant was proven guilty of first degree murder beyond a reasonable doubt, based on the testimony of two eyewitnesses. Defendant was not denied a fair trial when a witness called by the State invoked his fifth amendment right not to testify.
- ¶ 2 A jury convicted defendant Allen Robinson of first degree murder and found that he had discharged a gun which proximately caused the death of another person. He was sentenced to 55 years in prison. On appeal, defendant challenges the sufficiency of the evidence to convict him. He also contends that the State improperly influenced a witness not to testify.
- ¶ 3 Christopher Hanford (the victim) was shot and killed at Iowa and Lawler in Chicago on the evening of December 3, 2008. An Illinois state police forensic scientist testified that the

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cartridge cases, fired bullets, and bullet jacket fragments recovered from the scene had all been fired by the same weapon.

¶ 4 Oscar Russell testified for the State that on the evening in question he was selling drugs in the vicinity of Iowa and Lamon when he saw defendant and defendant's cousin, Lemarius Robinson (Lemarius). Russell had known defendant for five years. At the time, Lemarius was waving around a black handgun. Someone drove up and told defendant and Lemarius that there was a "dude" down the street, near Iowa and Lawler. Russell, defendant, Lemarius, and three other men went to that location. The victim and a group of about 12 men were there. Defendant and the victim began to argue and then began to fight. Lemarius took out his gun and warned the bystanders not to "jump in" because he would kill one of them. The victim appeared to be winning the fight, but defendant took the gun from Lemarius and shot the victim multiple times. Russell fled.

¶ 5 The next day, Russell agreed to speak with police officers about the incident. They handcuffed Russell and drove him to the police station at Grand and Central. He was placed in a locked room and stayed at the police station from 8 a.m. until evening. Russell identified defendant and Lemarius from several photographic arrays. On March 3, 2009, Russell was again taken in handcuffs to the same police station and spoke with Chicago police detective McDermott and Assistant State's Attorney Andy Dalkin, giving them the same account he gave at trial. The statement was transcribed and Russell signed it. Russell also identified defendant from a photograph as the shooter. On March 30, 2009, Russell went before the grand jury and identified defendant as the shooter.

¶ 6 Russell testified that at the time of trial he was incarcerated for aggravated battery. He had also been convicted of possession of a controlled substance on four prior occasions. Russell also testified that he had received no promises or threats from the police or assistant state's attorney in exchange for his answers to police following the murder, or his testimony at trial.

¶ 7 Chicago police officer Wayne Frano testified that on the evening in question he and his partner were on patrol in an unmarked car in the vicinity of the shooting. Officer Frano heard four gunshots and then saw three men run by. Defendant was among them. The men slowed down, and one of them told the officers that there had been a shooting and pointed in the direction of that shooting. When Officer Frano got to the scene of the shooting he found the victim lying in a fetal position on the corner, bleeding heavily. Officer Frano testified that either he or his partner called for assisting units and an ambulance. On March 4, 2009, Officer Frano viewed a lineup and identified defendant as one of the men he had seen run by his car that evening.

¶ 8 Deandre Guyton, a friend of the victim, testified that on the night in question he was walking in the area of Iowa and Lawler when defendant and Lemarius walked up to him; however, on cross examination, Guyton stated that he did not see defendant at that time. Lemarius pointed a gun at Guyton and pulled the trigger, but the gun did not fire. Guyton attempted unsuccessfully to wrestle the gun from Lemarius. He then ran to his home, which was about five houses down from the corner of Iowa and Lawler, where the shooting occurred that evening. Guyton called the victim, who came to the scene on foot. Before the victim could reach Guyton, he was shot by one of five people who approached him. Guyton testified that he saw the gun fire, but he could not tell who had fired it. The next day the police brought Guyton to the police station, where they showed him a photo array. He identified defendant, but refused to sign the photograph, saying that he did not wish to get involved in a murder.

¶ 9 On March 2 the police again brought Guyton to the police station and showed him a second photo array. This time, Guyton admitted that it was defendant who shot the victim. He also identified Lemarius as having been with defendant. Guyton testified that an assistant State's Attorney took a written statement from him that day. Guyton signed every page of the statement, but at trial he testified that he had not made some of the statements attributed to him. He denied saying that he could see everyone clearly because of street lighting. He denied saying that he

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saw defendant pointing a black gun at the victim and firing. Instead, he recalled that he said the gunfire came from "the direction [defendant] was standing in." He denied saying that he saw the flash coming from the gun in defendant's hand or that defendant twice fired the gun at the victim. Guyton did recall saying that after he heard two shots he ran, hearing three more shots as he did so.

