No. 1-09-1389

FIFTH DIVISION
July 15, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 CR 1389
	)	
SHANNON EVANS,	)	Honorable
	)	Rosemary Grant Higgins,
Defendant-Appellant.	)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon concurred in the judgement.

ORDER

Held: Defendant's statutory right to a speedy trial was not violated where the delay in bringing him to trial was caused by his own physical incapacity; the admission of witness' grand jury testimony was not improper where that testimony was inconsistent with their trial testimony; and the evidence presented at trial was sufficient for the trier of fact to find defendant guilty of first degree murder beyond a reasonable doubt.

¶ 1 Following a jury trial, defendant Shannon Evans was convicted of first degree murder with a firearm and sentenced 45 years of imprisonment and a consecutive sentence of 20 years for personally discharging a firearm. Defendant appeals, contending that he was denied his statutory

right to a speedy trial and that the State failed to prove him guilty of first degree murder beyond a reasonable doubt. For the reasons stated below, we affirm.

¶ 2 BACKGROUND

¶ 3 This matter arises out of the October 13, 2005 shooting death of Robert Duffy, Jr. On May 16, 2006, defendant was arrested for and subsequently charged with the first degree murder of Duffy. At defendant's initial court date on May 17, 2006, he was not present and the presiding judge noted a hospital mittimus for him. A hearing was held at which the State produced a Chicago police officer who stated defendant was recently shot in an unrelated matter and was hospitalized. The State proffered that defendant was in a medically induced coma and had a substantial criminal history. The court made a finding of physical incapacity, ordered that defendant be held without bail, and continued the case to May 31, 2006, for a preliminary hearing.

¶ 4 At the May 31, 2006 hearing, a Cook County Sheriff's Deputy advised the court that defendant remained hospitalized. Counsel from the Public Defender of Cook County also filed an appearance on defendant's behalf and a demand for a preliminary hearing and trial. The indictment of defendant was spread of record, the court noted the trial demand made in defendant's absence, and the matter was transferred to the presiding judge for arraignment on June 20, 2006. At the arraignment, the State informed the court that defendant remained in a coma. Defense counsel acknowledged defendant's incapacity and entered a plea of not guilty on defendant's behalf. The matter was continued by agreement to June 28, 2006, and later to July 25, 2006, when defendant first appeared in court. For a variety of reasons attributable to both sides, the case was subsequently continued by agreement on a number of occasions until November 12, 2008, when, for the first time,

defendant demanded trial while present in court. During the intervening period, discovery was gathered and exchanged, pleadings were filed, and defendant obtained new counsel twice. By agreement, November 12, 2008, was previously set as a trial date. However, on that date, the State answered it was not ready for trial and requested additional time to serve subpoenas on two witnesses. Over defendant's objection and demand for trial, the court granted the State's continuance to December 8, 2008, and thereafter to January 5, 2009, January 26, 2009, February 9, 2009 and February 23, 2009, when defendant filed a motion to dismiss the indictment for violation of his statutory right to speedy trial. The trial court denied defendant's motion, finding the speedy trial term tolled from May 17, 2006, to July 25, 2006, as a result of defendant's physical incapacity, and then continued to toll by agreed continuances until November 12, 2008.

¶ 5 The case proceeded to trial on March 3, 2009. After calling Robert Duffy, Sr. as a life and death witness, the State presented Tina Mosley. Mosley testified that she was Duffy's longtime girlfriend and the mother of his son. She stated that Duffy earned his living selling illegal drugs out of a house at 12210 South Parnell Avenue, where he was killed. She said Duffy and defendant were longtime friends and members of the Gangster Disciples street gang, and that they often did business together, along with another fellow gang member, Rashad Bethany. Mosley said that she met with Duffy on the day of his death and when he failed to call her later that evening, she became concerned and attempted to reach Bethany by telephone. Bethany returned Mosley's call the next morning and arranged to meet her at a local gas station. When Bethany arrived at the gas station, he was accompanied by defendant, who Mosely said was trembling, had bloodshot eyes, and appeared nervous. Defendant told her that a drug deal with two members of another street gang at the Parnell

Avenue house went badly and Duffy was shot. Defendant said he shot one of the other gang members and chased the second from the house before he fled to "put up" his gun. Defendant told Mosley that when he returned to the house, he saw two bodies being placed in an ambulance. Mosley later learned that Duffy had died.

