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1-08-1708

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County.
)	
v.)	No. 06 CR 14204
)	
AARON HART,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concur in the judgment.

ORDER

Held: Although trial witnesses recanted their identifications of defendant as the shooter, witnesses' prior statements to police naming defendant as the shooter were sufficient to sustain defendant's conviction for murder. Defendant could not show he was prejudiced by court's refusal to let him cross-examine witness about receiving a reduced sentence in exchange for testifying against defendant.

Following a jury trial, defendant Aaron Hart was convicted of first-degree murder. On appeal, he argues: (1) the State failed to prove him guilty beyond a reasonable doubt; and (2) the court erred in preventing him from establishing a witness's bias in testifying against defendant.

For the following reasons, we affirm defendant's conviction.

Defendant was charged by indictment with, among other things, first-degree murder in which he personally discharged a firearm pursuant to section 5/9-1(a)(1) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/9-1(a)(1) (West 2004)) and section 5-8-1(d)(iii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(iii) (West 2004)) in the shooting death of David Kennebrew.

The State's theory of the case was that defendant and Diondre Gentry, known as "Dre," were with mutual friends in the early morning hours of June 15, 2004. Dre and Kennebrew were members of the Insane Mafias. Dre and Kennebrew got into an argument over who was entitled to sell drugs on the block of Madison Street in front of the Marquis Room nightclub. While Dre and Kennebrew were arguing, Kennebrew made a derogatory reference to defendant. Dre then gave defendant a gun and defendant shot Kennebrew in the head. Defendant claims that although he was present on the night of the shooting, he never got out of the van that he arrived in and did not participate in the argument or the shooting. Defendant's theory was that members of the Insane Mafias decided to frame him for the murder rather than allow Dre or any other member of the Insane Mafias to go to prison for the crime.

The following relevant testimony was adduced at trial. Stanley Brumfield, known as "Rambo," testified that he had been friends with defendant for five or six years at the time of the shooting. He testified that defendant's nickname was "Four." He testified that on June 14, 2004, his friend, Deshaun Hemphill, picked him and defendant up in a van and drove around the west side of Chicago. He testified that at some point, the van stopped, and he decided to get out and

walk home. He did not remember going to the Marquis Room that night or parking in front of the nearby liquor store. Brumfield testified that he first learned that Kennebrew got shot on December 28, 2004, when the police picked him up from his job and took him to the police station for questioning. At trial, Brumfield denied or did not remember making statements to the police, the assistant State's Attorney, or the grand jury about the events that occurred on June 14 and 15.

Brumfield was impeached with a signed statement he made to the assistant State's Attorney on December 28, 2004, which was admitted as substantive evidence and published to the jury. In his statement, he stated that he and Hemphill had been friends for about five years and he and defendant, known as Four, had been friends for eight years. He identified photographs of both of them. Hemphill picked Brumfield up in his van between 10 and 11 p.m. on June 14, 2004. They also picked up defendant. They drove around the neighborhood for about two and a half hours. At some point, Hemphill parked the van in front of a liquor store on Madison. Brumfield heard defendant and Hemphill say to each other, "We're gonna get at him and there goes the nigger right there." Brumfield presumed they were talking about a "smaller build" black man he saw standing out on the sidewalk. Brumfield knew that the phrase "gonna get at him" meant that defendant and Hemphill were going to either shoot the man or "beat him up really bad." A light-colored van then pulled up on the driver's side of Hemphill's van and parked.

In his statement, Brumfield said that at that point, he "knew there was going to be trouble" and he "didn't want any part of [it]" so he exited Hemphill's van from the rear passenger

door and walked away. He could hear defendant and Hemphill ask him where he was going but he did not answer because he did not want to stick around. Brumfield had walked about two blocks when he heard two or three gunshots coming from the direction of Hemphill's van. Brumfield continued walking to his cousin's house and his cousin then drove him home. He stated that saw both defendant and Hemphill about a month later, but did not speak to them about what happened that night.

