

No. 1-12-0086

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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. 06 CR 07832
	)	
KENNETH STRONG,	)	Honorable
	)	Angela Munari
	)	Petrone,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER.**

¶ 1 *Held:* We affirmed defendant's murder conviction and his 55-year sentence. We held that the trial court committed no error in: (1) refusing to instruct the jury on second-degree murder; (2) admitting prior consistent statements from State witnesses in which they identified defendant as the shooter; (3) admitting multiple prior inconsistent statements from a State witness who testified at trial that he did not witness the shooting; and (4) admitting a detective's testimony regarding the steps taken in the police investigation.

¶ 2 A jury convicted defendant, Kenneth Strong, of first-degree murder, and the trial court sentenced him to 55 years' imprisonment. On appeal, defendant contends the trial court erred by: (1) refusing to instruct the jury on second-degree murder; (2) admitting prior consistent statements from several State witnesses; (3) admitting multiple prior inconsistent statements made by a State witness; and (4) admitting hearsay testimony. We affirm.

¶ 3 At trial, Melinda Powell testified she was the fiancée of the victim, Darryl McGowan. On the evening of December 25, 2005, Darryl, Melinda, Melinda's brother Eric Powell, and some friends (Richard Gibson, Cornelius Bryant, Antoine Williams, and a person known only as "Tone") went to the Smooth Shots nightclub located at 814 South California Avenue in Chicago. The nightclub was "crowded," with about 120 people inside. At approximately 2 a.m., after mingling and ordering drinks, Darryl, Antoine, Richard, Tone, Cornelius and Eric had their photograph taken by a photographer at the back of the nightclub. Antoine asked to see the photograph, and the photographer told him he could only see it if he paid \$10. A verbal argument ensued between Antoine and the photographer. Many people began exiting the nightclub in the aftermath of the argument.

¶ 4 Melinda testified Antoine remained in the nightclub, but she and the rest of their group of friends went outside. Melinda, Richard, Cornelius and Darryl walked to Richard's truck, which was parked on California Avenue, a "couple doors down" from the nightclub. Melinda got in the driver's seat of the truck and started the ignition. Meanwhile, the rest of the group decided to go back inside the nightclub and get Antoine.

¶ 5 Melinda testified that as the group approached the nightclub, Richard, Darryl and Cornelius began verbally arguing with four or five persons who were "directly in front" of the nightclub. Melinda testified that "Cornelius end up getting into a physical fight with one of the men. Him and the guy was fighting, another guy came around and hit Darryl in the face with a bottle." After Darryl was hit in the face with a bottle, "they start fighting the other guys." At that point, a man, whom Melinda identified in court as defendant, pulled out a gun and shot Darryl. Melinda was able to clearly see defendant's face because "[a] lot of light was on out

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there." Neither Richard, Cornelius, nor Darryl had any weapons in their hands when defendant shot Darryl.

¶ 6 Melinda testified that after the shooting, Darryl, Cornelius, and Richard ran back to Richard's truck. They pounded on the door, but Melinda was panicking and was unable to unlock the doors. Richard unlocked the doors from the outside, and everyone got in except for Darryl, who fell "[a]t the passenger door." Melinda climbed to the passenger side of the vehicle, exited and stood over Darryl, and asked him if he was ok. Darryl did not respond, and Melinda bent down to see if he was breathing. When Melinda looked up, she saw defendant standing about three feet away with a gun in his hand. Defendant said to Darryl, "bitch ass n\*\*\*er should never stole off me." On cross-examination, Melinda testified defendant said to Darryl, "bitch ass n\*\*\*er should have never stole on me." Melinda testified she ran across the street to get away from defendant. At that point, Melinda saw Antoine and Eric fighting with the person who had hit Darryl in the face with a bottle. "More shots [were] fired," but Melinda did not know where they came from. Melinda ran into the nightclub and asked that an ambulance be called. An ambulance subsequently arrived and Darryl began receiving treatment.

¶ 7 Melinda testified that at approximately 8:45 p.m. on December 27, 2005, a couple of police detectives came to her home and showed her a photographic array. Melinda identified a photograph of defendant as "[t]he guy who shot Darryl." On March 11, 2006, Melinda went to the police station and viewed a lineup. Melinda identified one of the persons in the lineup, defendant, as "[t]he guy who shot Darryl."

¶ 8 Melinda testified she was not drunk when she saw defendant shoot Darryl on December 25, 2005.

¶ 9 Antelia Williams testified she is Darryl's second cousin and Antoine's sister, and that she knows Melinda, Cornelius, and Richard. On December 25, 2005, she went to the Smooth Shots nightclub and stayed there for two hours. During that time, she was "mainly on the dance floor with Cornelius." She had nothing to drink that night.

¶ 10 Antelia testified that at approximately 2 a.m., Antoine got into a verbal argument with a photographer at the nightclub. In the aftermath of the argument, people began leaving the nightclub. Antelia went outside and noticed Darryl verbally arguing with another person, who she identified in court as defendant. Cornelius was standing near Darryl.

¶ 11 Antelia testified she told Darryl, "let's go, let's go." Then she noticed that defendant had a gun in his hand. Antelia again told Darryl, "let's go, he got a gun." At that point, Cornelius hit a person who was standing with defendant; after being struck by Cornelius, the person "hit him back." Cornelius fell down. Antelia testified "And then somebody out of nowhere came and hit Darryl upside the head with a bottle." The person who hit Darryl with the bottle "had dreadlocks and it was in a ponytail." After being hit with the bottle, Darryl began bleeding.

¶ 12 Antelia testified she saw defendant raise a gun—a black revolver—and point it at Darryl's chest. No one else had a gun. Antelia heard a "pow" and then she "took off running" toward her car. As she ran, Antelia heard four or five more gunshots, but she did not see who was doing the shooting. Antelia reached her car. About two minutes later, Melinda came over and told her that Darryl had been shot. Ambulances arrived.

¶ 13 Antelia testified she went to the police station on January 25, 2006, and identified defendant in a photographic array as "[t]he person that shot Darryl." On March 11, 2006, Antelia went to the police station and viewed a lineup which included defendant. Antelia identified defendant as the person who "shot [her] cousin."

¶ 14 Basirat Yvette Olabode testified that on December 25, 2005, she and a group of friends, Antoine, Antelia, Melinda, Darryl, and Cornelius went to the Smooth Shot nightclub around 11:30 p.m. A photographer at the nightclub took a photograph of the men in the group, after which a verbal argument ensued between the men and the photographer. Basirat, Antoine, and Antelia left the nightclub together.

