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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-1224
	)	
LUIS VILLAVICENCIO-SERNA,	)	Honorable
	)	Daniel P. Guerin,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices McLaren and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt and the trial court did not err in permitting the State to introduce videotapes of witnesses' prior statements into evidence.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Luis Villavicencio-Serna, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 50 years' imprisonment. He now appeals, raising two issues. First, he contends the he was not proven guilty beyond a reasonable doubt. Second, he argues that the trial court erred in allowing certain taped statements to be presented as substantive evidence. We disagree with both contentions and affirm.

¶ 4 II. BACKGROUND

¶ 5 Extensive evidence was presented at defendant's trial. Given that defendant is challenging the sufficiency of the evidence, we will set it forth here in some detail. The State first called the victim's mother, who identified Armando Huerta, Jr., as the victim.

¶ 6 The State's next witness was Juan Carlos Marines Rojas. He testified that he was with Huerta during the early morning hours of May 16, 2009. They were sitting in a car in the parking lot of the apartment complex where they lived, drinking beer and listening to music. They stepped out of the car to smoke. They then decided to go in for the evening. As they were walking toward the apartment building, Rojas heard a car pass by and gun shots. The car did not have its headlights on. Huerta took two steps and fell to the ground. Rojas had never seen the car from which the shots were fired. However, two days after the shooting, two police officers picked him up and drove him to the police station. He saw the car in the station's parking lot. The police did not point out the car to Rojas; he pointed it out to them. Rojas acknowledged that when he was first interviewed, he gave the police a different description of the car, stating it was a dark blue or dark green Honda. He explained that he could not see the color—which was actually gray/silver—in the dark. Further, he remembered how the back part of the car looked, and this helped him identify the car in the police lot. During cross-examination, Rojas acknowledged that he had consumed about eight beers and was “a little drunk.” A few hours before the shooting, another car dropped off some people, and Rojas did not see anybody else after that time until the time of the shooting. The shooting took place about 3:30 a.m. Rojas never saw the victim get involved in any sort of confrontation with the people in the car from which the shots came.

¶ 7 Sergeant Brian Goss, of the Addison Police Department, next testified for the State. At about 3:33 a.m. on May 16, 2009, Goss received a call of shots fired at 307 Dale Drive. Two other officers were dispatched to the area as well. When he arrived, Goss noted an individual

lying on the ground. There were other people standing near the individual. An ambulance arrived to transport Huerta to the hospital. Goss got into the ambulance with Huerta. Huerta was conscious and complained of pain. The ambulance departed the scene of the shooting, where Goss remained.

¶ 8 Goss testified that at the time of the shooting, the parking lot was almost full. There were exterior lights on the apartments, and it was a clear night. He located several shell casings. They appeared to be from a small-caliber weapon, such as .22 caliber gun. Goss opined that the casings came from a semi automatic weapon. No weapon was found at the scene.

¶ 9 On cross-examination, Goss acknowledged that, to his knowledge, no weapon had ever been recovered. He was not, however, in charge of the investigation—only the crime scene. It was thus possible that he might not have been aware that a weapon had been recovered subsequent to the shooting.

¶ 10 The State next called Josephina Vasquez. She was 19 years' old at the time of the trial. Vasquez testified that she had dated defendant for about four months “a couple of years ago.” They were dating in May 2009. Vasquez was a sophomore in high school. She also worked at a flea market, where she met defendant. Huerta was her neighbor, and she had known him for a long time. She stated that she was told by another neighbor that Huerta had been shot. She further testified that she was with defendant and that they were at defendant's apartment in Chicago at the time of the shooting. However, she agreed that this was not what she had told the police.

¶ 11 Rather, Vasquez had told the police that defendant had shot Huerta. She explained that she “felt like [she] was getting threatened by them to tell them that he shot him.” She stated that the police yelled at her and threatened her with jail. However, she agreed that they did not threaten her initially. The police continued to ask her the same questions, and, over time, they

became “more harassing and more threatening.” One of the officers stuck his finger in her face and insisted that SHE knew something about the crime. The officer threatened Vasquez with jail. Eventually, she gave a videotaped statement. The officers did not yell or threaten her while this statement was being made. Vasquez testified that the videotaped statement was the result of the pressure the police put upon her. The police “told [her] what [she] had to say.” Ultimately, Vasquez made two such statements. In the second one, she states that she drove to Addison with defendant and that defendant shot Huerta. In the first video, she stated that she went to bed about 2 a.m., defendant left, and he came back at 5 a.m., at which time he was physically cold. Defendant stated, *inter alia*, that he had taken care of business. Also on the first video, Vasquez stated that defendant did not like Huerta because Huerta had called Vasquez at 5 a.m. while Vasquez was with defendant. Following that call, defendant had been making threatening remarks about Huerta. In the second recording, she states that she drove to Addison with defendant and that defendant shot Huerta. The second videotaped statement shows Vasquez in a room by herself for a time, crying.