¶ 6 Eischa Toney next testified for the State. She said that in October 2005, she lived at 12238 South Wallace Street, approximately one block from 12210 South Parnell Avenue. Toney said she had lived there for more than 30 years, and knew defendant and Bethany since childhood. She stated that the Parnell Avenue house was vacant and was a known drug trafficking location. Toney said that on the night of October 13, 2005, defendant, Bethany, and two other men she knew as Little Ricky and Peanut, were drinking on her porch, as they often did. Shortly before Duffy was shot, the four men left in the direction of Parnell Avenue. Five to ten minutes later, Toney heard gunshots and saw defendant, Bethany, Little Ricky and Peanut running back toward Wallace from the direction of Parnell. Toney said she did not see defendant again until the day of Duffy's funeral, when the same four men gathered on her porch before attending the service. She said that when they returned from the service, defendant showed her Duffy's obituary and asked if she heard anything about the shooting or if she knew anyone who was talking about it. Defendant explained that he was asking because he was afraid of being framed for the killing. Toney told him she had not heard anything. She said that several months later, when defendant, Bethany, Little Ricky and Peanut next returned to her home, Bethany was openly bragging about robbing and shooting Duffy. When asked by the State if defendant said he played a part in Duffy's death, Toney initially said that she did not recall, and after being reminded of her grand jury testimony, in which she stated defendant said "[h]e was

a part of it" and "he helped," Toney responded "I was asked those questions, and you say I answered that. Evidently, I answered that." The State rephrased its questions a number of times, but Toney continued to give some variation of that response. On cross-examination, Toney said the State helped her relocate after her grand jury testimony because she no longer felt secure in her neighborhood. The parties stipulated that the State paid her $1,745.50 for moving expenses and a security deposit on a new residence.

¶ 7 William Moore, a forensic investigator for the Chicago Police Department, next testified for the State. Investigator Moore said that he arrived at 12210 South Parnell Avenue on October 13, 2005, at 9:50 p.m., and processed the scene. He observed that the house was in a state of disrepair and appeared abandoned, although there were signs that squatters were living there. Moore said he recovered three fired bullets from inside the house – one in the living room, one in the dining room, and one in the wall of the stairwell. He also recovered six cartridge casings of two different calibers from the living and dining rooms, as well as four cartridge casings, a pair of handcuffs, and an empty mobile phone case from the front lawn. Moore also found pools of fresh blood in the living and dining rooms and on the sidewalk in front of the house, and observed blood smears on the railing of the front porch and the interior walls of the house, which appeared to be leading from the interior to the exterior of the house.

¶ 8 The State next presented Patrick Fallie, who testified he had known and lived in the same neighborhood as defendant since childhood. When asked about almost anything beyond his biographical information, however, such as his whereabouts on the night of October 13, 2005, he stated he did not recall. Fallie further denied having any knowledge related to Duffy's killing. When

the State then impeached Fallie with his grand jury testimony, in which he claimed to be an eyewitness to the shooting and gave a detailed account thereof, Fallie denied ever testifying before the grand jury. He denied speaking with the police and the State's Attorney's office as well.