Brumfield was also impeached with the testimony he gave to the grand jury on April 25, 2006. That testimony also was admitted as substantive evidence and published to the jury. Brumfield's grand jury testimony was substantially similar to his statement to the assistant State's Attorney.

On cross-examination, Brumfield testified that he never saw defendant with a gun and did not see the shooting. He also did not see anyone arguing with Kennebrew that night.

Hemphill testified that he grew up with defendant and has known him for eight years, but that defendant was living in Iowa around the time of the shooting. He made an in-court identification of defendant and confirmed that his nickname was Four. He also stated that he knows Brumfield, Kennebrew, Dre, and Dre's cousin, Marquise Gentry. He testified that he was a member of the Insane Mafias gang and defendant was a member of the Four Corner Hustlers, a rival gang.

On June 14, 2004, Hemphill was driving around the neighborhood with defendant and Brumfield. They saw Dre and Marquise while driving and they all drove to the Marquis Room on Madison. Hemphill parked his van by a light pole and fence behind Bob's Liquor Store near

the Marquis Room. Kennebrew was on the sidewalk in front of the Marquis Room with Cornelius Brown, Tiesha McKenzie, and Lavoris Jackson. Dre got out of his van and began arguing with Kennebrew. Hemphill got out of his van and walked over to Dre. Defendant stayed in the van at first, but then got out and walked over to where Dre and Hemphill were. He specifically testified that defendant was not in the van playing video games when the shooting occurred. While Dre and Kennebrew continued to argue, Kennebrew began “talking greasy” and asked Dre, “What you all bringing these bitch-ass niggers with you all?” in reference to Hemphill and defendant. Defendant did not say anything in response, and Dre and Kennebrew continued arguing.

Hemphill testified that Dre had a gun with him and Kennebrew knew it because he said to Dre, “You got a gun, use it.” At that point, Hemphill turned and walked away. He then heard gunshots, but did not see who fired the gun. When he turned around, he saw Kennebrew on the ground and Dre was holding the gun. Hemphill testified that he did not see defendant argue with Kennebrew, did not hear defendant ask Dre to give him the gun, and did not see defendant take the gun from Dre to shoot Kennebrew. Hemphill, Dre, and defendant then ran back to Hemphill’s van. As they drove off, Dre fired three shots out the window in the direction of the Marquis Room. He never saw the gun again after that. Hemphill drove up LeClaire Avenue, left his van parked on the side of the road, and walked home. He did not know where Dre or defendant went.

Hemphill identified a handwritten statement he made to police and the assistant State’s Attorney, but denied or did not remember making the statements contained in it. He also

acknowledged that he testified before the grand jury on April 21, 2006, but maintained that he fabricated that testimony. He claimed that he was “doped up” when he spoke to the assistant State’s Attorney and when he testified before the grand jury. He stated that the police told him to implicate defendant in the shooting and he did so to avoid being charged as an accessory to the crime.

Hemphill was then impeached with his grand jury testimony, which was admitted as substantive evidence. In his grand jury testimony, Hemphill stated that defendant, whom he specifically referred to as Four, was present when Dre and Kennebrew were arguing. Kennebrew then started arguing with defendant and called him a “bitch-ass nigger.” Defendant then demanded that Dre give him the gun. Hemphill testified that Four shot Kennebrew two or three times and Hemphill then saw Kennebrew fall to the ground. After Four shot Kennebrew, he gave the gun back to Dre. Hemphill acknowledged that he told the assistant State’s Attorney the same story during his earlier interview and that this version of events was the truth.

Lavoris Jackson testified that she was Kennebrew’s girlfriend and was with him, McKenzie, and Brown at the Marquis Room on the night of the shooting. She saw a couple of guys jump out of two vans that pulled up in front of the liquor store next to the Marquis Room. She recognized them as Hemphill and Dre and Marquise Gentry. A fourth man also was there, but she had never seen him before. She described the unknown man as short and brown-skinned. She made an in-court identification of defendant as the unknown man. She witnessed the argument between Dre and Kennebrew but could not hear what it was about because she had moved away from the crowd toward the curb.

