2011 IL App (1st) 093100-U

FOURTH DIVISION
October 20, 2011

No. 1-09-3100

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. 04 CR 11843
	)	
MARCEL MILTON,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Eyewitness testimony and defendant's own inculpatory statements established defendant's guilt of first degree murder and two counts of attempted murder beyond a reasonable doubt, and the trial court did not err in denying defendant's motion for a new trial based on newly discovered evidence.

¶ 2 Following a bench trial, defendant Marcel Milton was found guilty, *inter alia*, of first degree murder and two counts of attempted first degree murder. He was sentenced to concurrent prison terms of 62 years on the murder count and 12 years on each count of attempted murder. On appeal, defendant contends the trial evidence was insufficient to establish beyond a

reasonable doubt that he shot at the victims because the eyewitness testimony was unreliable and evidence that defendant made inculpatory statements was uncorroborated. Defendant also asserts the trial court erred in denying his posttrial motion based on newly discovered evidence that defendant's codefendant had admitted killing the murder victim. We affirm.

¶ 3 Defendant and codefendant Reco Wilson were charged, *inter alia*, with the first degree murder of Deon Gardner, the attempted first degree murders of Sergio Wray and Lamar Murphy, and aggravated vehicular hijacking. The crimes, committed on March 22, 2004, resulted from a struggle among car thieves for the possession of a gray Jeep Cherokee previously stolen on March 17 from Alamo, a car rental business. Defendant and Reco were tried in separate but simultaneous bench trials before the same judge.

¶ 4 Lamar Murphy testified that at about 9 p.m. on March 22, 2004, he was at home at 6926 South Michigan, watching movies with his family and Deon Gardner, when Sergio Wray came to his home. Deon asked Wray for a ride, Wray agreed, and they and Lamar entered the vehicle that Wray had arrived in, a gray Jeep Cherokee. The Cherokee was parked facing north in front of Lamar's home on the west side of Michigan Avenue, which runs one-way north at that point. Lamar sat in the driver's seat, Wray in the front passenger seat, and Deon in the back seat behind Wray. As they were about to drive away, a white Chrysler driving southbound, the wrong way on the one-way street, stopped next to the Cherokee. One of the two occupants, a man in the front passenger side, exited the Chrysler with a gun in his hand. The gunman told the Cherokee's occupants two or three times, "Get out the f***ing car." He began shooting as he approached the passenger side of the Cherokee, and both Lamar and Wray left the vehicle through the driver's door. As Lamar was running away, he heard four or more additional shots. Lamar and Wray ran west through a gangway and yard toward Wabash. They saw the Chrysler drive down Wabash,

and they ducked down. Then Lamar returned to his home on Michigan, where he found Deon lying in the street, dying. The Cherokee was gone.

¶ 5 Lamar did not know codefendant Reco Wilson prior to the shooting, but at trial he identified Reco as being present at the shooting location. As the white Chrysler pulled up, a red car containing Reco "was pulling off" and "drove past."

¶ 6 Sergio Wray, who had served prison time in the 1990s for aggravated vehicular hijacking, testified that on March 17 or 18, 2004, Reco Wilson asked him to pick up a vehicle from one location and convey it to a second location, and Wray agreed. Reco drove Wray to 78th and South Shore Drive where a gray Jeep Cherokee was parked. Reco gave Wray the Cherokee's keys and told Wray to follow him to 77th and Yates. Wray entered the Cherokee and began to follow Reco. Claiming he got lost in traffic, Wray did not meet Reco at the appointed location, but kept possession of the Cherokee for his own personal use.

¶ 7 On March 22, Wray drove the Cherokee to Lamar Murphy's residence at 6926 South Michigan and parked at that address. His intent was to drive with Lamar and Deon Gardner in the Cherokee to pick up videos. At about 9:20 p.m., the three men entered the vehicle, with Lamar in the driver's seat, Wray in the front passenger seat and Deon behind him. Before Lamar could move the Cherokee, a white car going the wrong way on one-way Michigan Avenue, approached the Cherokee, and defendant jumped out of the white car with a gun in his hand. Defendant said, "Get the f*** out of the car." Both Wray and Lamar exited the Cherokee through the driver's door. Defendant was shooting the gun, and Wray believed defendant was shooting at him. Wray ran away. The following day, after learning that Deon was dead, Wray went to the police station and identified a photo of Reco as the man from whom he had obtained the Cherokee.