¶ 10 On March 30, 2009, Guyton went before the grand jury.<sup>1</sup> In his trial testimony, Guyton again denied making some of the statements attributed to him or claimed not to remember making them. He could not remember telling the grand jury that defendant had raised the gun and started shooting. He recalled telling them that he did not know where defendant obtained the gun because defendant already had it out. But he admitted saying that when he saw defendant pull out a gun, he did not see anybody else with a gun. He also admitted saying that he heard the first two shots, and that he saw them strike the victim. He recalled telling the grand jury that he had spoken to Chicago police detectives and Assistant State's Attorney Melissa Meana on March 3, 2009, and had told them the same things he was telling the grand jury. He denied telling the grand jury that defendant was the person who shot the victim. Instead, he recalled telling them that defendant was in the crowd from which the shots came. On cross-examination, Guyton stated that it was his testimony that he saw the victim get shot, but he did not see who shot him. However, he did testify that it was either defendant or Lemarius who pulled out the gun. Guyton denied that there was any fight or name calling before the victim was shot.

¶ 11 Guyton testified that he was currently incarcerated for unlawful use of a weapon by a felon. He also had two previous convictions for the manufacture and delivery of a controlled substance.

¶ 12 Assistant State's Attorney Melissa Meana testified that she took a statement from Guyton on the evening of March 3, 2009. Guyton told her that defendant shot and killed the victim. He

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<sup>1</sup>The transcript of the grand jury proceedings was admitted into evidence but it has not been included in the record on appeal.

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could see everyone clearly that night because of street lighting. He saw defendant holding his arm out straight, pointing a black gun at the victim. He then saw defendant shoot the victim.

¶ 13 Assistant State's Attorney Tene McCoy-Cummings testified that she questioned Guyton on March 30, 2009, before taking him before the grand jury. He was not handcuffed at the time, and he told her that he had been treated fairly by the police and had not been forced to say anything. Guyton told her that defendant shot the victim. Guyton also told the grand jury that defendant raised the gun and began shooting.

¶ 14 Chicago police detective Tim McDermott testified that on the evening after the shooting he spoke to Russell at the police station. Russell viewed a photo array and identified defendant as the person who shot and killed the victim. Russell subsequently gave a written statement in which he said that he sold drugs for defendant. Detective McDermott stated that he questioned Guyton, who looked at a photo array and identified defendant. However, Guyton refused to sign the photograph, saying that he did not want his name associated with a murder. McDermott also said Guyton was brought back to the police station on March 2, 2009, because he had told police officers that he wanted to give more information about the shooting. According to Detective McDermott, Guyton initially told him that he wanted to take care of the situation by himself, but he now wanted the truth to come out. Guyton then identified defendant in a photo array as the person who shot and killed the victim, and also viewed a second photo array and identified Lemarius as the person from whom defendant took the gun prior to the shooting.

¶ 15 Before the parties had rested, the State informed the court that it wished to call Lemarius as a witness. However, the State also informed the court that Lemarius remained a suspect in the case and that he might invoke his fifth amendment right not to incriminate himself. Because of this possibility, the court appointed an attorney to represent Lemarius. After conferring with Lemarius, the attorney informed the court that Lemarius would exercise his fifth amendment right. With the jury out of the room, the court then questioned Lemarius about this representation. When asked if he told the police that he had seen someone shoot the victim, he

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refused to answer invoking his fifth amendment right against self-incrimination. He denied being at the scene when the victim was shot. Lemarius was also questioned about whether he had written a letter to defendant in which he admitted that he was the shooter. He denied that he wrote that letter. He also denied that he had been threatened about testifying. Over objection by the State and the defense, the court ruled that Lemarius did not have to testify because he was exercising his fifth amendment right against self incrimination.

¶ 16 The jury found defendant guilty of first degree murder. The jury also found as an aggravating factor that defendant personally discharged the gun that caused the death of another person. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008). The court subsequently sentenced defendant to 55 years in prison.