Jackson saw a gun in Dre's back pocket, but knew that Kennebrew did not have a gun and did not see Hemphill with a gun. She said that Brown tried to convince Kennebrew to walk away. When Hemphill began talking with Kennebrew, Dre walked away. The unknown man then walked up, and Jackson started to cross the street. When she got to the other side of the street, she heard three gunshots coming from the direction of the Marquis Room. A few moments later, as a van drove off, she heard tires screeching and three more gunshots. She did not see who the shooter was.

Jackson did not speak to police on the night of the shooting. She told police this version of events in an interview that occurred about six months after the shooting. However, she acknowledged on cross-examination that in her first interview with police about a month after the shooting, she told police that she was not with Kennebrew.

Tiesha McKenzie testified that she was Brown's girlfriend and was with him, Kennebrew, and Jackson in front of the Marquis Room on the night of the shooting. She testified that Dre walked up to their group alone and began arguing with Kennebrew. She saw a wooden-handled gun in Dre's back pocket. Two vans then pulled up in front of the adjacent liquor store and Hemphill and short, dark-skinned man, whom she did not know, jumped out of one of the vans. She testified that Hemphill tried to break up the argument between Dre and Kennebrew. The unknown man then got involved in the argument with Kennebrew. She testified that the unknown man said to Kennebrew, "You don't know me. I'll pop your bitch ass. You don't know who you fucking with. I ain't scared of no nigger. I'll pop your bitch ass. You need to shut the fuck up, because you don't know who you're fucking [*sic*]." McKenzie testified that she

1-08-1708

was about 10 to 12 feet away from the unknown man, who was pointing a gun at Kennebrew or Brown. She did not see where the gun came from and stated that no one else had a gun. As she turned to leave the area, she heard a gunshot. When she turned around again, she saw the unknown man holding the gun and he fired two more shots at Kennebrew. Dre and the unknown man got in the vans and as they were driving off, they continued shooting out the window. She initially testified that she saw the vans turn onto Leamington Avenue, but later testified that they were on LeClaire. She admitted that she was unable to identify the unknown man in a photo array.

McKenzie testified that defendant was not the unknown man she saw shoot Kennebrew, although she also stated that she did not get a good look at the shooter's face. She testified that the unknown man's shirt, shorts, and hat were all of a camouflage pattern. She stated that she could not see the shooter's hair because he was wearing a hat, but was impeached with her grand jury testimony in which she stated that the unknown man was balding and had a short haircut.

Cornelius Brown testified that in the early afternoon of June 14, 2004, he was with Kennebrew about a block away from the Marquis Room. Dre approached them and started arguing with them because they were selling drugs in that area. Dre then returned to the Marquis Room in his van in the early morning hours of June 15, 2004. At the same time, Hemphill arrived there in his van. Dre and Hemphill exited their vans and approached Kennebrew, Brown, Jackson, and McKenzie, who were standing on the sidewalk in front of the nightclub. Dre's cousin, Marquise, drove away in Dre's van and continually circled the block. Dre began arguing with Kennebrew again but Hemphill tried to break up the argument. Brown saw a gun in Dre's

back pocket and urged Kennebrew to leave the area.

As Brown started to walk away about 10 minutes later, he saw a short, dark-skinned man exit Hemphill's van and walk towards Dre. He had not seen the man before that night. Brown testified that the unknown man was wearing dark pants, possibly a white t-shirt, and a white "do rag" on his head underneath a solid-colored baseball cap, but was not wearing camouflage. He described the unknown man as having a "short, strong build." Brown did not see the unknown man get involved in the argument.

Brown continued to walk away and then heard three gunshots fired in the area where Kennebrew was standing. Brown ran around the corner into a vacant lot and then heard three more gunshots. When he returned from the lot, he saw Kennebrew lying in the doorway of the Marquis Room and the two vans driving north on LeClaire. He did not see the shots being fired.