¶ 8 On April 4, Wray identified a police photo of defendant as the man who shot at him, Lamar, and Deon. On April 21, Wray identified defendant at a police lineup. At trial, Wray testified that defendant was the man who "shot at me, shot at the truck, shot at Lamar and at Mr. Gardner who is deceased, who died." Reco was not the man who shot at him.

¶ 9 Melvin Wilson testified that codefendant Reco Wilson was his cousin and defendant was his friend. On March 22, 2004, Reco phoned Melvin and asked him to drive defendant to 69th and Michigan. Melvin drove defendant to that location in Melvin's mother's white Chrysler Cirrus. During the drive, defendant was talking to someone on the phone. Melvin testified he did not know with whom he was talking, but he acknowledged he had testified previously before a grand jury that defendant was speaking with Reco on the phone and that defendant was urging Melvin to "hurry up." Melvin drove the wrong way on one-way Michigan Avenue. He stopped the Chrysler, defendant exited from the passenger seat, and Melvin "pulled off." He did not recall testifying before the grand jury that he had stopped his car by a Jeep. He testified at trial he did not hear defendant say anything, but he admitted he told the grand jury that, after defendant exited the Chrysler, Melvin heard defendant say: "Give me back my f***ing truck." Melvin testified at trial he did not know what defendant was doing at that time. Before the grand jury, however, Melvin testified he could see through the rear view mirror that defendant was "holding the gun toward the truck." Melvin stated at trial that he did not see from where defendant got the gun, but before the grand jury he said the gun had to have come out of defendant's coat. As Melvin drove away, he heard sounds like three or four shots or fireworks.

¶ 10 Melvin initially claimed at trial that before he testified before the grand jury, he was detained and questioned at a police station for 72 hours. He conceded later in his trial testimony that he was at the police station only 14 hours. He stated that during that time, the police induced him to implicate defendant and Reco, and he later told the grand jury what he was told

to say, what he thought they wanted to hear. Melvin conceded that in a previous court hearing, he testified that when he spoke to the assistant State's Attorney and testified before the grand jury, he told the truth.

¶ 11 Assistant State's Attorney Cheryl Galvin, who presented Melvin Wilson to the grand jury on April 21, 2004, testified that Melvin did not complain of his treatment by the police. Melvin never said he was going to testify to what the police told him to say. Melvin testified before the grand jury that when he was driving defendant on the night of the shooting, defendant was talking by cell phone to Reco. Defendant told Melvin to hurry up and then ordered Melvin to stop the car by a Jeep. As Melvin was driving away, he heard defendant say, "give me back my f***ing truck." Through the rear view mirror, Melvin could see defendant pointing the gun at the Jeep.

¶ 12 Sergeant Raymond Pierce testified that he spoke with Sergio Wray on the day after the shootings and learned that a gray Jeep Cherokee was involved. The Cherokee, which was one of three vehicles that had been stolen from Alamo in March, was located on April 3, 2004, at 8220 South Bishop, parked just one block from defendant's home at 8229 South Loomis.

¶ 13 Defendant was arrested at about 5 p.m. on April 19, 2004, and was interviewed by Pierce and Detective Patrick Ford at about 7:45 p.m. Defendant stated he knew nothing about the murder of Deon Gardner. On April 21 at about 12:40 a.m., Sergio Wray picked defendant out of a lineup as the person who shot Deon Gardner; Lamar Murphy was unable to identify anyone in the same lineup. After Wray's lineup identification of defendant, Pierce and Ford interviewed defendant again at 1:55 a.m. on April 21. Defendant told them that at one time he stole cars with Reco but had stopped, and that he was aware Reco recently had stolen three cars from a rental company near Midway Airport: a white Grand Prix, a red Grand Prix, and a gray Jeep Cherokee. Defendant knew the gray Jeep Cherokee was recovered near 82nd and Bishop and he admitted he

had been in it prior to it being recovered. Defendant said that a man by the name of Aaron had the Jeep Cherokee on the east side and was involved in an accident, and Reco went out there to get the vehicle back from Aaron. Reco had to find someone to drive the Jeep Cherokee, so he found Wray and asked him to drive it to 78th and Yates, but Wray took off in the Jeep instead of following him.