¶ 12 On one occasion when Huerta called Vasquez, defendant took the phone and told Huerta to stop calling. Vasquez testified that defendant was a jealous person. The police told Vasquez to say that she was in a car with defendant and Michael Daddio. She acknowledged telling the police that Daddio had certain tattoos and that he drove a Cadillac (the State extensively examined Vasquez about her videotaped statements, of which she acknowledged certain parts and denied others). Vasquez met Daddio through defendant. She identified a picture of Daddio’s car that the police showed her, and she wrote “silver” on it. She drew a diagram showing her position in the car. The word “shooting” also appears in her handwriting, and an arrow goes from the word to the spot in the parking lot where Huerta was shot. She explained that the police had told her where the shooting occurred.

¶ 13 Vasquez testified that she wanted to speak with her father, but was not allowed to do so. A few days after her interrogations, Vasquez called a telephone number the police had given her to complain about the way she was treated.

¶ 14 During cross-examination, Vasquez testified that she was 16 years' old at the time of the shooting. At the time of the trial, she was 19, was in a good relationship (not with defendant), and had two children. She had "moved on with [her] life." She reiterated that she was not present when Huerta was shot. Before implicating defendant for the police, she had repeatedly told them she was not present during the crime. The interrogation lasted for the better part of two days. She wanted the police to stop yelling and screaming at her. She was scared and wanted to go home. Therefore, she told the police "what they wanted to hear." The police told Vasquez she could "take the witness road" or "get arrested." She was crying. After she told the police what they wanted to hear, they were nice to her.

¶ 15 The State's next witness was Frank Pope, a detective with the Addison police department. He interviewed Vasquez in relation to the shooting that occurred on May 16, 2009. Detective Wadsworth also participated in the interview. The interview, which occurred during the early-morning hours of May 17th, was recorded. Vasquez identified defendant's picture in a photographic lineup. Pope denied harassing or yelling at Vasquez. He did not threaten her with jail. Pope added that Wadsworth also did not do any of these things. At some point after the interview, Vasquez was taken home, and, at 11 a.m. the next day, Pope, Detective Gonzalez, and Detective Gilhooley picked her up to conduct further questioning. Pope testified that no one harassed or threatened Vasquez in his presence. Moreover, she never said she did not want to speak to the police or that she wanted to speak with her father. During cross-examination, Pope admitted that he did not videotape the initial portions of his first interrogation of Vasquez, though he had the ability to do so.

¶ 16 The State next called Detective Commander Joseph Maranowicz, also of the Addison police department. He testified that he participated in the investigation in this case. Maranowicz acted as the juvenile officer during the interview of Vasquez. As the juvenile officer, his role was to act on the behalf of the juvenile, ensure they understand the process and their rights, keep the parents informed, and make sure the juvenile understands the questions that are being asked. Vasquez was 16 years old at the time she was interrogated. He observed Gilhooley's interrogation of Vasquez. Gilhooley never yelled at or harassed her, and he did not threaten her with jail. Maranowicz never did any of these things either. Vasquez never complained to him of such acts. During cross-examination, Maranowicz stated that he could not recall if he informed Vasquez that she could have a parent present. In any event, according to Maranowicz, Vasquez did not want her father contacted. Maranowicz acknowledged that at one point on the video, Vasquez is crying and vomiting. He admitted that he did not check on her and explained that they monitor juveniles remotely. Maranowicz did not know why Vasquez was throwing up, nevertheless, he did not enter the interrogation room to see why. Maranowicz agreed that he was also acting on behalf of the police department.

¶ 17 Following the conclusion of Maranowicz's testimony, the State played the first video recording of a portion of Vasquez's interview, which occurred during the early morning on May 17, 2009. During this portion of her interview, Vasquez states that she and defendant had dated for about 6 months. Two days before the shooting, she and defendant were going to break up; however, they reconciled. She stayed at defendant's apartment that night and spent the next day with defendant. At one point during the day, defendant smoked a "blunt." From about 9 p.m. on, they remained at defendant's apartment, going to sleep about 2 a.m. However, defendant left and returned about 5 a.m. He was cold. He stated that he had taken care of business. Vasquez then recounts the events of the next day, including that she and defendant argued; she took a

shower; following her shower, everything was fine between her and defendant; she went to work; and her father picked her up from work. During the interview, Vasquez also states that defendant is a jealous person; defendant did not like Huerta; and she was afraid of defendant.