On cross-examination, Brown testified that he spoke to police a few days after the shooting. During that interview, he identified Dre, Marquise, and Hemphill as being present at the time of the shooting. Brown also told police that he thought that the unknown man was the shooter. Brown told them that the unknown man's nickname was "Lil C," that he was a member of the Conservative Vice Lords, and that he had been in Cook County jail with Lil C about nine months earlier. He testified that he did not know if he told the assistant State's Attorney about Lil C when she interviewed him in December of 2004. Brown also testified that he had never seen defendant while in Cook County jail. On redirect, Brown confirmed that he did not see any shots being fired at Kennebrew and could not recognize the shooter. He also testified that he had "no idea" if defendant was the person he saw getting out of Hemphill's van on the night of the

shooting. He further testified on recross that he viewed a line-up but Lil C was not in it and he could not identify anyone in the line-up who was present on the night of the shooting.

Diondre “Dre” Gentry testified that he confronted Brown and Kennebrew early in the day on June 14 to stop them from selling drugs in front of the Marquis Room. He had a verbal argument with them at that time. He then returned to the Marquis Room in the early morning hours of June 15. Hemphill also was there with someone named Jerval who went by the nickname “C.” Dre testified that when he was arguing with Kennebrew, Kennebrew asked him “why did you bring those bitch ass niggers here?” in reference to the people that Dre brought to the Marquis Room. In response, Jerval then got involved in the argument. Dre testified that he gave his gun to Jerval, who then shot Kennebrew. Dre, Jerval, and Hemphill then got in Hemphill’s van and drove away. Dre then fired three more shots out the window at the crowd in front of the Marquis Room. He testified that he pled guilty to murder for his involvement in Kennebrew’s death and was currently serving a 20-year sentence.

Dre denied that anyone named Four was present at the time of the shooting and denied that he knew anyone who went by that name. He was then impeached with prior inconsistent statements he made to police on April 2, 2006, in a videotaped interview conducted while he was in custody in Minnesota. The videotaped interview was admitted as substantive evidence and was later viewed by the jury during deliberations.

In his April 2006 interview, Dre admitted that he was present on the night of the shooting, but that he did not shoot Kennebrew. He explained that he confronted Kennebrew and Brown that night because they were selling drugs in the area. He admitted that he brought a gun with

him that night. When asked who else was there that night, Dre told police that Hemphill arrived at the Marquis Room with a short black man who went by the nickname Four, a member of the Four Corner Hustlers gang. He stated that Four was a friend of Hemphill's. He had seen Four twice before with Hemphill, but had never met him. He also remembered seeing a different man get out of Hemphill's van and immediately walk away from the scene.

Dre also told police that when he was arguing with Kennebrew, Kennebrew asked him why he brought "these bitch ass niggers" with him to the Marquis Room. Four then got into "his own argument" with Kennebrew "to defend himself" and Four told Kennebrew he was "not a bitch.". Four demanded that Dre give him the gun. Dre gave Four the gun and Four then shot Kennebrew. Dre said that he did not know that Four was going to shoot Kennebrew. Dre, Hemphill, and Four then got into Hemphill's van and drove away. Dre admitted that Four gave the gun back to him and that Dre fired additional gunshots out of the window. Dre said that he then gave the gun back to Four "to get rid of it." Hemphill turned onto LeClaire Street and when the van stopped, they all got out and ran away. Dre then walked back to his van, which was parked a few blocks away.

Later in the interview, when police presented Dre with a picture of defendant, Dre identified him as being Hemphill's friend, Four, the person who shot Kennebrew "if I'm not mistaken." When asked if he needed to view the person in that picture in a physical line up to be certain, Dre said, "no, that's the guy," in reference to the picture. However, Dre later agreed to view that person in a physical line up to be certain. Dre never viewed a line up in which defendant participated.