¶ 17 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt. To resolve this contention, we must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 18 (2011). We will reverse a conviction only when the evidence is so unreasonable, improbable, or unsatisfactory that reasonable doubt of the defendant's guilt remains. *Id.* at 8. We also bear in mind that it is the function of the jury, as the trier of fact, to determine the weight to be given to the testimony of the witnesses, their credibility, and the reasonable inferences to be drawn from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991).

¶ 18 Defendant contends that the two occurrence witnesses, Oscar Russell and Deandre Guyton, gave "materially contradictory" testimony concerning what happened on the evening in question. Russell testified that there was an argument between defendant and the victim, followed by a physical fight during which defendant took a gun from Lemarius and shot the victim. Guyton testified that as the victim approached a group of people, one of them shot the victim. But there was also evidence that Guyton told the police, two assistant State's Attorneys, and the grand jury that it was defendant who shot the victim. Although Guyton attempted to

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disavow some of these statements at trial, it was for the jury to determine his credibility as well as that of Russell. *Id.*, at 226. Defendant cites *People v. Williams*, 34 Ill. App. 3d 136, 140 (1975) for the proposition that a reviewing court may discount the testimony of eyewitnesses when their accounts are completely different. But in *Williams*, the two witnesses who claimed to have seen the defendant shoot the victim were shown to have many inconsistencies in their testimony in prior trials. *Id.*, at 140. Moreover, one of the witnesses had been convicted of the same crime in an earlier trial, and the prosecution offered to secure executive clemency for him in return for his testimony. *Id.*, at 138. At trial it was also revealed that the prosecution had failed to disclose the existence of two witnesses who would have raised serious doubts about the credibility of one of the two eyewitnesses. *Id.*, at 141. Here, although Guyton disavowed many of his prior statements, there was still evidence that he had repeatedly stated that defendant shot the victim. Russell testified to this same crucial fact. Both Russell and Guyton were incarcerated at the time of trial, and both men had previously been convicted of other offenses. But the question of their credibility and any discrepancies in their testimony were for the jury to resolve. *Steidl*, at 226. Defendant contends that Guyton was not credible because he initially did not cooperate with police. But Guyton told Detective McDermott that he had planned to "take care" of the situation himself but then decided that he wanted the truth to come out. Defendant concedes that the trier of fact is free to believe all or part of a witness' testimony *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004). Viewing the trial evidence in the light most favorable to the State, we cannot say that no rational trier of fact would have found the evidence sufficient to convict defendant of first degree murder. *Beauchamp*, 241 Ill. 2d at 18.

¶ 19 Defendant also contends that the State exerted improper influence on Lemarius Robinson in order to prevent him from testifying. The record establishes that at the time of trial, Lemarius remained a suspect in this shooting. Prior to trial, the State advised the court that there was a letter, purportedly from Lemarius to defendant, in which Lemarius wrote that he had shot the victim. This letter was not introduced into evidence. According to the evidence at trial,

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Lemarius had earlier that evening allegedly pointed a gun at the victim's friend, Deandre Guyton, and pulled the trigger, but the gun failed to fire. He was also alleged to have supplied that gun to defendant moments before defendant shot the victim with it. The trial court appointed an attorney to represent Lemarius when the State informed the court that Lemarius might be in a position to plead the fifth amendment.

¶ 20 When the State informed the court that Lemarius might plead the fifth amendment, the court appointed an attorney to represent him. That attorney advised the court that Lemarius did not wish to testify, and would invoke the fifth amendment if called to testify. The State sought Lemarius' testimony and objected along with the defense when the trial court determined that Lemarius should not be called to testify because he intended to plead the fifth amendment. Defendant asserts that his contention of undue influence by the State is supported by *People v. Mancilla*, 250 Ill. App. 3d 353 (1993). But in *Mancilla*, the witness was prepared to testify until the prosecutor dissuaded him by raising the prospect of perjury charges and a change in his immigration status. *Id.* at 360. Here, the State did not threaten Lemarius, rather it informed the court of his plans. Lemarius' decision to invoke that right blocked the State and the defense from calling Lemarius as a witness. Based upon these facts, we find no basis for defendant's claim that the State's actions amounted to intimidation of Lemarius.

¶ 21 For the reasons set forth in this order, we affirm defendant's conviction and sentence.

¶ 22 Affirmed.