

NOTICE  
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2015 IL App (5th) 130030-U

NO. 5-13-0030

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 12-CF-329
	)	
MAURICE L. COOPER,	)	Honorable
	)	William G. Schwartz,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court. Justices Stewart and Moore<sup>1</sup> concurred in the judgment.

**ORDER**

¶ 1 *Held:* Prior inconsistent statement of eyewitness corroborated by other evidence presented at trial was sufficient to permit rational trier of fact to find that the essential elements of crime of aggravated battery with a firearm were proven beyond a reasonable doubt.

¶ 2 Maurice L. Cooper, defendant, was convicted after a jury trial of aggravated battery with a firearm and sentenced by the circuit court of Jackson County to 25 years'

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<sup>1</sup>Justice Spomer was originally assigned to participate in this case. Justice Moore was substituted on the panel subsequent to Justice Spomer's retirement, and has read the briefs.

imprisonment. The defendant appeals his conviction contending that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 The victim, Andreako Lilly, a/k/a Dreako (hereinafter Dreako), testified that on May 22, 2012, he and his cousin walked to the corner of Stalls and Chestnut Streets in Carbondale because he had heard that there was a large crowd of people socializing. Shortly after arriving, Dreako noticed that the defendant was also in the crowd. The defendant and Dreako had known each other all of their lives, but they were not friends. In fact, the two of them had gotten into a fight a week or two earlier. Dreako also had gone to jail, for reasons not mentioned at trial, and believed the defendant should have been incarcerated instead of him.

¶ 4 Dreako testified he decided to leave the gathering after seeing the defendant, but heard someone to his right call his name. When he turned to see who was calling him, he heard gunshots from his left where the defendant had been. His body stiffened, and he fell to the ground. Dreako stated that everything seemed to him to be in slow motion. He was having trouble breathing and was unable to get back up onto his feet. He testified that he thought he was going to die. Dreako further testified that after the shots were fired, he saw the defendant running away.

¶ 5 Police arrived at the scene shortly after the shooting. An officer asked Dreako who had shot him and he identified the defendant as the shooter. He told another officer, however, that he did not know who shot him. At trial, Dreako acknowledged giving both statements, but explained that he initially denied knowing who shot him because he did not want to "feel like a snitch," for then "people disown you."

¶ 6 After he was taken to the hospital, the police spoke to Dreako in the emergency room. In a recorded conversation, Dreako reported that he had been shot by the defendant. He believed that the defendant fired four rounds at him, striking him twice. He also picked the defendant's photo as the shooter from a photo lineup of similar-looking men.

¶ 7 Later, while a patient at a rehabilitation hospital, Dreako was questioned further about the circumstances of the shooting. He again was reluctant to identify the defendant as the shooter. In fact, he told one of the investigating detectives that he did not want to go forward with the prosecution. His explanation, again, was that he did not want to be a snitch. Dreako acknowledged his reluctance at trial, and further testified that he was afraid of someone's coming after him because he was cooperating with the prosecution. He also explained that he had told police that the defendant was the shooter because he was the only one present at the gathering that day with whom he had a problem.

¶ 8 One of the people socializing in the area at the time of the shooting was Brooke Troxel. She testified she spent that afternoon on Chestnut Street drinking with a friend. At some point, she needed to use a restroom and went inside one of the houses. As she was leaving the residence, she heard gunshots. Fearing for her life, she jumped into her car and fled the scene. Later that evening, upon returning to her own home, she discovered that a bullet had hit the driver's side door of her car. Her car had been parked near the location where Dreako was shot. She decided to go back to Carbondale to the police station that evening so the police could get the bullet out of her door. She also agreed to give a video-recorded statement to the police. She stated in her recorded

interview that she heard the first shot, saw the second shot, and watched Dreako fall to the ground. She identified the shooter as being a dark-skinned black male, with gold teeth and a short haircut. When presented with the same photo lineup that Dreako had seen, she, too, chose the defendant's photo as being the shooter. The defendant's teeth, which were, in fact, gold, were not visible in the photo. When asked to identify the defendant in court, however, Troxel told a different story. She maintained that she did not know who got shot, did not see the shooting, and did not see who the shooter was. She claimed that earlier that day, before the shooting, she drank as much as 1½ fifths of gin, smoked marijuana, and ingested Vicodin. She also stated that she was not wearing her glasses at the time of the incident and could not see clearly. Her recorded video statement implicating the defendant was then admitted into evidence and played for the jury. The detective who interviewed Troxel also testified at trial that Troxel did not appear intoxicated at the time of her statement.