When asked about these prior inconsistent statements at trial, Dre explained that the police first mentioned the name Four to him and told him to blame the shooting on Four because that was consistent with the story that Marquise and Hemphill provided them. Dre testified that he repeated the police officers' story because he did not want to be charged for the murder. Dre acknowledged that he never told the police in April 2006 that Jerval or "C" was present or that that person shot Kennebrew.

On cross-examination, Dre denied that he identified a picture of defendant as being Four during his interview with police. He also testified that when he pled guilty to murder in this case, he also pled guilty to a felony drug offense that was pending at that time. He testified that he knew he could have been sentenced to as many as 15 years on the drug charge, but accepted a 10-year sentence to run concurrently with his 20-year sentence on the murder conviction. He knew that a concurrent sentence meant that he did not have to "do any extra time for the drug case." He also acknowledged that if he did not accept a plea deal for the murder of Kennebrew, he could have received between 60 and 80 years' imprisonment in light of his extensive criminal background. He agreed that a 20-year sentence was a "good enough deal." Dre further testified that he had never seen or talked to defendant before.

At the end of cross-examination, the following colloquy occurred:

“[DEFENSE COUNSEL]: By the way, once again, the sentence that you received, the 20 years [for murder], the 10-year sentence [on the drug charge] runs concurrent with the murder case, right?

A: Yes, sir.

Q: Okay. And you know that you could have received a sentence where they run consecutive, one stacked on top of the other?

[STATE]: Objection. That is not the law.

COURT: Sustained.”

On redirect, the following exchange occurred:

“[STATE]: Counsel asked you about this concurrent sentencing. By law, based on your experience with the criminal justice system, by law, the sentences for your drug case and the murder are to run at the same time because you were not on bond at the time; is that right?

A: Say that again.

Q: By law, the sentences had to run concurrent.

[DEFENSE COUNSEL]: Objection. That is not the law that it has to run concurrent.

COURT: Overruled. He can answer it if he knows.”

Dre did not answer the question. Dre also testified on redirect that he understood he was not required to testify against defendant in this case as a condition of his plea agreement.

Detective Mike Mancuso was then called to testify as one of the detectives who investigated Kennebrew’s death. He first interviewed Hemphill and Brumfield about six months after the shooting. As a result of those interviews, Mancuso learned that defendant’s nickname was Four. Mancuso also testified that he participated in the April 2, 2006, interview with Dre while Dre was in custody in Minnesota and authenticated the videotape. He testified that during

the interview, Dre was shown a picture of defendant, whom Dre identified as Four. On cross-examination, he testified that in May of 2006, he participated in an interview of defendant while defendant was in custody in Iowa pursuant to a warrant issued by the Chicago police in this case.

Defendant then testified on his own behalf. He testified that he lived in Iowa but took a bus to Chicago on June 14, 2004. He met up with Brumfield and Hemphill that evening. The three of them drove around in Hemphill's van drinking alcohol. Some time after midnight, they encountered Dre and Marquise Gentry, whom defendant did not know previously. Hemphill got out of his van and got into Dre's van. Defendant and Brumfield stayed in Hemphill's van. After about two minutes, Hemphill returned and said he had to "take care of some business." They then followed Dre down Madison Street and parked about 25-30 feet away from the Marquis Room behind Dre's van.

Hemphill got out of the van, but defendant did not see where he went because he was playing a video game on his telephone. At one point, Brumfield turned down the radio and said "dude got a gun." Defendant then looked toward the crowd of people standing in front of the Marquis Room, but could not tell whether Dre was holding a gun. Defendant continued to play his video game, but Brumfield jumped out of the van. Defendant then heard gunshots and dove onto the floor. Dre and Hemphill then jumped in the van and Hemphill drove away. Dre said, "I finally got that lil' nigga." Dre then leaned out the window and said something else while he fired two or three shots toward the crowd. Defendant then heard the gun hit a car that was parked on the street, as if Dre had thrown it out of the window. While driving on LeClaire, Hemphill slowed down behind another car. Defendant then jumped out of the van and walked to his aunt's

house, which was an hour away. He denied that he took a gun from Dre or shot anyone that night. Defendant further testified that he was not in a gang and did not have the nickname Four or Lil C. Defendant testified that he traveled from Iowa to Chicago once a month to meet with his parole officer and that he appeared in court several times after the shooting. In May of 2006, he was arrested in Iowa. While in custody, two Chicago police officers and an assistant State's Attorney interviewed defendant. Defendant testified that he spoke to them voluntarily for five to six hours. He also waived extradition and returned to Chicago with police two to three weeks later.