¶ 15 Basirat testified that outside the nightclub, she saw Darryl and defendant facing each other. Cornelius was next to Darryl; two other men (one of whom was wearing dreadlocks) were standing next to defendant. Basirat heard Darryl say that "nothing was going to happen, calm down, no one is going to touch my cousin." Basirat testified that "[t]here were words exchanged between [defendant and Darryl] saying, 'This shouldn't even be leaving out the club.' "

¶ 16 Basirat testified Cornelius punched one of the men standing next to defendant. The person Cornelius punched then punched him back, knocking Cornelius to the ground. Darryl "stepped up" to defend Cornelius and then the man with the dreadlocks hit Darryl in the face with a beer bottle. Darryl then "stepped a little forward \*\*\* and [defendant] raised a gun up" and aimed it at Darryl. Defendant "fired a shot, and [Basirat] saw his hand jerk." While this altercation was going on, neither Darryl nor Cornelius had any weapons or guns in their hands.

¶ 17 Basirat testified she ran across the street and ended up on the corner of Arthington Street and California Avenue with Antelia, Antoine and Eric. Melinda came over and told them Darryl had been shot. Basirat called 911. Then the man with the dreadlocks (who had hit Darryl in the face with the bottle) walked past. Eric attempted to "rough him up." A black car turned the corner and a man (the driver) exited the driver's side and started coming toward them. The man with the dreadlocks screamed to the driver to "shoot 'em, shoot 'em, they got me, shoot 'em." The driver "began shooting" toward Basirat, Antelia, Eric and Antoine, and they ran across the

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street to get away. The man with the dreadlocks and the driver got back in the black car and drove away.

¶ 18 Basirat testified that on January 26, 2006, she went to the police station and identified defendant in a photographic array as being the person who shot Darryl. On March 11, 2006, Basirat went to the police station, viewed a lineup, and identified defendant as the person who shot Darryl.

¶ 19 Richard Gibson testified that at approximately 11 p.m., on December 25, 2005, he drove Darryl, Melinda, and one other person (he cannot remember who) to the Smooth Shot nightclub. They entered the club and stayed for a couple of hours. Richard and some other persons had their photograph taken inside the nightclub, after which the photographer exchanged words with Darryl and Antoine. The doormen told them to leave.

¶ 20 Richard testified he exited the nightclub with Melinda and walked to his truck. Richard gave Melinda the keys and told her to get inside. Richard then saw Darryl and two other men walking in the opposite direction, toward the nightclub. Richard turned around to get Darryl and bring him back to the truck. As he turned around, Richard heard a gunshot. Richard looked toward the front of the nightclub and saw defendant with a gun in his hand. Richard also saw Darryl and other persons running toward his truck. Melinda was unable to open the door for Darryl, so Richard went around to the driver's side and opened the door from the outside. Meanwhile, Darryl collapsed next to the truck. Richard heard more gunshots and ran to a nearby gangway.

¶ 21 Richard testified that on January 20, 2006, he met with a detective, viewed a photographic array, and identified defendant as the person he saw with the gun. On March 11,

2006, Richard went to the police station, viewed a lineup and, again, identified defendant as the person he saw with the gun.

¶ 22 Eric Powell testified that on December 25, 2005, he, Darryl, Melinda, Richard, Antoine, Cornelius, Antelia, and Basirat went to a nightclub at 815 South California Avenue. He and his friends had their photograph taken at the nightclub; Eric was not aware of any argument with the photographer. Eric was drunk when he left the nightclub. Eric testified he did not see Darryl get shot, did not see anyone hit Darryl on the side of the face with a glass bottle, and did not see Cornelius get into a fight.

¶ 23 Eric denied going to the police station on January 24, 2006, and giving a statement regarding the shooting. The prosecutor showed Eric his handwritten statement from January 24, 2006, and Eric admitted the signature at the bottom of each of the statement's eight pages said "Eric Powell," but Eric said he was drunk that day, and that he does not remember signing the statement. Eric denied viewing a photographic array on January 24, 2006, and he also denied testifying before the grand jury on March 28, 2006.

¶ 24 Eric admitted he viewed a lineup on March 11, 2006, but he denied identifying defendant as the shooter. Eric testified he "just pointed at the first familiar face."

¶ 25 Lisette Mojica testified she is an assistant State's Attorney (ASA). ASA Mojica testified that on January 24, 2006, she spoke to Eric at the police station and he made a statement regarding Darryl's murder. ASA Mojica wrote down Eric's statement, and Eric signed the bottom of each page. In the handwritten statement, which was admitted into evidence and is contained in the record on appeal, Eric stated that on December 25, 2005, he was at the Smooth Shots nightclub and saw Antoine verbally argue with a photographer who had taken a

photograph of Eric, Antoine, Tone, Cornelius, and Darryl earlier that evening. A doorman told Antoine, Darryl, and Cornelius to leave the nightclub.

¶ 26 Eric stated he and Darryl walked out of the nightclub, followed by Cornelius and Antoine. Eric and Darryl put their jackets inside Richard's truck because they knew a fist fight was about to happen. Eric then saw a man with dreadlocks break a drink glass against the side of Darryl's head. Another man punched Cornelius once in the face. Eric then saw defendant standing face to face with Darryl. Defendant removed a revolver from his coat pocket, pointed it in Darryl's and Eric's direction, and fired the gun one time.

¶ 27 Eric stated he and Darryl ran toward Richard's truck. Darryl tried to enter the passenger side of the truck, but was unable to do so and fell to the sidewalk. At that point, Eric did not know Darryl had been shot and only thought he had been hurt by being hit with the drink glass. Eric went after the man with the dreadlocks, caught up to him at the corner of Arthington Street and California Avenue, and punched him once in the face. The man with the dreadlocks picked Eric up off the ground, at which point Eric saw defendant with two other men near a car. Eric did not see any gun at that time, but he heard at least three gunshots. The man with the dreadlocks dropped Eric to the ground, and Eric ran back toward the nightclub.

¶ 28 Eric stated defendant was the only person he saw with a gun during the shooting. Neither Eric, Darryl, Cornelius, Richard, Antoine, nor Tone had a gun on them during the shooting.