¶ 9 Other evidence presented at trial established that the defendant's car was located in an alley on the night of the shooting, abandoned, approximately 100 yards from where Dreako was shot. Based on a tip, the defendant was discovered the next day hiding in a closet in a residence in Du Quoin, at which time he was arrested.

¶ 10 Additional evidence revealed that two spent bullet casings were found at the scene of the shooting. Approximately two months later, in an unrelated investigation, police recovered a handgun from a field near the shooting. According to the State's forensic expert in firearm examination, the handgun discovered in the field fired the bullets that left the two spent bullet casings. Although the handgun was never linked to the

defendant through any specific forensic evidence, the gun was black and silver, the same colors reported by Troxel when she described the gun she saw the defendant use to shoot Dreako. After all of the evidence was presented, the jury found the defendant guilty of aggravated battery with a firearm.

¶ 11 The defendant argues on appeal that his conviction for aggravated battery must be reversed because the State's entire case depended on the credibility of two witnesses who repeatedly recanted their identification of the defendant as the shooter. The defendant believes that the State failed to prove, beyond a reasonable doubt, that he was the person who shot Dreako on May 22, 2012, and thereby failed to prove he was guilty of aggravated battery with a firearm as charged. We disagree. We initially note that a criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of guilt. *People v. Vriner*, 74 Ill. 2d 329, 342, 385 N.E.2d 671, 676 (1978). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). We, sitting as a reviewing court, do not substitute our judgment for that of the jury regarding the credibility of witnesses, the weight given to the evidence, reasonable inferences drawn from the evidence, or resolution of inconsistencies or conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). We also note that recanted prior inconsistent statements are sufficient to support a conviction, even without corroborating evidence. See *People v. Douglas*, 2014 IL App (5th) 120155, ¶¶ 28-31, 6 N.E.3d 876; *People v.*

*Thomas*, 354 Ill. App. 3d 868, 878-81, 821 N.E.2d 628, 636-39 (2004); *People v. Curtis*, 296 Ill. App. 3d 991, 999-1000, 696 N.E.2d 372, 378-79 (1998).

¶ 12 The evidence presented here reveals that during the early evening of May 22, 2012, Dreako was socializing with at least 20 other people at the corner of Stalls and Chestnut Streets in Carbondale. Dreako noticed the defendant standing with several people in a nearby parking lot. Dreako had known the defendant all his life, but they were not friends. In fact, the two had gotten into a fight a week or two earlier. Dreako was going to walk away when he heard someone call out his name. He turned to his right to see who had called him, and then heard gunshots to his left. He felt his body stiffen before falling to the ground. As he looked back, he saw the defendant running away.

¶ 13 Police officers who arrived first on the scene observed a large number of people gathered in the area. Dreako was lying on the ground with blood on his t-shirt. Dreako told the officers he was having trouble breathing. They cut off his t-shirt and observed what appeared to be bullet holes in his torso. Once at the hospital, Dreako told the investigating officers that it was the defendant who had shot him. He also picked the defendant's photo out of a photo lineup. Dreako explained at trial that he did not want to identify the defendant as the shooter on several different occasions because he did not want to be seen as a snitch. He also testified that he was afraid of someone's coming after him because he came to court and had cooperated with the police and the prosecution.