¶ 9 The State next called Detective John Otto of the Chicago Police Department, who testified that on October 13, 2005, he was called to the scene of a shooting at 12210 South Parnell Avenue. Upon his arrival, he observed that the house was cordoned off with police tape, there was blood on the sidewalk in front of the house, and there was a trail of blood leading from inside the house to the porch. He spoke with the forensic investigator and instructed the other officers on the scene to canvas the area before he went to Christ Hospital, where he learned the shooting victim, Duffy, was dead. Detective Otto said $15,000 worth of cocaine was found on Duffy's body. Detective Otto then described the course of his investigation, including enlisting the aid of the gang investigations and narcotics units in an attempt to develop additional leads. Otto said that on April 12, 2006, he was informed that Patrick Fallie was in the police station's gang lockup area and claimed to have information related to Duffy's killing. Detective Otto continued, without objection, that he interviewed Fallie, who told him that on the night of October 13, 2005, he was parked outside a house neighboring 12210 South Parnell Avenue, waiting for two friends to purchase loose cigarettes from a woman who lived next door. As he waited, Fallie saw Duffy limp out of the Parnell Avenue house, followed by the defendant and another man he did not recognize, both of whom were holding handguns. The street was artificially lit and Fallie's view was unobstructed. Fallie could see Duffy waiving his hands in the air and could hear him begging for his life for before defendant shot him in the upper body, causing him to fall to the ground. Defendant then stood over Duffy and fired three

or four more times into his upper body and head before bending down to take something from his hand and fleeing. Fallie told Detective Otto that he had known defendant and Duffy for years and was sure it was them he saw that night. Otto said that after the interview, he brought Fallie to the State's Attorney's Office, where Fallie met and spoke with Assistant State's Attorney David Williams. Williams interviewed Fallie and brought him before a grand jury that same day.

¶ 10 Former Assistant State's Attorney David Williams next testified for the State. He stated that Fallie testified before the grand jury on April 12, 2006, and, without objection, read large portions of that testimony, the transcript of which was published to the jury. Reading from that transcript, Williams said Fallie told the grand jury that Duffy, defendant, Bethany and Ricky Long, also called Little Ricky, all of whom he had known for years, were members of the Gangster Disciples. Fallie said that at approximately 8:00 p.m. on October 13, 2005, he was parked across the street from 12210 South Parnell Avenue, waiting for two friends named Mike and Markina to purchase loose cigarettes at a neighboring house. As he waited, he saw Duffy limp out of the front of the house and head toward the sidewalk with defendant and another man he could not identify following closely behind. Both of the men following Duffy were holding handguns. As they exited, Duffy turned to face defendant, waiving his hands and saying "don't shoot, don't shoot, it ain't worth it, don't kill me," before defendant shot him in his upper body. Duffy fell and defendant stood over him, firing three or four more times into his body. Fallie said defendant then picked up small bag Duffy was holding and ran in the direction of Wallace Street. Fallie further testified that he did not go to the police with this information earlier because he feared for his life. He knew that it was defendant's practice to return to the scene of a shooting and observe who the police were interviewing. Williams

also stated, without objection, that Toney testified before the grand jury on April 28, 2006, where she said, *inter alia*, that she overheard defendant and Bethany bragging about robbing and shooting Duffy. On cross-examination, Williams said Fallie was arrested on a firearms charge the day before he testified before the grand jury. Following Williams' testimony, portions of the grand jury transcripts were admitted into evidence.

¶ 11 Police officer Roberta Honeycutt next testified for the State. She was the first police officer to arrive at the scene of the shooting on October 13, 2005, where she found Duffy on the ground in front of the Parnell Avenue house, bleeding from multiple gunshot wounds, but still alive. She said that an ambulance arrived shortly after her and was used to transport Duffy to the hospital. Officer Honeycutt said that when she examined the scene, she found a mobile phone case and a plastic bag containing a white rocky substance she believed to be crack cocaine. She observed no one else injured at the scene.

¶ 12 Tonia Lynn Brubaker, a forensic scientist for the Illinois State Police, next testified for the State as an expert on firearms identification. Brubaker said that she analyzed the three fired bullets recovered from the scene and another fired bullet received from the Cook County Medical Examiner's Office. Using accepted scientific means she was able to conclude with a reasonable degree of scientific certainty that of the four bullets recovered, two were 9-millimeter/.38-caliber bullets fired from the same firearm. The other two were 380 auto/.38-caliber bullets fired from the same firearm, but a different firearm than that which fired the 9-millimeter/.38-caliber bullets. Brubaker also analyzed the ten fired cartridge casings recovered from the scene and determined that three 9-millimeter casings were fired from the same firearm and the seven remaining 380-caliber

casings were fired from a different firearm.