On cross-examination, defendant denied that Brumfield or Hemphill called him Four and stated that he did not have a nickname. He acknowledged that the police and assistant State's Attorney interviewed him while he was in custody in Iowa. However, defendant denied telling the assistant State's Attorney that after meeting up with Dre and Marquise near Laramie and Adams on the night of the shooting, they all agreed to go to the Marquis Room because Dre had a "problem" there. Defendant also denied telling her that when Hemphill's van arrived at the Marquis Room, Brumfield got out of the van at the same time Hemphill did. He testified that he told the assistant State's Attorney that he stayed in the van after Hemphill got out, but could not remember if he told her he was playing a video game.

Defendant also called Michael Dickens to testify. Dickens stated that on the night of the shooting, while he was in his car parked on Madison Street about a half block away from the Marquis Room, he heard gunshots. He testified that he knew Dre, but did not recall seeing him that night. He acknowledged that he was interviewed by police in December of 2004, but did not

recall being shown a photo of a possible shooting suspect at that time. When reinterviewed by police in June of 2006, he could not identify defendant in a line up. On cross-examination, he testified that he did not recall telling police that he saw a short black man wearing a baseball hat and a “do rag” shooting at Kennebrew. He also testified that he did not recall telling police that he saw Dre and another unknown man wearing a baseball hat arguing with Kennebrew.

Defendant then tendered a stipulation that, if called to testify, Corey Watson would say that in April of 2006, he was interviewed by police as a witness to the Kennebrew’s shooting. He identified photographs of Dre, Brown, and Kennebrew, and told police that they were present at the Marquis Room on the night of the shooting. However, he did not identify defendant as being present.

In rebuttal, the State called Assistant State’s Attorney Aidan O’Connor to testify. She stated that she interviewed defendant while he was in custody in Iowa. After reading defendant his *Miranda* rights, defendant waived his rights and agreed to speak with her. Defendant told O’Connor that while driving around with Hemphill and Brumfield, they met Dre and Marquise Gentry near Laramie and Adams. Dre talked about a problem he was having at the Marquis Room on Madison. They all agreed to go to the Marquis Room. When they got there, Brumfield walked away and defendant did not see him again. Defendant said that he saw Dre with a gun in his pocket and heard some arguing. O’Connor testified that defendant never told her that he stayed in the van playing a video game on his phone while the incident was going on. On cross-examination, O’Connor admitted that she did not ask defendant to sign a handwritten statement documenting his account.

The state also tendered a stipulation that, if called to testify, Detective Mancuso would say that he interviewed Michael Dickens in December of 2004. At that time, Dickens stated that he saw two vans pull up and park behind his car in front of the Marquis Room. Dre got out of the white van and the van drove away. He told Mancuso that he walked to the gas station just west of the Marquis Room to buy a soda. When he returned, he saw a short black man wearing a baseball hat and a “do rag” shooting at Kennebrew. He did not know that person and was unable to identify a photograph of him. Dickens also told Mancuso that after the unknown man shot Kennebrew, “they all” got back in the van and drove off. He said that he could not see the shooter’s face because the baseball hat covered it. Mancuso also testified that at the time defendant was booked, defendant stated that his nickname was Four.

Following closing arguments, the jury convicted defendant of first-degree murder in the shooting death of Kennebrew during which he personally discharged a firearm. He was sentenced to a total of 55 years’ imprisonment. Defendant now appeals.