¶ 29 ASA Melanie Fialkowski testified that Eric gave testimony before the grand jury on March 28, 2006. The transcript of Eric's grand jury testimony was admitted into evidence and is contained in the record on appeal. Eric's grand jury testimony largely mirrored the statement he made to ASA Mojica identifying the circumstances surrounding defendant's shooting of Darryl. Specifically, Eric testified before the grand jury that he, Darryl, Melinda, Cornelius, Richard, and

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Antoine, as well as two women named Cookie and Beth, went to the Smooth Shots nightclub on December 25, 2005. None of them were armed with guns. A verbal argument ensued with a photographer who had taken a photograph of the men in their group, and the doorman asked them to leave. They exited the nightclub. Darryl and Eric went to Richard's truck and put their coats inside. Darryl returned to the front of the nightclub and engaged in a verbal argument with defendant. Defendant had his hands in his pocket and "Darryl grabbed his hand like what you got, a gun or something, and [defendant] falled back up out of the crowd." A man "with a chain" punched Cornelius, and a man with braids hit Darryl in the face with a shot glass. Defendant then pulled out a gun and shot Darryl. Darryl ran back to Richard's truck and collapsed. Eric ran across the street and he and Antoine punched the man with the braids. Eric heard more shots fired. Shortly afterward, the police came.

¶ 30 Detective Patrick Deenihan testified that shortly after 2 a.m. on December 26, 2005, he and his partner, Detective McDonagh, received an assignment to investigate a homicide at the Smooth Shots nightclub. When they arrived at the scene, Detective Deenihan noticed glass on the sidewalk and he saw blood on and next to a truck parked 30 to 45 feet away from the nightclub. Detective Deenihan learned that Richard was the owner of the truck. Detective Deenihan also saw Eric "acting very disturbed, wildly and \*\*\* a couple of uniformed policemen were trying to calm him down." Eric was yelling that his friend had been shot. Eric was bleeding from his hands and he was taken to a hospital.

¶ 31 Detective Deenihan testified he talked with the photographer who had been working in the nightclub that night, and learned his name was Calvin Harris. Calvin told the detective he was not outside when the shooting occurred. Detective Deenihan subsequently spoke with Calvin in the police station and he showed the detective two photographs from his digital

camera, one of which was the photograph he had taken of Darryl's group. After speaking with Calvin, Detective Deenihan spoke with Melinda and Richard and received a description of the shooter.

¶ 32 Detective John Haniacek testified that at approximately 6 p.m., on December 27, 2005, he and his partner, Detective Tom Crane, were assigned to investigate Darryl's shooting. At approximately 7 p.m., the detectives went to 3340 West Fillmore Street to interview a confidential informant, after which they put together a photographic array containing a photograph of defendant. The detectives went to Melinda's house on December 27, 2005, and showed her the photographic array. Melinda identified a photograph of defendant "as the person who shot and killed the boyfriend, Darryl McGowan."

¶ 33 Detective Haniacek testified that on January 20, 2006, he and Detective Prugar went to 230 Manheim Road, where they met with Richard and showed him a photographic array. Richard identified a photograph of defendant as the person he saw "with a gun in his hand" at the time of the shooting.

¶ 34 Detective Haniacek testified that on January 24, 2006, Eric came to the police station and viewed a photographic array. Eric identified a photograph of defendant as the person who shot Darryl.

¶ 35 Detective Haniacek testified that on January 25, 2006, Antelia came to the police station and viewed a photographic array. Antelia identified a photograph of defendant as the person she had seen "level a handgun" at Darryl, after which she heard a gunshot.

¶ 36 Detective Haniacek testified that on January 26, 2006, Basirat came to the police station and viewed a photographic array. Basirat identified a photograph of defendant and stated that after hearing a gunshot she saw defendant point a gun at Darryl and she saw the gun "jerk up."

¶ 37 Detective Haniacek testified that on March 11, 2006, Basirat, Antelia, Melinda, Eric and Richard each picked defendant out of a lineup.

¶ 38 Mitra Kalelkar, an assistant chief medical examiner of Cook County, testified she performed the autopsy on Darryl. Dr. Kalelkar's examination revealed that Darryl had lacerations on the left side of his face and a gunshot wound on the front of his chest. The bullet entered the chest, fractured a rib, and then went through his left lung and his heart. Dr. Kalelkar determined that the cause of death was a gunshot wound to the chest and the manner of death was homicide.

¶ 39 At the close of all the evidence, defendant requested that the jury be instructed on second-degree murder. Second-degree murder occurs when a person commits first-degree murder but either of the following mitigating factors are present: (1) a sudden and intense passion resulting from serious provocation; or (2) a subjective but unreasonable belief that deadly force was necessary for self-defense (also known as imperfect self-defense). 720 ILCS 5/9-2(a) (West 2006). Defendant bears the burden of proving either mitigating factor by a preponderance of the evidence before he can be found guilty of second-degree murder. 720 ILCS 5/9-2(c) (West 2006).

¶ 40 The trial court denied defendant's request to instruct the jury on second-degree murder.

¶ 41 The jury subsequently convicted defendant of first-degree murder and found that he personally discharged a firearm that proximately caused Darryl's death. The trial court sentenced defendant to 30 years' imprisonment plus a 25-year enhancement for personally discharging a firearm proximately causing Darryl's death, for a total of 55 years' imprisonment. Defendant appeals.

¶ 42 I. Whether the Trial Court Erred by Refusing to Give Second-Degree Murder Instructions Based on Imperfect Self-Defense

¶ 43 First, defendant contends the trial court erred by failing to instruct the jury on second-degree murder based on the mitigating factor of imperfect self-defense. A person is justified in using deadly force under the principles of self-defense when he reasonably believes such force was "necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2006). A person commits second-degree murder based on imperfect self-defense when he commits the offense of first-degree murder and at the time of the killing he subjectively believes the circumstances to be such that they justify the use of deadly force under the principles of self-defense, but his belief is unreasonable. *People v. Blue*, 343 Ill. App. 3d 927, 936 (2003).

¶ 44 A defendant is entitled to have the jury instructed on defense theories about which there is "some" evidence, even if the evidence is "very slight." *People v. Jones*, 175 Ill. 2d 126, 131 (1997). Our supreme court has issued divergent statements on the proper standard of review regarding whether the evidence supports the giving of a jury instruction. On the one hand, the supreme court has stated "[t]here must be some evidence in the record to justify an instruction, and it is within the trial court's discretion to determine which issues are raised by the evidence and whether an instruction should be given." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). On the other hand, the supreme court has also stated that "[t]he question of whether sufficient evidence exists in the record to support the giving of a jury instruction is a question of law subject to *de novo* review." *People v. Washington*, 2012 IL 110283, ¶ 19.

¶ 45 We need not resolve whether the abuse of discretion standard of review or the *de novo* standard of review applies, because under either standard we would affirm the trial court.