¶ 14 On the evening of the homicide, Reco phoned defendant and said he had found the Jeep Cherokee in the 6900 block of Michigan. Reco asked defendant to call his cousin Melvin Wilson to drive defendant over to 69th and Michigan to get the Jeep Cherokee. Melvin drove defendant there in a white Chrysler. Reco was in communication with defendant by cell phone on the way over there, and Reco told defendant to hurry up, that the Jeep was going to be leaving soon. So Melvin drove southbound the wrong way on Michigan and stopped by the Jeep Cherokee. Defendant got out armed with a 9-millimeter weapon. He ordered the occupants of the Jeep out. The front seat passengers got out and ran. Deon Gardner was in the rear seat and slow getting out. Defendant thought that Deon might have been armed with a gun, so he shot him once. Deon fell to the ground. Reco then got out of the car that he was in, grabbed the gun, and shot Deon two more times. Then Reco left the scene in the Jeep Cherokee and defendant left in Reco's car.

¶ 15 After defendant gave that statement, assistant State's Attorney Jeanne Bischoff arrived at the police station and interviewed both defendant and Reco Wilson. Bischoff testified that at about 6:45 a.m. on April 21, she and Detective Ford interviewed defendant. Defendant's statement to Bischoff was substantially the same account that he had given to Pierce and Ford, but it differed in some respects. Reco told defendant by phone to reach underneath the passenger seat of the Chrysler. Defendant retrieved a 9-millimeter handgun from under the seat and ordered Melvin to stop the car. Defendant jumped out of the car with the gun in his hand and

went up to the Cherokee. When the third man exited the rear passenger door of the Cherokee and defendant thought the man was reaching for something in his waist, defendant fired one shot toward the ground. Reco ran up, took the gun from defendant, and fired at the rear seat passenger, Deon Gardner. Then defendant and Reco fled in Reco's car.

¶ 16 At 10:15 p.m., Bischoff had another conversation with defendant, with Ford present, in which defendant repeated his earlier statement but added that he fired two shots at the front-seat passengers of the Cherokee as they fled.

¶ 17 Defendant testified in his own behalf at trial. He had known codefendant Reco Wilson for about 10 years; they lived on the same block on Loomis at 82nd Street. Reco was a car thief and had stolen 10 or 15 cars from Alamo. Reco stole a Jeep Cherokee from Alamo. Defendant first saw the Cherokee on the evening of the shooting; it was parked on Michigan and 69th Street. Defendant was in front of his residence on Loomis when Reco phoned that evening and asked him to do a favor. Reco said he was at 69th and Michigan and asked if defendant could come over and drive Reco's girlfriend's car, a red 2000 Intrepid. Defendant said he had no car to enable him to meet Reco. Reco phoned a second time and told defendant his cousin would come to get defendant. Five minutes later Reco's cousin, Melvin Wilson, came and picked up defendant in front of his home. As Melvin was driving defendant to 69th and Michigan, Reco phoned once more and told defendant to get the red Intrepid and drive it to 77th and Yates. Reco never told defendant why he needed defendant to drive his girlfriend's car. Reco never told him to hurry up because it looked like the people were going to leave. Defendant did not know why Melvin was driving the wrong way on Michigan and did not tell him to do so. When they arrived at 69th and Michigan, they pulled up and defendant saw the red Intrepid. It was parked about three cars from a gray Jeep. Defendant did not look at the Jeep Cherokee and did not see anybody in that vehicle. Defendant saw Reco in the red Intrepid. Reco got out of the Intrepid

and defendant got in. Meanwhile, Melvin had driven away. Defendant drove off in the red Intrepid and heard shots as he was pulling away. He drove the Intrepid to 77th and Yates as Reco had asked, and waited there. About five minutes later, Reco drove up in the Cherokee. Reco got into the red Intrepid and drove defendant home.