¶ 18 The second video recording (actually a series of exhibits) made during Vasquez's interrogation was then played for the jury. During a break, the trial court instructed the jury to disregard portions of Vasquez's statement where she says that defendant is a jealous person, a violent person, and that he had been shot in the past. Moreover, the parties agreed to fast-forward through portions of the recording where Vasquez is alone. The jury did view portions where she is seen crying and throwing up.

¶ 19 In the second recording, Vasquez states that she, defendant, Michael Daddio, and Donald Rogers, drove to her apartment complex during the early morning of May 16, 2009. Defendant had a black gun in his waist band. Defendant took out the gun and cocked it when they reached the parking lot. They drove around the lot twice, with the headlights off. Defendant told her to duck, and he reached over her and fired approximately five shots. Daddio then drove Vasquez and defendant to defendant's apartment. She and defendant got into an argument. The State also played a voicemail message defendant left on Huerta's phone six days before the shooting. In it, defendant directs a number of expletives toward Huerta.

¶ 20 Michael Daddio next testified for the State. At the time of the trial, he was 22 years old. Daddio stated that he used to work for defendant and defendant's brother. He worked at the same flea market at which defendant and Vasquez worked. He had driven defendant and Vasquez to Vasquez's home on about five occasions. In May 2009, Daddio was driving a silver 1993 Cadillac DeVille. He testified that he could not recall what he was doing on Friday night, May 15, 2009. After refreshing his recollection, Daddio testified that he sold the Cadillac on May 16, 2009. He could not recall what he was doing at any other time on the sixteenth. On

May 17, 2009, police officers came to Daddio's place of employment and escorted him away. He was advised of his *Miranda* rights, as indicated by a form he signed at 3:53 p.m. A video recording of a portion of his interview with the police commenced at 9:25 p.m. The police took him to the crime scene and asked about events transpiring around 3:15 a.m. Daddio directed the police to Rogers' house. Daddio claimed that the police told him he needed to point out a second person, and, after several hours, he acquiesced and pointed out Rogers. He said the police told him they would take him away from his family. They said they would "plaster [his] face" around so his little brother would know he was part of a murder. There was "lots of other stuff; emotional stuff that was, like, very heartbreaking." They kept Daddio there for hours, "telling [him] a little bit about the case" and "telling [him] that [he] was part of the case." They told him that he "needed to put it together." They threatened that Daddio would go to jail for life. Eventually, he "couldn't take it anymore" and "just pointed someone out."

¶ 21 Daddio acknowledged seeing two men outside of Vasquez's apartment speaking Spanish on the night of the murder; however, he later denied being present. He denied that Rogers was present and that defendant told him to drive around the area. He further denied that defendant shot at the people in the parking lot. He denied seeing defendant with a gun. Daddio reiterated that the police compelled him to implicate defendant by threatening to arrest him.

¶ 22 During cross-examination, Daddio stated that he was not in Addison on May 16, 2009, at or about 3:33 a.m. He was not with defendant or Vasquez at any point on that day. He was not with Rogers that day until later in the day. The police picked Daddio up from work around 4 p.m. He was not allowed to call his mother. He had "somewhat of an emotional breakdown" in that he could not catch his breath and was crying.

¶ 23 The State's next witness was Roy Selvik, a detective from the Addison police department. He spoke with Vasquez on May 16 and May 17, 2009. He never yelled at her or

threatened her with imprisonment. He did not recall anyone else doing so. He went to the flea market to locate defendant and Daddio. With regard to Daddio, Selvik located him, approached, and identified himself. He asked Daddio if he would be willing to speak to the police, and Daddio answered affirmatively. Daddio voluntarily accompanied Selvik to the police department. Pope was also present. Selvik told Daddio that he was not under arrest and free to leave at any time. He *Mirandized* Daddio. Daddio told Selvik that he knew why the police wanted to speak to him, namely, a shooting in Addison.

¶ 24 During cross-examination, Selvik testified that he only had contact with Vasquez for about three minutes at the Addison police department. He agreed that outside of this time, he would not have known how she was treated; though, if there was yelling or screaming, he would have heard it. Selvik stated that of the seven hours Daddio was at the police department, Selvik spoke with him for about three hours. The rest of the time, Daddio was left in a room by himself.

¶ 25 The State the called Donald Rogers. Rogers stated that he was 22 years old at the time of the trial. He used to work with defendant at the flea market. On May 15, 2009, at about 10 p.m. he was with his girlfriend, Aristen Williams, at her house. Rogers remained there until about 4:30 a.m. and went home. He slept until noon or 1 p.m., got up, showered, and spent the day watching movies with his mother. He did not go to work on May 16 or May 17. On May 17, the Addison police picked up Rogers at his uncle's house. The police told Rogers he would get 35 years if he did not cooperate. Officers yelled and hit the desk. At one point, an officer removed Rogers' glasses. They asked him if he wanted to see his mother again. On June 26, 2009, Rogers drove himself and his girlfriend to the Addison police station to provide additional information.