Defendant first argues that he was not proved guilty beyond a reasonable doubt because the only evidence the State presented to establish that defendant shot Kennebrew was the prior inconsistent statements of Dre, who was also convicted and sentenced for his participation in the shooting, and Hemphill. Furthermore, defendant contends that his trial testimony was more credible than Dre’s or Hemphill’s prior statements to police.

When reviewing a challenge to the sufficiency of the evidence, the relevant question is “ ‘whether, after viewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” *People*

v. Jackson, 232 Ill. 2d 246, 280 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

A reviewing court may not substitute its judgment for that of the trier of fact on questions relating to the weight of the evidence or the credibility of the witnesses. *Jackson*, 232 Ill. 2d at 280-81. This standard applies regardless of whether the evidence is direct or circumstantial. *Jackson*, 232 Ill. 2d at 281. Thus, under this standard of review, the trier of fact is responsible for resolving all conflicts in the witnesses' testimony, weighing the evidence, and drawing all reasonable inferences from the facts. *Jackson*, 232 Ill. 2d at 281 (quoting *Jackson*, 443 U.S. at 319). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *Jackson*, 232 Ill. 2d at 281.

We have long recognized that the testimony of a single eyewitness is sufficient to convict if the testimony is positive and the witness is credible. *People v. Island*, 385 Ill. App. 3d 316, 346 (2008). Even where the identification was contained in a witness's prior inconsistent statement and admitted as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2006)), the identification is sufficient to sustain conviction without the need for corroborating evidence. *Island*, 385 Ill. App. 3d at 347.

To determine the reliability of identification testimony, we must examine the following factors: (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the offense; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *In re M.W.*, 232 Ill. 2d 408, 435 (2009); see also *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). Thus, based on these considerations, we

must determine whether the trier of fact could reasonably accept the identification testimony as true beyond a reasonable doubt. *Island*, 385 Ill. App. 3d at 346.

Here, the factors weigh strongly in favor of reliability and permitted the jury to reasonably conclude beyond a reasonable doubt that defendant was the shooter. At trial, Hemphill testified that he and defendant, who was known as Four, had been friends for eight years. He was with defendant and Brumfield on the night of the shooting and they drove to the Marquis Room. Defendant got out of the van and joined Hemphill and others gathered on the sidewalk in front of the nightclub. Hemphill specifically denied that defendant stayed in the van playing video games. Hemphill testified that Kennebrew called defendant a “bitch-ass nigger.” In his grand jury testimony, Hemphill testified that after Kennebrew insulted defendant, defendant demanded that Dre give him the gun. Hemphill then saw defendant shoot Kennebrew “two or three” times and he saw Kennebrew fall. He also told the grand jury that he previously identified defendant as the shooter in his statement to police.

On balance, we conclude that Hemphill provided a reliable identification of defendant and the jury was entitled to rely on that identification in finding defendant guilty. See *In re M.W.*, 232 Ill. 2d at 435. Although Hemphill made the identification two years after the shooting, that fact is unlikely to have affected the reliability of the identification considering that Hemphill was making an identification of his long-time friend.

Although Hemphill’s testimony need not be corroborated, we also note that Dre’s testimony largely confirmed Hemphill’s version of events. We recognize that testimony given by an accomplice witness may have “ ‘inherent weaknesses and should be accepted only with

caution and suspicion.’ ” *Island*, 385 Ill. App. 3d at 346 (quoting *People v. Tenney*, 205 Ill. 2d 411, 429 (2002)). However, if believed by a jury, accomplice witness testimony, standing alone, may

“ ‘sustain a criminal conviction if it convinces the [trier of fact] of the defendant’s guilt beyond a reasonable doubt.’ ” *Island*, 385 Ill. App. 3d at 346 (quoting *People v. Tenney*, 205 Ill. 2d 411, 429 (2002)).

At trial, Dre corroborated Hemphill’s version of events, specifically that Kennebrew was shot and killed after he called defendant a “bitch-ass nigger.” During his interview with police, Dre identified a photograph of defendant as Four and named him as the shooter. He told police that he knew defendant as Hemphill’s friend, he had seen him with Hemphill on two prior occasions, he gave defendant the gun, and he stood by defendant as he shot Kennebrew.