¶ 13 The State next called Doctor Ponni Arunkumar of the Cook County Medical Examiner's Office to testify as an expert in forensic pathology. Dr. Arunkumar performed the postmortem examination of Duffy, during which she observed evidence of nine gunshot wounds, four lacerations, and one abrasion. She testified that one of the lacerations, located at the top of Duffy's head, was of the type often seen when a person is hit with a gun. She said the gunshot wounds were distributed throughout the victim's body, with four passing through his limbs, one through his back, and the remainder through his head and neck. One bullet was recovered from his chest cavity. Gunpowder stippling observed on several of the gunshot wounds indicated that they were inflicted by a weapon fired within 18 inches of the body. The gunshot wounds had different trajectories, which Dr. Arunkumar said indicated constant motion of the victim and/or the shooter. Dr. Arunkumar opined that the cause of death was multiple gunshot wounds, and the manner of death was homicide. After successfully moving the admission of its exhibits, the State rested.

¶ 14 The defendant called one witness, Markina Polk, who testified that she witnessed Duffy's murder. Polk said that on the night of October 13, 2005, she went to the house neighboring 12210 South Parnell Avenue with her friend, Mike, to buy cigarettes. When she arrived, she noticed that Fallie, whom she knew to be a Gangster Disciple, was parked across the street, sitting alone in his car. She said that she could also see Duffy on the front lawn of the neighboring house with his hands in the air, arguing with two men she could not identify, one of whom was armed. She did not see defendant. Polk said she then saw the man closest to Duffy push him in the back, causing Duffy to stumble and turn to face him. The unidentified man then shot Duffy. Polk said she immediately ran

into the neighboring house for cover, but she heard approximately five shots fired. She also said that shortly before she testified, Fallie approached her and asked her to deny seeing him at the scene of the shooting that night. On cross-examination, Polk said she unsuccessfully attempted to contact the authorities to tell them what she witnessed, but she did not press the issue because she lived in the neighborhood and feared for her life.

¶ 15 Before resting, by way of stipulation, the defense then entered a statement Mosley made to the police, admitting to breaking into Duffy's apartment after the shooting to look for money.

¶ 16 On March 6, 2009, the jury found defendant guilty of first degree murder with a firearm. Defendant filed a motion for a new trial, renewing his argument that his statutory right to a speedy trial was violated, and further arguing that he was not proved guilty of murder beyond a reasonable doubt. The trial court denied defendant's motion and subsequently sentenced him to 45 years of imprisonment for first degree murder, and 20 years consecutively for personally discharging a firearm during the commission of that crime. Defendant appeals his conviction, arguing that his right to a speedy trial was violated and that the State failed to prove him guilty of first degree murder beyond a reasonable doubt.

¶ 17 ANALYSIS

¶ 18 I. Speedy Trial

¶ 19 "In Illinois, a defendant possesses both constitutional and statutory rights to a speedy trial. [Citations.] The constitutional and statutory provisions address similar concerns; however, the rights established by each of them are not necessarily coextensive." *People v. Castillo*, 372 Ill. App. 3d 11, 16 (2007). In this case, defendant asserts only a violation of his statutory right to a speedy trial and

specifically disclaims any constitutional argument.

¶ 20 The Illinois Code of Criminal Procedure (Code) (725 ILCS 5/100-1 *et seq*. (West 2008)) states, in relevant part:

> "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." 725 ILCS 5/103-5(a) (West 2008).

Further, section 103-5(f) of the Code states that any "[d]elay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried * * * and on the day of expiration of the delay the said period shall continue at the point at which it was suspended." 725 ILCS 5/103-5(f) (West 2008).