¶ 26 On cross-examination, Rogers stated everything he told the police in May and June of 2009 was a lie. When the police came to pick him up on May 17, 2009, he did not feel as though he had a choice regarding whether to go with them. He denied being at Vasquez's apartment complex on May 16, 2009, several times prior to making a recorded statement. The police told him he was lying. Rogers has had no contact with defendant since May 16, 2009. During redirect-examination, Rogers denied that the police told him what to say during the recorded portion of his interview; rather, he stated that he made up the statement by himself.

¶ 27 The State's next witness was Dr. Michael Humilier, a forensic pathologist. He performed an autopsy on the victim. He opined that Huerta's death resulted from multiple gunshot wounds.

¶ 28 Dennis Kotlinski, an Addison police officer, testified after Humilier. In 2009, he was the high-school liaison for the Addison Trail High School. On May 16, 2009, Vasquez was brought to the police station by her father. Her father had reported her missing that morning, and, as the high-school liaison, such matters were typically referred to Kotlinski. Kotlinski interviewed her to ascertain why she had been missing. During the course of the interview, Kotlinski came to believe that Vasquez had information about a shooting that had occurred earlier that day. Kotlinski testified that he never yelled at or coerced Vasquez. Detectives Pope and Wadsworth, who were also present, also did not coerce Vasquez in any way.

¶ 29 During cross-examination, Kotlinski acknowledged that at the start of his first interview with Vasquez, he was aware that she may have had some connection to the shooting. Kotlinski made no attempt to secure the clothing Vasquez was wearing during the early morning of May 16, 2009, so that it could be tested for gunshot residue. Kotlinski was aware of another vehicle that had been in the area of the shooting around the time it occurred. The car contained four people: Paul Alvarado, Daniel Garcia, David Vargas, and Maritza Padilla. The car was in the area at about 3:30 a.m. to drop off Padilla. It was a dark green Pontiac Bonneville. The car's

occupants were asked to come in to the Addison police station, and three of them complied (Vargas did not). None of these individuals were tested for gunshot residue. Kotlinski went to speak with Vargas. During redirect, Kotlinski testified that Vargas was cooperative when he went to speak with him. At the time of the shooting, Maritza Padilla had already exited the car and was in her apartment with her father. He did not test any of these individuals for gunshot residue because they were honest and forthcoming and had already left the scene when the shooting took place.

¶ 30 A number of officers and a State's Attorney testified that defendant, Vasquez, Daddio, and Rogers were not subject to coercion, though, they were left alone for long periods in the interrogation room. Cesar Padilla, Maritza's father, testified that she arrived home about 3 a.m., though he did not know the exact time. He heard gunshots a short time after Maritza came home. He went outside and saw Huerta lying on the ground. He held Huerta and attempted to comfort him. The police arrived about five minutes later. Padilla further testified that Maritza was no longer in the country.

¶ 31 The State next called Stefan Bjes, an Addison police officer. He testified that he and another officer drove Juan Rojas to see if he could identify the vehicle used in the shooting. Rojas identified a silver Cadillac DeVille as the shooter's vehicle. Jose Gonzalez, another Addison police officer, testified that he was fluent in Spanish and translated the conversation between Rojas and Bjes.

¶ 32 Aristen Williams testified that she dated Rogers in May 2009. Rogers never stayed at her house past 2:30 a.m. She helped her father with a newspaper delivery job, which required her to leave home at that time. She received several texts from Rogers on the morning of the murder.

¶ 33 Alvarado and Garcia both testified that they were returning home from a record release party on the morning of May 16, 2009. After they dropped off Maritza, a person ran up to

Alvarado's car and kicked it. Garcia testified that Alvarado stopped the car and suggested getting out and beating up the person. Garcia talked him out of it, and they drove home. After he got home, Alvarado received a call from Maritza. He then called Garcia, and they drove to the Addison police department, where they were interviewed. Alvarado denied that he or anyone in his car fired a weapon while at Maritza's apartment complex during the early morning hours of May 16, 2009.

¶ 34 The State next called Sean Gilhooley of the Addison police department. Gilhooley was present when defendant was charged with Huerta's murder. When informed of the charges, defendant said, "Fuck that nigga, call my girlfriend 5 a.m." During cross-examination, he acknowledged that he did not record this statement, and on redirect, he explained that he did not know that defendant was about to make that statement.