¶ 46 We begin our analysis by examining the pertinent trial testimony to determine whether there was some evidence supporting the giving of a second-degree murder instruction based on

imperfect self-defense, *i.e.*, whether there was some evidence that defendant had a subjective but unreasonable belief that deadly force against Darryl was necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony. In determining whether defendant has established sufficient evidence entitling him to an instruction on second-degree murder based on imperfect self-defense, we may consider factors including "defendant's intent or motive, recent history of violence between the parties, previous relationship between the parties, the type of wound suffered by the victim, any contact between the defendant and victim, and the circumstances surrounding the incident." *People v. Toney*, 337 Ill. App. 3d 122, 138-39 (2003).

¶ 47 A. Melinda's Trial Testimony

¶ 48 Melinda testified she went to the Smooth Shots nightclub on December 25, 2005, with Darryl, Eric, Richard, Cornelius, Antoine and Tone, and that Antoine engaged in a verbal argument with the photographer at the nightclub who had taken a photograph of the men in the group. Melinda testified that after the argument, everyone in their group except for Antoine left the nightclub. Melinda entered Richard's truck, while the others decided to go back into the nightclub and retrieve Antoine.

¶ 49 Melinda testified that Darryl, Richard, and Cornelius began verbally arguing with four or five persons in front of the nightclub, one of whom was defendant. Melinda did not testify to the subject of the argument or to the actual words exchanged. Melinda testified that Cornelius then got into a "physical fight" with one of the four or five men in defendant's group. Another one of the four or five men in defendant's group then hit Darryl in the face with a bottle. Melinda testified that after Darryl was struck in the face with the bottle, "they start fighting the other guys"; Melinda did not specifically identify either defendant or Darryl as participants in this

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fight, nor did she testify as to any injuries inflicted by Darryl and/or his group upon defendant's group during this round of fighting. Melinda testified defendant then pulled out a gun and shot Darryl. Neither Darryl nor any members of Darryl's group had a weapon in their hands. Melinda testified that Darryl ran to Richard's truck and collapsed, and she bent down to him and then looked up and saw defendant. On direct examination, Melinda testified she heard defendant say to Darryl, "bitch ass n\*\*\*er should never stole off me." On cross-examination, Melinda testified she heard defendant say to Darryl, "bitch ass n\*\*\*er should have never stole on me."

¶ 50 In sum, Melinda only specifically identified Cornelius as having physically fought with a member of defendant's group. Melinda did *not* testify that she witnessed Darryl threaten or physically fight with defendant or any member of defendant's group. Further, Melinda's testimony indicated that instead of threatening or inflicting any injuries on defendant or his group, Darryl *received* an injury by being struck in the face with a bottle. Melinda also testified that although defendant was armed with a gun, Darryl and his companions were unarmed, lessening any threat they posed to defendant and his group. Melinda also testified on direct examination that subsequent to the shooting, defendant made a statement in Melinda's presence indicating that the shooting was because Darryl had "stole off" defendant; on cross-examination, Melinda testified defendant stated that the shooting was because Darryl had "stole on" defendant. There were no follow-up questions regarding the meaning of the phrases "stole off" or, "stole on," as used by defendant; neither party argued at trial or on appeal that those phrases indicated that defendant was saying Darryl had struck him. Rather, in his reply brief on appeal, defendant states only that his statement as testified to by Melinda indicated a reference to a theft. Melinda's testimony presented not even slight evidence that defendant subjectively believed deadly force

against the unarmed victim, Darryl, was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent a forcible felony.

¶ 51 B. Antelia's Trial Testimony

¶ 52 Antelia testified that after everyone left the nightclub following Antoine's verbal argument with the photographer, she saw defendant and Darryl outside the nightclub, verbally arguing with each other. Antelia did not testify to the subject of the argument. Antelia testified she saw a gun in defendant's hand and told Darryl to go. No one else had a gun. Antelia testified that at that point, Cornelius struck one of defendant's group, who then punched Cornelius and knocked him down, after which another member of defendant's group hit Darryl in the head with a beer bottle. Defendant then raised his gun and pointed it at Darryl's chest. Antelia heard a "pow" and ran away.

¶ 53 In sum, similar to Melinda, Antelia testified only that Cornelius had physically fought with a member of defendant's group prior to the shooting. Antelia did not testify that Darryl ever threatened or struck defendant or any member of defendant's group. Rather, Antelia's testimony indicated that instead of threatening or inflicting any injuries on defendant and his companions, Darryl *received* an injury by being struck on the head with a beer bottle while at around the same time Cornelius was punched to the ground. Antelia's testimony presented not even slight evidence that defendant subjectively believed deadly force against the unarmed victim, Darryl, was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony.

¶ 54 C. Basirat's Trial Testimony

¶ 55 Basirat testified that after everyone left the nightclub following the argument with the photographer, she saw Darryl and Cornelius standing next to each other, facing defendant and

two other men, one of whom was wearing dreadlocks. Basirat heard Darryl say to "calm down." She also heard Darryl and defendant "exchange" words, with one or both of them saying, "This shouldn't even be leaving out the club." Cornelius punched one of the men standing next to defendant; the man punched Cornelius back, knocking Cornelius to the ground. The man with dreadlocks hit Darryl in the face with a beer bottle. Darryl then "stepped a little forward" and defendant raised a gun up and aimed it at Darryl. Defendant fired a shot and Basirat saw defendant's hand "jerk." Basirat testified neither Darryl nor Cornelius had any weapons or guns in their hands.

¶ 56 In sum, similar to Melinda's and Antelia's testimony, Basirat testified only that Cornelius (not Darryl) had fought with a member of defendant's group prior to the shooting, and that Cornelius had been knocked to the ground. Basirat's testimony indicated defendant was armed while Darryl and Cornelius were not and, instead of threatening or inflicting any injuries on defendant or his companions, Darryl told everyone to calm down, but then *received* an injury by being struck in the face with a beer bottle while, at around the same time, Cornelius was knocked to the ground. Unlike Melinda and Antelia, Basirat did testify that just prior to the shooting, Darryl "stepped a little forward;" however, Basirat did not testify that in stepping a little forward, Darryl raised his hands or, otherwise, threatened to make an offensive move against defendant or any member of his group. Basirat's testimony did not present even slight evidence that defendant subjectively believed deadly force against the unarmed, injured victim, Darryl, was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony.

¶ 57

#### D. Richard's Trial Testimony

¶ 58 Richard testified that after everyone left the nightclub following the argument with the photographer, he saw Darryl and two other men walking in the opposite direction of him, toward the nightclub. Richard turned around to get Darryl; as he turned around, he heard a gunshot and saw defendant with a gun in his hand. Richard's testimony indicates he did not witness the argument/fight preceding the shooting that the other witnesses testified to, nor did he actually see the shooting; accordingly, Richard's testimony provided not even slight evidence as to whether defendant subjectively believed deadly force against Darryl was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony.