> "Under the statutory provision, proof of a violation requires only that the defendant has not been tried within the period set by statute and that the defendant has not caused or contributed to the delays. [Citation.] A delay is occasioned by the defendant and charged to the defendant when the defendant's acts caused or contributed to a delay resulting in the postponement of trial. [Citation.] The

> defendant bears the burden of affirmatively establishing a speedy trial violation, and in making his proof, the defendant must show that the delay was not attributable to his own conduct. [Citation.] * * * The trial court's determination as to who is responsible for a delay of the trial is entitled to much deference, and should be sustained absent a clear showing that the trial court abused its discretion." *Castillo*, 372 Ill. App. 3d at 16.

¶ 21 Defendant argues that the trial court erred in tolling the period between his arrest and his first appearance in court. The State responds that tolling that time was appropriate because defendant was physically incapacitated and the resulting delay was attributable to him. We agree.

¶ 22 Section 114-4 of the Code provides:

> "Physical incapacity of a defendant may be grounds for a continuance at any time. If, upon written motion of the defendant or the State or upon the court's own motion, and after presentation of affidavits or evidence, the court determines that the defendant is physically unable to appear in court or to assist in his defense, or that such appearance would endanger his health or result in substantial prejudice, a continuance shall be granted. * * * *Such continuance shall suspend the provisions of Section 103-5 of this Act*, which periods of time limitation shall commence anew when the court, after presentation of additional affidavits or evidence, has determined that such physical incapacity has been substantially removed." (Emphasis added.) 725 ILCS 5/114-4(i) (West 2008).

Here, one day after defendant's arrest, the circuit court took notice of the hospital mittimus and held

a hearing *sua sponte* to determine his capacity to proceed. After receiving uncontradicted evidence that defendant was in a coma, the court found him physically incapacitated. Prior to defendant's appearance in court, there is nothing in the record to suggest he challenged that finding, or made any assertion or introduced any evidence that his condition had improved. Indeed, at defendant's June 20, 2006 arraignment, defense counsel acknowledged his client's continued incapacity. Likewise, the record is void of any attempt by defendant to introduce evidence after the fact that the trial court's finding of incapacity was mistaken. Under these circumstances, tolling the period before defendant's first appearance in court was not only permissible, it was proper. *See People v. Tucker El*, 123 Ill. App. 3d 955 (1984) (continuance ordered by trial court on its own motion due to defendant's physical incapacity tolled the 120-day speedy trial period where defendant did not otherwise advise the court he could proceed before the expiration of that time).

¶ 23 As for the series of continuances between June 20, 2006, and November 12, 2008, defendant does not contest that they were made by express agreement of the parties and, therefore, tolled the time in which he must be brought to trial under section 103-5(a) of the Code. *People v. Kliner*, 185 Ill. 2d 81, 114 (1999) ("A defense counsel's express agreement to a continuance may be considered an affirmative act contributing to a delay which is attributable to the defendant.").

¶ 24 This leaves only the 111-day period between November 12, 2008, when defendant objected to any further continuances, and March 3, 2009, when his trial commenced. As that period is plainly within the 120-day limit set by section 103-5(a), the trial court's ruling that defendant's statutory right to a speedy trial was not violated is affirmed.

¶ 25 II. Hearsay

¶ 26 Defendant next contends, in the mixed context of a sufficiency of the evidence argument, that the trial court improperly admitted hearsay evidence. Specifically, he asserts that the introduction of Fallie and Toney's grand jury testimony was improper because "a prior statement * * * is not admissible in law or statute where the witness did not remember making the statement." The State responds that Fallie and Toney's grand jury testimony was inconsistent with their trial testimony and, therefore, the prior testimony was admissible.

¶ 27 Before we reach the substance of defendant's arguments, we note that it appears from the record that defendant did not object to the introduction of Fallie's grand jury testimony at trial, nor did he raise an objection to it in his post-trial motion. "To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion." *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). "When a defendant has forfeited appellate review of an issue, the reviewing court will consider only plain error." *Id*.

> "The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances. [Citation.] We will apply the plain-error doctrine when:
>
> > '(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the

integrity of the judicial process, regardless of the closeness of the evidence.' [Citation.]