¶ 14 The same evening of the incident, Troxel went to the police station because she discovered a bullet hole in her driver's side door. She, too, identified the defendant from the photo lineup as the shooter. She also stated in a video-recorded interview, conducted

the evening of the shooting, that she saw Dreako falling toward the ground when the second bullet hit him. She also described the shooter with particularity and stated he "just walked up, shot, and took off running." While Troxel denied at trial that she witnessed the shooting and further claimed that she did not know who shot Dreako, she did acknowledge giving the recorded statement to the police the evening of the shooting. She testified that the transcript of her interview accurately reflected what she said that night, but explained at trial that she was intoxicated that evening after drinking all afternoon, taking Vicodin, and using marijuana.

¶ 15 The jury was instructed as to the credibility of witnesses, particularly when a witness has made an earlier statement inconsistent with his or her testimony at trial. The jury was also informed that a witness's earlier inconsistent statement is evidence when the statement describes an event of which the witness had personal knowledge and the witness acknowledges under oath that the earlier statement was accurately recorded. It is then up to the jury to decide whether the witness made the earlier statement, and if so, what weight should be given that statement, considering all the circumstances under which it was made. Based on these instructions, the jury could consider Troxel's prior inconsistent statement as substantive evidence. While the jury was presented with conflicting evidence of what Troxel saw that evening, it was also for the jury to weigh that evidence and determine what parts of it to believe. See *People v. Zizzo*, 301 Ill. App. 3d 481, 489, 703 N.E.2d 546, 551 (1998). Whether Troxel had consumed any alcohol or drugs, or how much, before the shooting was another matter for the jury to resolve, as was the effect of any such use on her credibility. See *Sutherland*, 223 Ill. 2d at 242, 860

N.E.2d at 217. We note that a witness's use of drugs before an incident does not necessarily render his or her testimony incredible. *People v. Banks*, 98 Ill. App. 3d 556, 560, 424 N.E.2d 898, 902 (1981). We further note that Troxel's testimony as to her level of intoxication contradicts the video as well as the testimony of the interviewing officer. Nothing about her speech or appearance as shown on the video suggests she was intoxicated to the extent she claimed at trial. Moreover, her identification of the defendant matched the identification provided by Dreako. Looking at all of the evidence in the light most favorable to the State, the jury reasonably could have concluded, after listening to and watching Troxel testify, that her prior statement to the police was truthful and her testimony at trial was not. The defendant has pointed to nothing in the record justifying the substitution of our judgment for that of the jury with respect to Troxel's credibility. We therefore agree that Troxel's credible identification of the defendant, as well as her prior inconsistent statement, supports the jury's verdict. See *People v. Morrow*, 303 Ill. App. 3d 671, 676-78, 708 N.E.2d 430, 435-36 (1999).

¶ 16 Our willingness to conclude that a rational fact finder could have believed Troxel's prior inconsistent statement is enhanced by corroborating evidence also presented at trial. Dreako testified that he saw the defendant at the gathering immediately before the shooting and that he saw the defendant running away from the scene immediately after the shots were fired. Dreako identified the defendant as the shooter to the police several times even though he also stated he did not know who shot him and did not want to go to court for fear of being labeled a snitch. Dreako may have had a reason to falsely implicate the defendant because of their history of "bad blood," but Dreako also had a

motive to falsely exculpate him as well. Additionally, two spent bullet casings were found at the scene of the shooting. A handgun that, according to the State's forensic firearm expert, fired the two spent bullet casings found near Dreako was recovered from a nearby field. The colors of that handgun were consistent with the colors of the gun Troxel described as having been used by the shooter, the two shell casings corroborate the number of shots that Troxel told police she heard that evening. Finally, there is the fact that the defendant abandoned his vehicle near the scene of the shooting, fled to Du Quoin, and hid there from the police until they pulled him out of a closet. Evidence of a defendant's flight is a circumstance tending to prove guilt. *People v. Lewis*, 165 Ill. 2d 305, 349-50, 651 N.E.2d 72, 93 (1995). Taking all of the evidence together in the light most favorable to the State, it is clear that a rational trier of fact could and, in this instance, did find that the essential elements of the crime of aggravated battery with a firearm were proven beyond a reasonable doubt.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Jackson County.

¶ 18 Affirmed.