¶ 59 E. Eric's Trial Testimony

¶ 60 Eric testified at trial that he did not see Darryl get hit in the face with a bottle, did not see Cornelius get into a fight, and did not witness the shooting. Eric denied making any statement to the police or testifying before the grand jury. Eric's testimony at trial provided not even slight evidence as to whether defendant subjectively believed deadly force against Darryl was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony.

¶ 61 F. Eric's Statement to ASA Mojica

¶ 62 Eric's statement (which was written down by ASA Mojica and signed by Eric) was testified to by ASA Mojica and admitted into evidence. Eric stated that after everyone left the nightclub following the verbal argument with the photographer, he saw a man with dreadlocks break a drink glass against the side of Darryl's head and he saw another man punch Cornelius once in the face. Eric then saw defendant standing face to face with Darryl. Defendant removed

a revolver from his coat pocket, pointed it toward Darryl and Eric, and fired one time. Neither Darryl, Eric, nor Cornelius had a gun on them.

¶ 63 Thus, Eric's statement indicated that two of defendant's companions physically attacked Darryl and Cornelius, after which defendant shot at Darryl and Eric. Eric's statement made no representations that Darryl, Cornelius or Eric (all of whom were unarmed) struck or threatened defendant or defendant's companions prior to the shooting; rather, instead of threatening or inflicting any injuries on defendant and his companions, Darryl *received* an injury by being struck on the head with a drink glass at around the same time Cornelius was punched in the face. Eric's statement did not provide even slight evidence that defendant subjectively believed deadly force against the unarmed, injured victim, Darryl, was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony.

¶ 64 G. Eric's Grand Jury Testimony

¶ 65 Eric's grand jury testimony was testified to by ASA Fialkowski and admitted into evidence. Eric testified before the grand jury that after everyone left the nightclub following the verbal argument with the photographer, Eric saw Darryl engaged in a verbal argument with defendant; Eric did not testify to the subject of the argument. Eric testified defendant had his hands in his pocket and Darryl "grabbed his hand like what you got, a gun or something, and [defendant] falled back up out of the crowd. \*\*\* He fell back a little bit." A man with a chain punched Cornelius, and a man with braids hit Darryl in the face with a shot glass. Defendant then pulled out a gun and shot Darryl. Neither Darryl, Eric, nor Cornelius were armed.

¶ 66 In sum, Eric's grand jury testimony indicated that two of defendant's companions attacked Darryl and Cornelius, after which defendant shot Darryl. Eric made no representations that Darryl, Cornelius, or Eric struck or threatened defendant and his companions prior to the

shooting; rather, Eric testified that instead of threatening or inflicting any injuries on defendant and his companions, Darryl *received* an injury by being hit in the face with a shot glass at around the same time the man with the chain punched Cornelius. Eric also testified before the grand jury that although defendant was armed with a gun, and one of defendant's companions was armed with a chain, Darryl, Cornelius and Eric were all unarmed, further lessening any threat Darryl, Cornelius, and Eric posed to defendant and his companions.

¶ 67 Defendant notes that Eric testified that Darryl grabbed at defendant's hand prior to the shooting. However, Eric explained that Darryl grabbed at defendant's hand because he thought defendant might have a gun in his pocket; Eric did not testify that Darryl hurt defendant or threatened him with physical harm. Eric further testified that defendant "fell back a little" from Darryl. Eric did not testify that Darryl pushed or shoved defendant, causing him to fall back; rather, Eric's testimony indicates that after Darryl grabbed at defendant's hand, defendant backed away from Darryl, and then Darryl was hit in the face with the shot glass, Cornelius was punched, and defendant shot Darryl.

¶ 68 Eric's grand jury testimony did not provide even slight evidence that at the time of the shooting, defendant subjectively believed deadly force against the unarmed, injured victim, Darryl, was necessary to prevent imminent death or great bodily harm to himself or others, or the commission of a forcible felony.

¶ 69 H. The Photograph of Darryl and His Companions

¶ 70 Defendant contends he "had reason to be leery of Darryl" and of Darryl's companions at the time of the shooting because they had just been drinking in the nightclub, had gotten into an argument in the nightclub, and had taken a photograph showing them apparently "throwing gang signs." However, there was no evidence presented that defendant was aware Darryl and his

companions had been drinking. As for the argument inside the nightclub, it was verbal, not physical, and thus provided no evidence of any violent tendencies by Darryl toward defendant or anyone else. As for the photograph (which is contained in the record on appeal), no evidence established that the hand gestures exhibited therein were gang-related or that defendant ever even witnessed Darryl and his companions having their photograph taken.

¶ 71

#### I. Conclusion

¶ 72 We cannot say the trial court erred in finding not even slight evidence that defendant subjectively believed deadly force against the victim was necessary to prevent imminent death or great bodily harm to himself or others, or to prevent the commission of a forcible felony, given that: the victim was unarmed; there was no evidence of any history of violence between defendant and the victim; there was no evidence the victim made any threats toward defendant or any members of defendant's group; there was no evidence that the victim fought with defendant or any member of his group; and defendant's account of the shooting in Melinda's presence in the immediate aftermath made no mention of any threat posed by the victim or that he believed the shooting was done in self-defense.<sup>1</sup> Accordingly, the trial court committed no error in refusing to give a second-degree murder instruction based on imperfect self-defense.

¶ 73 II. Whether the Trial Court Erred by Refusing to Give Second-Degree Murder Instructions Based on Mutual Combat

¶ 74 Defendant contends the trial court erred by refusing to instruct the jury on second-degree murder based on mutual combat. First-degree murder may be reduced to second-degree murder

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<sup>1</sup> We note Melinda's testimony regarding defendant having stated that Darryl had either "stole on" or "stole off" him; however, as discussed earlier in this order, there was no testimony regarding the meaning of those phrases, and no argument at trial or on appeal that those phrases meant that Darryl had struck defendant. Defendant himself indicated in his reply brief on appeal that the reference was to a theft, as opposed to a reference to physical violence creating a belief in the need to use deadly force.

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when, at the time of the killing, defendant "is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed." 720 ILCS 5/9-2(a)(1) (West 2006).

¶ 75 "Mutual combat" is recognized as a "serious provocation" sufficient to reduce first-degree murder to second-degree murder. *People v. Lauderdale*, 2012 IL App (1st) 100939, ¶ 24. "Mutual combat is a fight or struggle which both parties enter willingly or where two persons, upon a sudden quarrel and in hot blood, mutually fight upon equal terms and where death results from the combat. In considering whether defendants have met the threshold burden of proving some evidence of mutual combat, it has been held that the alleged provocation on the part of the victim must cause the same passionate state of mind in an ordinary person under the same circumstances. A slight provocation is not enough, because the provocation must be proportionate to the manner in which the accused retaliated. The crime is murder when a defendant attacks a victim with violence out of all proportion to the provocation. There is no mutual combat where the manner in which the accused retaliates is out of all proportion to the provocation, particularly where homicide is committed with a deadly weapon." [Citations and internal quotations omitted]. *Id.* ¶ 26.