¶ 35 The State then called several witnesses to identify and authenticate various telephone records. The trial court admitted telephone records pertaining to Daddio, Huerta, and Rogers.

¶ 36 Before closing, the State played Daddio's taped statement. In the statement, Daddio states that defendant called him around midnight on Friday May 15, 2009, and asked if Daddio could drive Vasquez home. Daddio picked up defendant and Vasquez. Rogers was also present. Defendant and Vasquez were in the backseat. They got to Vasquez's home about 1 a.m. Defendant told Daddio to drive around the parking lot. After doing so once, Daddio observed 2 males talking in Spanish. One appeared angry, and he and defendant exchanged words in Spanish. At one point, defendant said, "Fuck you." Daddio heard four or five gunshots come from behind him. Defendant told Daddio, "go, go, go." Defendant asked Daddio to drive him home. Vasquez was still in the car. When Daddio dropped off defendant and Vasquez at defendant's home, defendant said, "This never happened." Daddio then went home.

¶ 37 The State also played Rogers' recorded statement. Around midnight on May 15, 2009, Rogers and Daddio were hanging out. Defendant called and asked if they wanted to come over and hang out with defendant and his girlfriend. Daddio and Rogers picked up defendant and Vasquez. They drove around for a while. Defendant got a phone call on Vasquez's phone. Defendant was yelling, and he threatened to beat up the caller. Defendant then directed Daddio where to drive. They turned into an apartment complex. A guy in the parking lot yelled at defendant, and defendant yelled back. Rogers then heard gunshots. He was not sure who was shooting, so he checked himself to see if he had been hit (he had not). Defendant told Rogers that he would shoot him too if Rogers told anyone about the shooting.

¶ 38 According to defendant, the State also played "a misidentified recording of Vazquez." There are references in the trial record to two different recordings at this point; however, one is of Rogers and we cannot locate a recording that corresponds to the other exhibit number. The record also indicates that only 1 minute and 23 seconds of this recording were played for the jury. After playing this tape, the State rested.

¶ 39 Defendant first called Officer Brant, who testified that he contacted RedSpeed, a company that manages red-light cameras. RedSpeed was unable to provide any information regarding a silver Cadillac in the relevant area on May 16, 2009. He was also unable to obtain any relevant information from the Illinois Toll Authority through its cameras that monitor toll booths. On cross-examination, Brant testified that he used "every possible piece of technical surveillance" available to try to determine whether Daddio's car had been caught on camera.

¶ 40 Defendant then called Detective Reba of the Addison police department. In May 2009, he was an evidence technician. He collected shell casings from the parking lot of Vasquez's apartment complex. He denied knowing if fingerprints could be found on shell casings. After agreeing that he was careful not to transfer DNA onto the casings, he further denied knowing

whether DNA could be found on shell casings. Reba did not know whether the shell casings were ever tested. During cross-examination, Reba testified that a freshly ejected shell casing is typically hot.

¶ 41 Officer Thomas Hostetler of the Addison police department next testified for defendant. He was an evidence technician in 2009. He processed the silver Cadillac used in the shooting on May 17, 2009. He identified a picture of the car, which showed “heavy front-end damage to the passenger side front.” He tested the rear passenger compartment for gunshot residue. During cross-examination, he stated that if the car had been cleaned after the discharge of a gun, it might affect the test. Similarly, if the shooter stuck his hand out the window or if the car had been driven with the windows open, the test could be affected.

¶ 42 The defense then read a stipulation to the jury. The parties stipulated that a forensic scientist from the Illinois State Police Forensic Science Center would testify that he tested residue samples taken from defendant’s hands and from the interior of the Cadillac. He would have also testified that either a firearm was not discharged by defendant in the Cadillac or the residue had somehow been removed.

¶ 43 Defendant then called his final witness, Maria Marines. She lived in the apartment complex where Huerta was shot. She was the sister of Juan Carlos Marines Rojas, who testified earlier in the trial. The victim was her nephew, and she had a good relationship with him. She did not know defendant. She knew who Vasquez was, but they were not friends. Marines testified that she was awake and in her kitchen during the early morning of May 16, 2009. She heard a car pull up and stop. She also heard voices. Marines did not recognize a man who spoke, but she did recognize the voice of Maritza Padilla. Marines then heard what she described as “a bang towards the car,” by which she meant a sound “like when you hit a car.” She then heard Maritza yell. She then heard tires squeal and the car drive off. At the same time

she heard the tires squeal, she heard a number of gunshots, “one after the other.” There were “more than five” shots. She ran to a window and heard her brother yelling. She did not observe any other cars in the area while she was standing at the window.