The first step of plain-error review is determining whether any error occurred." *Id*. at 613.

As the admission of Fallie's grand jury testimony was not improper, we need not consider whether it constituted plain error.

¶ 28 Section 115-10.1 of the Code provides, in relevant part:

"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[.]" 725 ILCS 5/115-10.1 (West 2008).

"The prior testimony need not directly contradict testimony given at trial to be considered 'inconsistent'[citation], and is not limited to direct contradictions but also includes evasive answers, silence, or changes in position." *Martinez*, 348 Ill. App. 3d at 532. This includes instances where a witness testified to a matter before a grand jury, but claims to be unable to recollect it at trial. *People v. Flores*, 128 Ill. 2d 66, 87 (1989). "The determination of whether a witness' prior testimony is inconsistent with his present testimony is left to the sound discretion of the trial court" and will not be reversed absent abuse of that discretion. *Id*. at 87-88. Prior inconsistent statements that meet these

requirements and thus fall within this exception to the hearsay rule may be used as substantive evidence to prove an element of an offense. *People v. Hastings*, 161 Ill. App. 3d 714, 719 (1987).

¶ 29 In this case, there can be no doubt that Fallie's grand jury testimony was inconsistent with his trial testimony. Contrary to defendant's characterization, Fallie did not simply testify at trial that he could not remember anything related to this case. He specifically denied, *inter alia*, seeing defendant shoot Duffy. This directly contradicts the testimony he gave to the grand jury. Indeed, Fallie even denied testifying before the grand jury. Since he was subject to cross-examination and his testimony to the grand jury was made under oath, the trial court did not abuse its discretion in allowing its introduction as substantive evidence of defendant's guilt.

¶ 30 It is also appears from the record that Toney was being intentionally evasive at trial. Instead of directly answering the State's questions concerning defendant's claims of involvement in Duffy's death, she said she remembered being asked about the matter before the grand jury, but she could not recall how she answered. Although the State rephrased its questions repeatedly, Toney invariably gave some version of that response. Under these circumstances, we do not believe the trial court abused its discretion in finding an inconsistency between her grand jury and trial testimony and, therefore, the admission of her grand jury testimony was not erroneous.

¶ 31 III. Sufficiency of the Evidence

¶ 32 Lastly, defendant contends that the State failed to prove him guilty of first degree murder beyond a reasonable doubt.

> "When a defendant challenges the sufficiency of the evidence, a criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory

> that it creates reasonable doubt of defendant's guilt. [Citation.] It is not within the purview of the reviewing court to retry a defendant where the sufficiency of the evidence is at issue. [Citation.] Rather, it is the responsibility of the trier of fact to determine the credibility of witnesses, the weight to be given to their testimony and the reasonable inferences to be drawn from the evidence. [Citation.] The relevant question on review is whether, after considering 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. Rodriguez*, 336 Ill. App. 3d 1, 14-15 (2002).

"[T]he reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 33 Defendant argues, in relevant part, that no rational trier of fact could have found him guilty of murder beyond a reasonable doubt because: (1) Fallie was impeached; (2) there was no physical evidence directly linking defendant to the killing; and (3) Polk testified that she also witnessed the killing and she did not identify defendant as the shooter. Fallie's grand jury testimony was supported by the physical evidence, which indicated that Duffy was initially shot in the house and killed on the front lawn. The fact that different caliber bullets and casings were found at the scene does not render his testimony improbable where the house was a known gang and drug trafficking location, and at least one witness testified that both of Duffy's assailants were armed with handguns. To the degree that Polk's testimony conflicted with Fallie's grand jury testimony, the jury was free to credit Fallie's grand jury testimony and reject Polk's testimony. Viewing all the evidence in a light most favorable

to the State, we conclude that a rational trier of fact could have found the essential elements of the first degree murder beyond a reasonable doubt.

¶ 34 CONCLUSION

¶ 35 Based on the foregoing, we affirm defendant's conviction for first degree murder.

¶ 36 Affirmed.