¶ 76 Defendant contends the evidence at trial that the shooting occurred in the aftermath of a physical argument between Darryl's group and defendant's group outside the night club supported the giving of an instruction on second-degree murder based on mutual combat. We disagree. As discussed in detail earlier in this order, the evidence indicated that Cornelius (*not* Darryl) engaged in a physical fight with one of defendant's companions prior to the shooting; no evidence was presented that Darryl ever threatened defendant or defendant's companions or

struck or physically harmed any of them in any way. No evidence was presented that Darryl displayed any weapons; rather, Darryl (as well as all the members of Darryl's group) were unarmed. Defendant's act of shooting the unarmed victim, who had never struck defendant or his companions or threatened to hurt any of them, but who at most had verbally argued with defendant, grabbed at defendant's hand to prevent him from accessing a gun, and stepped slightly forward, was completely out of proportion to the provocation; this is especially so given the evidence that just prior to the shooting, Darryl had been hit in the head with a bottle or shot glass, and Cornelius had been punched to the ground, thus lessening any threat posed by them.

¶ 77 As the trial testimony showed that defendant attacked the victim with violence out of all proportion to the provocation, there was not even slight evidence of mutual combat here. Accordingly, the trial court did not err by refusing to instruct the jury on second-degree murder based on mutual combat.

¶ 78 III. Whether the Trial Court Erred by Admitting Prior Consistent Statements

¶ 79 Defendant contends the trial court erred by admitting Detective Haniacek's testimony regarding prior statements made by Melinda, Richard, Antelia, and Basirat during their viewing of the photographic arrays and lineups that were consistent with their trial testimony identifying defendant as the shooter.

¶ 80 The admission of evidence is within the sound discretion of the trial court and will not be overturned on appeal absent a clear abuse of discretion. *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 92. The trial court has the discretion to exclude relevant evidence if its prejudicial effect substantially outweighs its probative value. *Id.*

¶ 81 Defendant here waived review by failing to object to Detective Haniacek's testimony at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Even choosing to address the issue on the merits, though, we find no reversible error.

¶ 82 "Generally, a witness's prior consistent statements are inadmissible to corroborate the trial testimony of that witness because they serve to unfairly enhance the witness's credibility." *People v. Temple*, 2014 IL App (1st) 111653, ¶ 34. "However, this rule does not apply to statements of identification." *Id.* Section 115-12 of the Code of Criminal Procedure of 1963 (Criminal Code) provides for the substantive admissibility of statements of prior identification where: "(a) the declarant testifies at the trial or hearing, and (b) the declarant is subject to cross-examination concerning the statement, and (c) the statement is one of identification of a person made after perceiving him." 725 ILCS 5/115-12 (West 2006).

¶ 83 Defendant does not dispute that the declarants (Melinda, Richard, Antelia, and Basirat) testified at trial and were subject to cross-examination concerning their prior statements. Defendant argues, though, that in testifying about their prior statements, Detective Haniacek went "far beyond" the prior statements of identification "crossing the line into detailed recounting of specific out-of-court statements made by witnesses, consistent with the details of their trial testimony-that is, inadmissible prior consistent statements."

¶ 84 We find no error. Detective Haniacek's testimony regarding the witnesses' statements during the photographic array is as follows:

*Melinda Powell*

"Q. Who did she identify on the photo array?

A. As soon as she saw the photo array, she immediately identified [defendant]

\*\*\* as the person who shot and killed the boyfriend, Darryl McGowan.

*Richard Gibson*

"Q. Did [Richard] make an identification?

A. Yes, he did.

Q. Who did he identify?

A. He identified [defendant].

\* \* \*

Q. And when you spoke with [Richard] \*\*\* and he identified the defendant, what did he tell you the defendant had done?

A. He said that immediately after he heard a gunshot, he saw [defendant] with a gun in his hand."

*Antelia Williams*

"Q. Did Antelia Williams make an identification on that photo array?

A. Yes, she did.

Q. Who did she identify?

A. She identified [defendant].

\*\*\*

Q. When Antelia Williams identified [defendant], what did she identify [defendant] as having done?

A. She identified [defendant] standing face to face with Darryl McGowan, level a handgun, and then she heard a gunshot."

*Basirat Yvette Olabode*

"Q. Did [Basirat] make an identification out of that photo array?

A. Yes, she did.

Q. Which person did she identify?

A. She identified [defendant].

\*\*\*

Q. What did she tell you the defendant had done?

A. She said that after hearing a gunshot, she saw [defendant] pointing a gun at Darryl McGowan and saw the gun jerk up."

¶ 85 Detective Haniacek's testimony regarding the witnesses' statements during the lineups is as follows:

*Melinda Powell*

"Q. Who did she identify?

A. [Defendant].

Q. What did she identify [defendant] as having done?

A. She identified [defendant] as the person who shot and killed her boyfriend, Darryl McGowan."

*Richard Gibson*

"Q. Did Richard Gibson make an identification?

A. Yes, he did.

Q. Who did he identify?

A. He identified [defendant].

Q. What did he identify [defendant] as having done?

A. Immediately he identified [defendant] as the person he observed with a handgun in his hand immediately after hearing shots fired."

*Antelia Williams*

"Q. When [Antelia] viewed the lineup, did she make an identification?

A. Yes, she did.

Q. Who did she identify?

A. She identified [defendant].

Q. And what did she identify the defendant as having done?

A. She identified [defendant] standing face to face with Darryl McGowan, level a handgun in his direction, and fire one time."

*Basirat Yvette Olabode*

"Q. When [Basirat] viewed the lineup, did she make an identification?

A. Yes.

Q. Who did she identify?

A. She identified [defendant].

\*\*\*

Q. What did she identify the defendant as having done?

A. She identified [defendant] as the person after she heard a gunshot with a gun in his hand point it at Darryl McGowan, she saw the gun jerk."