¶ 18 Defendant denied telling the police that he was the person who stole the gray Jeep Cherokee or shot people. He told the police he did not know anything about it. He did not tell the police he knew Reco or Melvin. He did not tell the police that he had heard shots and could think of no reason why he would have told them. He never gave Reco a gun that night. Reco said nothing to defendant on the phone about a gun being in the car Melvin was driving.

¶ 19 At the conclusion of the simultaneous but severed bench trials, the court found defendant guilty on all counts. The court also found codefendant Reco Wilson guilty of all charges based on the court's conclusion Reco was responsible for the aggravated vehicular hijacking and did not withdraw from the commission of the shootings after getting defendant to come to where the Cherokee was parked.

¶ 20 Defendant filed a motion for a new trial based on newly discovered evidence, and a hearing was held on the motion. Charles Jones testified that he had avoided service of process during the trial because he did not want to be involved. Jones had grown up with defendant and Reco at 82nd and Loomis. Jones gave the police two statements in March of 2004. Jones identified Defendant's Exhibit No. 1 as a statement he had given to a detective and a state's attorney. Jones testified he also gave a second statement that he wrote out in his own handwriting, with a detective and a state's attorney present. The second statement was not introduced at the hearing.

¶ 21 Jones was familiar with the gray Jeep Cherokee and had seen Reco drive it. Jones knew the car was stolen because all Reco did was to steal cars from a rental place lot. One day, when

Jones and Reco's cousin were in Reco's home, Jones saw the keys to the Cherokee. He took the keys, went out and found the Cherokee at 84th and Throop. He drove the Cherokee for a couple of days, just riding around. One night, about three days after Jones took the Cherokee, Reco saw him driving the Cherokee and followed him. After Jones parked the car at 78th and Coles, Reco ran up to him with a gun and told him to drop the car keys. Jones threw down the keys and ran away. Minutes later, Reco phoned him and threatened to put him in a coma, the way Reco had put Meeko in a coma. Meeko was a boy who rode around in the Cherokee with Jones the day Jones took the Cherokee from Reco. The next day, Reco came to Jones and showed him a newspaper article from the *Chicago Defender* about the murder of Deon Gardner in a gray Jeep Cherokee. Jones's brother and sister were present at that time. "And he tell me, see, this what happened to the mother f****r that steal from me. You lucky you like family or I'd kill your ass too." Jones also testified that Reco said he saw Gardner sitting in the Cherokee and that he (Reco) ran up and started shooting in the car. When Reco saw another passenger jump out and run, Reco shot at him too. Jones knew Reco had a couple of guns, "a 32" and "a 9." Jones never saw defendant drive the Jeep Cherokee.

¶ 22 Pamela Mitchell testified that she was Charles Jones's sister. She knew defendant and Reco from the neighborhood of 82nd and Loomis where she grew up. On March 26, 2004, she was present at 82nd and Loomis when Reco showed her brother Charles a newspaper. Reco told Charles, "This is what I do to mother f***ers that steal from me." Reco also said at that time that he should have killed Charles too.

¶ 23 In rebuttal, assistant State's Attorney Paul Joyce testified that on October 26, 2004, he interviewed Charles Jones. Joyce identified Defendant's Exhibit No. 1 as a photocopy of the statement Jones had given him and that Joyce had written out. It was the only statement Joyce created that day. Jones made corrections to the statement and signed it. In the statement, Jones

said: "Charles Jones states that Reco Williams said 'this is what happens to mother f***ers that steal from me." At no time in the statement did Jones ever say that Reco admitted he personally shot and killed Deon Gardner.