¶ 44 During cross-examination, Marines testified that, on two occasions, defense counsel told her that she did not have to testify. Nevertheless, Marines called defense counsel and said she needed to testify. She acknowledged that she currently rents an apartment from Vasquez’s father. She agreed that she did not know who dropped Maritza off at the apartment complex. Moreover, the sound that she described as someone hitting a car could have been a car hitting someone. On redirect, Marines stated she was familiar with the sound of someone hitting a car. After she heard that noise, she heard Maritza yell “Armando” (the trial court instructed the jury to disregard this statement).

¶ 45 Defendant then rested and made a motion for a directed verdict, which was denied. The State then called Officer Brant in rebuttal. He testified that he took a statement from Maria Marines on May 16, 2009.

¶ 46 The State then rested in rebuttal. Ultimately, the jury convicted defendant of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)). He was sentenced to 50-years’ imprisonment.

¶ 47 III. ANALYSIS

¶ 48 Defendant now appeals, raising two primary issues. First, he contends he was not proven guilty beyond a reasonable doubt. Second, he argues that the trial court erred by permitting the video statements of Vasquez, Daddio, and Rogers to be admitted as substantive evidence. We disagree with both contentions.

¶ 49 A. Reasonable Doubt

¶ 50 We turn first to defendant's assertion that he was not proven guilty. The gist of this argument is that his conviction “rests almost exclusively on the testimony of alleged co-

conspirators.” In reviewing the sufficiency of the evidence, we must construe the evidence in the light most favorable to the State and consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992). It is primarily for the jury to assess the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). The jury’s determinations are entitled to great deference, and it is not our function to retry a defendant. *People v. Moss*, 205 Ill. 2d 139, 165 (2001). Hence, we will not disturb a jury’s verdict unless the evidence is so unsatisfactory as to raise a reasonable doubt regarding a defendant’s guilt. *Id.*

¶ 51 Defendant contends that the testimony of an accomplice should not be accepted “unless it carries with it an absolute conviction of its truth.” *People v. Williams*, 65 Ill. 2d 258, 267 (1976). We note that in the case defendant cites in support, the witness was serving a 15-to-30-year prison sentence and was promised an immediate release in exchange for his testimony. *Id.* There is no evidence of such an agreement in the instant case, which renders *Williams* of limited guidance. Moreover, even the uncorroborated testimony of an accomplice may sustain a criminal conviction (*People v. Carrilalez*, 2012 IL App (1st) 102687, ¶ 32), though it remains true that such testimony should be viewed with caution and suspicion (*People v. Simpson*, 2013 IL App (1st) 111914, ¶ 21)).

¶ 52 Defendant argues that the credibility of the earlier inculpatory statements of Vasquez, Daddio, and Rogers was so undermined by their later recantations that no rational trier of fact could accept them. Initially, we note that as a matter of credibility, this question was primarily for the jury. *Williams*, 193 Ill. 2d at 338. The jury was able to view the witnesses on the stand and observe their demeanor; observe the recorded statements of these witnesses including their demeanor when giving them; hear the reasons they gave for changing their respective stories;

and make its determination in light of all such considerations. We owe this determination great deference. *Moss*, 205 Ill. 2d at 165. We also note that Rogers claim that he was with his girlfriend at the time of the shooting was contradicted by her, which would have provided a rational basis for the jury to conclude that Rogers' earlier inculpatory statement was the true one.

¶ 53 Moreover, contrary to defendant's intimations, there was significant evidence before the jury in addition to the testimony of Vasquez, Daddio, and Rogers. Notably, Rojas identified Daddio's car as the vehicle used in the shooting. Defendant takes issue with the quality of the identification, but that was a question of fact for the jury. See *People v. Rogers*, 27 Ill. App. 3d 123, 126-27; see also *People v. Hayes*, 14 Ill. App. 3d 248, 251-52 (1973). Furthermore, six days before the murder, defendant left an invective-laden message on Huerta's phone. Such evidence of animosity between defendant and the victim is relevant to establishing a motive for the crime. See *People v. Heard*, 187 Ill. 2d 36, 59 (1999). Evidence of motive is probative of whether a crime was committed. *People v. Morales*, 2012 IL App (1st) 101911, ¶ 28. Thus, defendant's conviction does not rest "almost exclusively" on the testimony of Vasquez, Daddio, and Rogers.

¶ 54 Defendant attempts to establish reasonable doubt by raising the possibility that the shooter was one of the people with Alvarado. Alvarado and Garcia both testified that the shots did not come from their vehicle, and it was for the jury to evaluate that testimony. *Williams*, 193 Ill. 2d at 338. We are cognizant that the testimony of Maria Marines supports defendant's position. However, to accept her testimony, the jury necessarily would have had to reject the testimony of her brother, Juan Rojas. While Maria had no apparent motive to come to defendant's defense, we also perceive no motive on Rojas's part to implicate someone other than the true shooter of his friend. Apparently, one of these witness's was simply mistaken. The jury could have reasonably concluded that Rojas's testimony, since he was actually present in the

parking lot, was entitled to more weight than that of his sister. In any event, resolving such conflicts is primarily for the jury. *Williams*, 193 Ill. 2d at 338.