¶ 86 All of these statements made by Melinda, Richard, Antelia and Basirat during their viewings of the photographic arrays and lineups, and testified to by Detective Haniacek, are ones in which the witnesses pointed out defendant and described the actions performed by him at the time of the shooting, and which served to identify him as the shooter. See Cleary & Graham's Handbook of Illinois Evidence, § 611.16 at 520 (9th ed. 2009) ("Statements of identification include a short summary description of the conduct of the identified individual, made contemporaneously with the identification, *People v. Tisdell*, 201 Ill. 2d 210 (2002); such as 'He's

the one who shot the victim,' *People v. Bowen*, 298 Ill. App. 2d 829 (1998); or 'Thorne was the man who held Acevedo during the robbery,' *People v. Thorne*, 352 Ill. App. 3d 1062 (2004).").

¶ 87 Contrary to defendant's argument, Detective Haniacek did not testify to any statements by Melinda, Richard, Antelia, and Basirat unrelated to defendant's identification as the shooter. Accordingly, Detective Haniacek's testimony regarding the statements of identification of Melinda, Richard, Antelia, and Basirat was admissible under section 115-12 of the Criminal Code.

¶ 88 Defendant argues that "[a]t the very least, the elicitation through Haniacek of not one but *two* prior consistent statements from [Melinda, Richard, Antelia, and Basirat in the photographic array and lineup] was cumulative and more prejudicial than probative, particularly given their unambiguous identifications of [defendant] during their trial testimony, and the fact that each admitted on the stand to having previously identified [defendant] in a lineup and a photographic array." Defendant cites no cases where a court has reversed a criminal conviction on the basis that the elicitation of a witness's prior identification of defendant in a photographic array and lineup was cumulative and more prejudicial than probative. In the absence of any support for his argument, the issue is waived. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Vincent v. Doebert*, 183 Ill. App. 3d 1081, 1087 (1989).

¶ 89 IV. Whether the Trial Court Erred by Admitting Multiple Prior Inconsistent Statements From Eric Powell

¶ 90 At trial, Eric recanted previous statements he had made identifying defendant as the shooter and testified that he did not witness the shooting. The State then introduced into evidence Eric's prior statements identifying defendant in the photographic array and in a lineup. Unlike Melinda, Richard, Antelia and Basirat, for whom their prior statements identifying defendant in a photographic array and lineup were consistent with their trial testimony, Eric's

prior statements of identification were inconsistent with his trial testimony in which he stated he was unaware of the identity of the shooter. The issue is whether Eric's prior statements of identification were substantively admissible under section 115-12 even where he was unable or unwilling to identify defendant in open court.

¶ 91 We addressed this same issue in *People v. Bowen*, 298 Ill. App. 3d 829 (1998). In *Bowen*, the defendant there was tried for first-degree murder. *Id.* at 830. A witness, Lamont Brown, testified that on the night of the murder, he saw a blue Malibu drive by twice. *Id.* at 831. Lamont recognized the men in the car as "Bam," "Ricardo," and "Maurice," who were rival gang members. *Id.* Lamont testified that the car subsequently stopped nearby, and Maurice exited the passenger's side and shot the victim. *Id.*

¶ 92 Lamont further testified that the defendant was not the same Maurice in the blue Malibu who had shot the victim. *Id.* at 832. Lamont recalled speaking with Detective Gehrke, but denied being shown any photographs. *Id.* Lamont admitted he attended a lineup and identified the defendant. *Id.* However, Lamont testified he did not identify the defendant as the person who shot the victim; rather, he identified the defendant as a member of a rival gang. *Id.*

¶ 93 Detective Gehrke testified that Lamont was shown a photographic array and identified a photograph of the defendant as the person who shot the victim. *Id.* at 833. Detective Gehrke also testified that Lamont viewed a lineup and identified the defendant as the shooter. *Id.*

¶ 94 Following his conviction, the defendant appealed, arguing that the admission of Lamont's prior statements as substantive evidence of identification was reversible error where Lamont denied making the statements at trial and testified the defendant did not commit the crime. *Id.* at 834.

¶ 95 The appellate court began its analysis by noting that "section 115-12 on its face permits the substantive admission of prior identification statements without regard to whether the witness makes an in-court identification. The language of this section does not require an in-court identification, nor does it prohibit the introduction of a prior identification statement where the witness fails to identify the defendant in open court." *Id.* (citing 725 ILCS 5/115-12 (West 1996)).

¶ 96 The appellate court then cited *People v. Holveck*, 141 Ill. 2d 84 (1990), in which the State questioned its identification witness about her out-of-court identification of the defendant but did not attempt an in-court identification. The supreme court held that the out-of-court identification was properly admitted under section 115-12 because the witness testified at trial and was subject to cross-examination. *Id.* at 105.

¶ 97 The appellate court concluded that "*Holveck* does not restrict the hearsay evidence admissible under section 115-12 to those prior identifications which corroborate a positive in-court identification." *Bowen*, 298 Ill. App. 3d at 834-35.

¶ 98 The appellate court also cited section 611.16 of Cleary & Graham's Handbook of Illinois Evidence, which states:

" [P]rovided the declarant testify at trial and be subject to cross-examination concerning the prior statement of identification of a person made after perceiving him, the prior statement of identification, testified to by the declarant or another witness, including a police officer, is now admissible as an exception to the hearsay rule as substantive evidence without regard to whether the statement of prior identification corroborates a positive in-court identification by the declarant, is offered as a substitute for an inability to make an in-court identification, or to bolster a weak in-court identification on the part

of the declarant.' " *Bowen*, 298 Ill. App. 3d at 835 (quoting Cleary & Graham's Handbook of Illinois Evidence § 611.16 at 481 (6th ed. 1994)).

The appellate court stated that "we adopt this position set forth in Cleary and Graham." *Bowen*, 298 Ill. App. 3d at 835. The appellate court concluded that "the trial court properly admitted as substantive evidence [Lamont's] prior identification of the defendant, despite his inability or refusal to identify the defendant in open court." *Id.* at 835-36.

¶ 99 In accordance with *Bowen*, we hold that the trial court properly admitted as substantive evidence Eric's prior identification of defendant in the photographic array and lineup, despite his inability or refusal to identify defendant in open court.

¶ 100 The next issue is whether the trial court properly admitted Eric's handwritten statement and grand jury testimony, which were more detailed than his statements identifying defendant in the photographic array and lineup. Eric's handwritten statement and grand jury testimony were admitted under section 115-10.1 of the Criminal Code, which states:

"Admissibility of Prior Inconsistent Statements. In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

(a) the statement is inconsistent with his testimony at the hearing or trial,

and

(b) the witness is subject to cross-examination concerning the statement,

and

(c) the statement--

(1) was made under oath at a trial, hearing, or other proceeding, or

(2) narrates, describes, or explains an event or condition of which

the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, or

(C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." 725 ILCS 5/115-10.1 (West 2006).