Although Dre was not absolutely certain that the person in the photograph was defendant, he told police “that was the guy.” Viewing those facts in light of the aforementioned reliability factors, Dre’s identification of defendant was sufficiently reliable that a jury could have believed it beyond a reasonable doubt. See *In re M.W.*, 232 Ill. 2d at 435.

We recognize that both Hemphill and Dre provided testimony at trial that conflicted with earlier statements or testimony. However, it was within the sole province of the jury to accept or reject the recantations of their prior statements at trial. See *Jackson*, 232 Ill. 2d at 280-81; *Island*, 385 Ill. App. 3d at 346. Here, the jury resolved those conflicts against defendant. Viewing these two eyewitness identifications and all of the other testimony in the light most favorable to the State, we find that there was sufficient evidence presented to allow a rational jury to find

defendant guilty beyond a reasonable doubt. *Island*, 385 Ill. App. 3d at 346.

Defendant also argues that he was denied a fair trial because he was prevented from presenting a complete defense. Specifically, defendant argues that during Dre's cross-examination, defense counsel was prevented from asking Dre whether he knew that he could have been sentenced on his murder conviction and an outstanding drug charge consecutively rather than concurrently, the effect being that he could have served a total of 30 years rather than 20 years had he not pled guilty. As a result, defendant argues, he could not "further" impeach Dre's credibility by establishing that Dre only named defendant as the shooter in order to receive a combined 20-year sentence as opposed to a 30-year sentence.

Defendant's argument is without merit because he cannot demonstrate that he was prejudiced by the alleged error. When determining whether a denial of cross-examination violates the defendant's right of confrontation, we should look not to what defendant has been prohibited from doing, but to what he has been allowed to do. *People v. Sykes*, 341 Ill. App. 3d 950, 978 (2003) (citing *People v. Hines*, 94 Ill. App. 3d 1041, 1048 (1981)). The ultimate question in this context is "whether the jury has been made aware of adequate factors to determine whether the witness is worthy of belief, not whether any particular limitation has been placed on defendant's ability to cross-examine a witness or whether the jury has knowledge of any specific fact." *Sykes*, 341 Ill. App. 3d at 978 (citing *Hines*, 94 Ill. App. 3d at 1048). If, after reviewing the entire record, we conclude that the jury has been made aware of the relevant areas of impeachment of a witness, no constitutional question arises simply because the defendant has been prohibited from pursuing other areas of inquiry on cross-examination. *Sykes*, 341 Ill. App.

3d at 978 (citing *Hines*, 94 Ill. App. 3d at 1048).

The State concedes that the circuit court erred in sustaining its objection and preventing defense counsel from cross-examining Dre on whether he knew he could have received a combined 30-year sentence rather than a 20-year sentence. See 730 ILCS 5/5-8-4(i) (West 2004). However, no constitutional violation occurred because defense counsel had already impeached Dre's credibility by showing that he testified against defendant in order to reduce his sentence. See *People v. Hari*, 355 Ill. App. 3d 449, 463 (2005), *rev'd on other grounds*, 218 Ill. 2d 275 (2006); *Hines*, 94 Ill. App. 3d at 1048. Dre testified on cross-examination that he knew he could have received a 60- or 80-year sentence if he had not pled guilty to Kennebrew's murder. He also acknowledged that he had gotten a "good enough deal" from the State. Thus, the jury had already heard evidence suggesting that Dre was motivated to name defendant as the shooter in exchange for a reduced sentence and the testimony defendant sought to establish would have been cumulative. Therefore, defendant was not prevented from impeaching Dre's credibility or presenting a complete defense. See *Hines*, 94 Ill. App. 3d at 1048; *Hari*, 355 Ill. App. 3d at 463, *rev'd on other grounds*, 218 Ill. 2d 275.

For the foregoing reasons, we affirm defendant's conviction.

Affirmed.