¶ 55 Under such circumstances, we cannot disturb defendant's conviction. The testimony of Vasquez, Daddio, and Rogers, in itself, provided an adequate and rational basis for the jury's verdict. Moreover, there was additional evidence of defendant's guilt in Rojas' identification of Daddio's car and the message left by defendant on Huerta's phone. Thus, we cannot conclude that no rational trier of fact could convict defendant based on the evidence in the record, viewed in the light most favorable to the State. *Sutherland*, 155 Ill. 2d at 17.

¶ 56 B. Admission of the Recorded Statements

¶ 57 Defendant's next contention is that the trial court erred in allowing the videotaped statements of Vasquez, Rogers, and Daddio into evidence. We review this issue using the abuse-of-discretion standard (*People v. Rojas*, 359 Ill. App. 3d 392, 401 (2005)), so we will reverse only if no reasonable person could agree with the trial court (*Shaw v. St. John's Hospital*, 2012 IL App (5th) 110088, ¶ 18). Curiously, defendant does not identify any particular statement to which he objects (we, accordingly, will only consider the statements generally as well). We recognize that the statements at issue were lengthy; however, defendant does not even provide examples of the sorts of statements of which he complains (he therefore also fails to substantiate his argument with citation to the record). This is improper and results in forfeiture of the issue. *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50. As has oft been stated, an appellate court "is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error [citation]." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Such considerations aside, defendant's arguments suffer from several fatal flaws.

¶ 58 Defendant asserts that, “[a]s a rule, admission of prior inconsistent statements must take the form of impeachment.” Strictly speaking, of course, this is not the case, as 115-10.1 of the Criminal Code of 1963 (725 ILCS 5/115-10.1 (West 2008)) makes prior inconsistent statements substantively admissible under certain circumstances. He then cites *People v. Hastings*, 161 Ill. App. 3d 714, 719 (1998), for the proposition that a prior inconsistent statement may be admissible as substantive evidence if the statement is inconsistent with trial testimony; subject to cross-examination; within the personal knowledge of the declarant; and acknowledged at trial by the declarant. *Hastings* summarizes a portion of section 115-10.1 (see Ill. Rev. Stat. 1983, ch. 38, par. 115-10.1). In its entirety, as it existed then and exists now, section 115-10.1 states:

“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.

Nothing in this Section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein.” 725 ILCS 5/115-10.1 (West 2008); see also Ill. R. Evid. 801(d)(1) (eff. Jan. 1, 2011).

Note that, contrary to the *Hastings* court’s articulation of the statute, the under-oath requirement is set forth in the disjunctive; the subject-to-cross-examination condition pertains to the witness’s trial statement rather than the prior statement; and recorded statements need not be acknowledged at trial. Moreover, the question of whether a prior inconsistent statement is admissible substantively as opposed to for impeachment purposes are distinct questions. See *People v. McCarter*, 385 Ill. App. 3d 919, 932 (2008); see also *People v. Fillyaw*, 409 Ill. App. 3d 302, 314 (2011) (“When the court told counsel that it was admitted under section 115–10.1, counsel stated that it was improper impeachment \* \* \*. We agree with Fillyaw that his counsel’s objections referring to substantive and impeachment evidence reveal that he did not understand that section 115–10.1 addresses only substantive evidence.”).

¶ 59 In any event, defendant has a number of distinct complaints regarding the admission of these statements. Specifically, he complains that they were collateral in nature to a significant extent, that they are internally inconsistent, that “several instances exist of witnesses denying making the statements,” and that they should not have been played in their entirety. He also argues that they were not admissible as impeachment evidence. We will address these points in turn.

¶ 60 We first turn to defendant’s assertions about the allegedly collateral nature of these witnesses’ testimony. At times, defendant makes claims such as Vasquez’s “statements are full of collateral issues—irrelevant discussions and the like.” Elsewhere, defendant argues:

“The State’s brief misstates [d]efendant’s argument in portion—[d]efendant does not argue the statements were collateral in total. In fact, he argues the opposite—they form the central pillars of the case against [defendant]. The collateral nature of portions of the videos, especially Vasquez’s statement, are [*sic*] detailed<sup>1</sup> in [defendant’s] brief. This is not the same as saying the statement itself is collateral in nature.”