¶ 101 Defendant argues that while the admission of one statement that is inconsistent with a witness's trial testimony is proper under section 115-10.1, the introduction of multiple statements that are inconsistent with the trial testimony but consistent with each other creates the same bolstering effect that is prohibited by the rule against the introduction of prior consistent statements. Therefore, defendant contends, once the trial court admitted one of Eric's prior statements that was inconsistent with his trial testimony and that identified defendant as the shooter, the trial court was prohibited from admitting Eric's other prior statements identifying defendant that were consistent with the first.

¶ 102 Defendant waived review by failing to object to the admission of the statements at trial. *Enoch*, 122 Ill. 2d at 186. Even choosing to address the issue on the merits, we find no cause for reversal, where we have previously rejected the same argument defendant is making here. Specifically, in *People v. White*, 2011 IL App (1st) 092852, we stated:

"We recognize that there is an inherent tension between the admission of multiple prior inconsistent statements as substantive evidence under section 115-10.1 and the rule barring admission of prior statements that bolster trial testimony. We do not agree with defendants, however, that the rule barring prior consistent statements, or its 'underlying rationale,' can so easily be grafted onto the rules allowing for admission of prior inconsistent statements. Courts have long recognized a bar against prior consistent statements, with limited exceptions, because these statements serve no purpose other than to bolster trial testimony. [Citation.] Even under the limited exceptions when prior consistent statements are admissible, they cannot be considered as substantive evidence. [Citations.]

Prior inconsistent statements stand on very different evidentiary ground. Prior inconsistent statements are a vital tool to challenge witness credibility by contradicting and discrediting trial testimony. [Citation.] More important to this analysis, if a prior inconsistent statement meets basic requirements of reliability under section 115-10.1, either party in a criminal case may introduce the prior inconsistent statement as substantive evidence. [Citation.] Section 115-10.1 is meant to advance the legislature's goal of 'prevent[ing] a 'turncoat witness' from merely denying an earlier statement when that statement was made under circumstances indicating it was likely to be true.' [Citation.]

Thus, while courts have found little value in a prior consistent statement apart from the impermissible bolstering of trial testimony, the legislature has recognized that a prior inconsistent statement not only serves to discredit trial testimony, but may serve as substantive evidence if it meets the requirements of section 115-10.1. While a blanket

prohibition (with limited exceptions) makes sense for prior consistent statements, applying that same general bar to inconsistent statements that are consistent with each other would frustrate the legislature's goal of discouraging recanting witnesses. [Citation.] A witness could be questioned as to prior inconsistent statements, but after one is admitted as substantive evidence, the witness would be free to deny other prior statements without a risk that those statements would be admitted as substantive evidence. We conclude that the underlying rationale for the rule against prior consistent statements does not justify obstructing the operation of section 115-10.1. [Citation.] We decline to create a new evidentiary rule limiting the number of inconsistent statements admitted under section 115-10.1." *Id.* ¶¶ 51-53.

We adhere to the reasoning in *White* and hold that the trial court did not err in admitting Eric's multiple prior inconsistent statements under section 115-10.1.

¶ 103 Defendant next argues that Eric's multiple prior inconsistent statements were cumulative and more prejudicial than probative. We addressed this same argument in *White*, noting that the defendants there had "not cited any case where a court has found that the prejudicial effect of a substantively admitted prior inconsistent statement substantially outweighed its probative value merely because it was repetitive of a previously admitted prior statement." *Id.* ¶ 45. *White* further noted that "this court has found that even when the State presented a prior inconsistent statement that was 'unnecessarily repetitive' of another, the repetition did not rise to the level of prejudice." *Id.* (citing *People v. Fields*, 285 Ill. App. 3d 1020, 1028 (1996)).

¶ 104 In accordance with *White* and *Fields*, we find that the admission of Eric's multiple prior inconsistent statements did not constitute reversible error.

¶ 105 V. Whether the Trial Court Erroneously Admitted Hearsay Testimony

¶ 106 Defendant contends the trial court erred by admitting Detective Haniacek's testimony that, after speaking to a confidential informant, he placed defendant's photograph in a photographic array. Defendant argues that when Detective Haniacek referred to the conversation with the confidential informant, who did not testify at trial, he implicitly introduced testimonial hearsay, specifically that the informant identified defendant as the shooter. Defendant argues that the admission of testimonial hearsay from a declarant who did not testify at trial denied him his right to confrontation under the Sixth Amendment.

¶ 107 Testimony recounting the steps taken in a police investigation is nonhearsay and does not violate a defendant's confrontation rights, even if a jury might conclude that the nontestifying witness implicated defendant, as long as the testimony does not reveal the substance of the conversation between the detective and the nontestifying witness. *People v. Johnson*, 116 Ill. 2d 13, 24 (1987); *People v. Gacho*, 122 Ill. 2d 221, 248 (1988); *People v. Rice*, 321 Ill. App. 3d 475, 481 (2001).

¶ 108 In the present case, Detective Haniacek testified to the steps taken in the police investigation, specifically, that on December 27, 2005, he and his partner spoke with the confidential informant, after which the officers put together a photographic array containing a photograph of defendant. Detective Haniacek never revealed the substance of their conversation with the confidential informant. Accordingly, Detective Haniacek's testimony was properly admitted.

¶ 109 Defendant argues that by referring to the nontestifying witness as an "informant," Detective Haniacek improperly suggested that the witness was someone with "inside knowledge about the crime and its perpetrator." Defendant argues that "[t]he jury needed to make only the simplest of inferences [from Detective Haniacek's testimony] to determine that the 'informant'

must have identified [defendant] as the shooter." Accordingly, defendant contends we should reverse and remand for a new trial. Defendant's argument is unavailing. As we discussed earlier in this order, testimony regarding the officers' investigatory procedures, including the occurrence of conversations with nontestifying witnesses, is admissible even if the logical inference is that "nontestifying witnesses implicated the defendant," as long as the testimony does not reveal the substance of the conversation between the officers and the nontestifying witnesses. *Johnson*, 116 Ill. 2d at 24. As Detective Haniacek's testimony regarding the officers' investigatory procedures did not explicitly reveal the substance of his conversation with the informant, his testimony was admissible even if the logical inference is that the informant implicated defendant.

¶ 110 Defendant argues that Detective Haniacek's testimony regarding his conversation with the informant had no probative value and was irrelevant because "[i]t was not necessary to bridge any gaps in the investigation or the testimony." As aptly noted by the State, though, Detective Haniacek's testimony "filled a gap in the course of the police investigation, recounting how the police went from having no suspect to putting a picture of defendant in a photo array." The admission of Detective Haniacek's testimony was not error.

¶ 111 For the foregoing reasons, we affirm the trial court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 112 Affirmed.