Still elsewhere, defendant claims that “examples abound of collateral issues.” Moreover, none of these assertions are supported by legal authority or citation to examples of collateral evidence in the record. Absent concrete examples, this argument is wholly unpersuasive. We need not, and will not, consider these contentions any further. *Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50.

¶ 61 Next, defendant asserts that each statement was, “at least in part,” inconsistent. Generally, resolving inconsistencies in the evidence is a matter for the trier of fact. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Moreover, inconsistencies in testimony are relevant to the weight the testimony is entitled. *People v. Lybarger*, 198 Ill. App. 3d 700, 702 (1990). As such, this contention is not relevant to the admissibility of the statements at issue here.

¶ 62 Next, defendant complains that “several instances exist of witnesses denying making the statements.” While this might be relevant to section 115-10.1 in some circumstances, it is not where, as here, the statements were recorded. See 725 ILCS 5/115-10.1(c)(2)(B), (C) (West

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<sup>1</sup> We disagree with defendant’s assertion that Vasquez’s collateral statement were “detailed” in his opening brief, as no particular purportedly collateral issue is ever identified.

2008). The statute sets forth recording the statement as an alternate basis for admissibility to having the declarant acknowledge the statement under oath. *Id.* On a related point, defendant also complains that these witnesses acknowledged making portions of their statements. This would be relevant if the statements had been admitted as impeachment evidence, for there would be no basis to admit that portion of the statement to perfect impeachment. See *People v. Grayson*, 321 Ill. App. 3d 397, 406 (2001). However here, as noted above, such acknowledgements provide a basis for the statements admissibility as substantive evidence in accordance with section 115-10.1(c)(2)(B). The Illinois Rules of Evidence similarly allow for the admissibility of a prior statement where a witness acknowledges under oath having made the statement. See Ill. R. Evid. 801(d)(2)(B) (eff. Jan. 1, 2011). Hence, these claims are not well taken.

¶ 63 Defendant further contends that the recordings should not have been played (largely) in their entirety. It is well settled that, “although only the inconsistent portions of a prior inconsistent statement are admissible into evidence,” the trial court “need not make a ‘quantitative or mathematical analysis’ of whether the entire statement of the witness is inconsistent for the entire statement to be admissible.” *People v. Govea*, 299 Ill. App. 3d 76, 87 (1998), quoting *People v. Salazar*, 126 Ill. 2d 424, 456-58 (1988). This is a matter within the trial court’s discretion. *People v. Harvey*, 366 Ill. App. 3d 910, 922 (2006). The trial court could reasonably conclude that, as all of these witnesses claimed their earlier statements were the product of coercion, they should be played in their entirety to allow the jury to view their demeanor throughout. Moreover, we cannot fault the trial court for “refusing to decipher which portions of the recanting witnesses’ statements were true and which portions were not.” *Id.* at 923. Finally, we note that at one point, defense counsel stated that if the trial court allowed the State to play a substantial portion of the recordings, then “[w]e want the entirety played.”

Defendant cannot, of course, prevail on appeal based on an error that he invited. See *People v. Kane*, 2013 IL App (2d) 110594, ¶ 19 (“A party who agrees to the admission of evidence through a stipulation is estopped from later complaining about that evidence being stipulated into the record.”).

¶ 64 Finally, defendant asserts that the statements were not admissible for their impeachment value. This assertion is beside the point, as we have already determined that the statements were admissible substantively. Defendant cites *People v. Cruz*, 162 Ill. 2d 314, 361-62 (1994), for the proposition that a prior inconsistent statement may be used for impeachment only where a witness’s trial testimony does affirmative damage to the impeaching parties’ case. Defendant provides no concrete examples here. Moreover, we note that section 115-10.1 contains no such requirement. See 725 ILCS 5/115-10.1 (West 2008). As these witnesses’ statements were admissible for substantive purposes, the rule set forth in *Cruz* is not relevant here.

¶ 65 Finally, given defendant’s presentation of these arguments, we find it impossible to address the issue of prejudice, to which defendant devotes a single, conclusory sentence: “The overall effect is to inundate the jury with these inadmissible blocks of statements incriminating [defendant].” Absent prejudice, the admission of these statements--assuming *arguendo* that it was erroneous—would not amount to reversible error. *In re April C.*, 326 Ill. App. 3d 245, 261-62 (2001).

¶ 66 In sum, as the appellant, defendant bore the burden of establishing error on appeal. *TSP–Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008). He has not convinced us that the statements at issue here were not admissible as substantive evidence under section 115-10.1 (725 ILCS 5/115-10.1 (West 2008)) or that the trial court abused its discretion in admitting the statements in their entirety.

¶ 67

#### IV. CONCLUSION

¶ 68 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 69 Affirmed.