¶ 24 The court denied the motion for a new trial after concluding that Reco's statement to Charles Jones was braggadocio and did not indicate Reco was the shooter. The court sentenced defendant for first degree murder to 62 years in prison, including a 25-year enhancement for personally discharging a weapon, and 12-year prison terms on each of the two attempted murder counts, with all sentences ordered to be served concurrently.

¶ 25 On appeal, defendant contends the State failed to establish his guilt beyond a reasonable doubt because the testimony of eyewitness Sergio Wray was unreliable, the evidence of defendant's oral confession was suspect, and Melvin Wilson's trial testimony recanted his previous grand jury testimony. Defendant also asserts that further doubt of his guilt was provided by the posttrial testimony of Charles Jones and his sister that codefendant Reco Wilson admitted to them he shot Deon Gardner.

¶ 26 In a bench trial, the trial judge has the responsibility to determine the credibility of the witnesses, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the evidentiary record. *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). Such determinations are granted substantial deference on review, and we may not substitute our judgment for that of the trial judge on these matters. *Id*. Where a guilty finding depends on eyewitness testimony, a reviewing court must decide whether a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). Under this standard, eyewitness testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id*. at 280.

¶ 27 Defendant argues that there was no physical evidence linking him to the crime. However, the lack of physical evidence does not raise a reasonable doubt where an eyewitness has positively identified defendant as the perpetrator of the crime. *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009), citing *People v. Clarke*, 391 Ill. App. 3d 596, 610 (2009).

¶ 28 Defendant contends that the conditions under which eyewitness Sergio Wray viewed the shooter on the night of the shooting were not conducive to a reliable and positive identification. He asserts that Wray's identification was suspect because Wray had never seen defendant before the shooting incident, Wray was taken by surprise by the unexpectedness of the event, the incident lasted just a few seconds and took place in the dark with no description of lighting circumstances, and Wray admitted he did not see well at night. However, Wray testified that, although it was dark, light was coming from the street lights, and that Deon Gardner drew Wray's attention to the white Chrysler as it approached the Jeep because the Chrysler was driving down the wrong way on a one-way street. Consequently, Wray's attention was directed to the man who exited the Chrysler wielding and shooting a gun and demanding that Wray and the other two men exit the jeep. Two weeks later, Wray identified defendant as the shooter from a police photo array and a month after the shooting he identified defendant from a lineup. Wray testified with certainty at trial that defendant was the man who shot and killed Deon and shot at Lamar and himself.

¶ 29 Moreover, the identification of defendant as the man who emerged from the passenger seat of the Chrysler was not in issue. By his own admission at trial, defendant was the Chrysler's passenger who was driven to the scene of the shooting by Melvin Wilson and who saw and spoke with Reco at that location. The argument he presented at trial in his defense was that, although he was present, he never had a gun and that his codefendant, Reco Wilson, was the shooter. In his trial testimony, defendant admitted he was at the crime scene and observed the

parked Jeep, but he denied even having knowledge of the shooting. However, both Lamar and Wray testified that the man who fired the gun was the passenger in the white Chrysler that drove up to the Jeep Cherokee. Wray knew Reco and identified Reco to the police as the man who gave him the Cherokee in mid-March, but Wray testified that Reco was not the man who shot at him. Wray's testimony was corroborated by Melvin Wilson. At trial, Melvin admitted testifying before the grand jury that after defendant exited the Chrysler, Melvin heard defendant say, "Give me back my f***ing truck." Melvin drove away in the Chrysler, but in the rear view mirror he saw defendant was pointing a gun toward the Cherokee. Melvin heard sounds like three or four shots or "fireworks."

¶ 30 The weight to be given to the testimony of Wray, his credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony were the responsibility of the trial judge who was the trier of fact. See *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In considering a challenge to the sufficiency of the evidence, it is not the function of this court to reweigh the evidence or retry the defendant. *People v. Leak*, 398 Ill. App. 3d 798, 818 (2010). Thus, we reject defendant's claim that Wray's identification of defendant as the shooter was unreliable and conclude that the experienced trial judge could reasonably accept Wray's identification testimony as reliable and true beyond a reasonable doubt.

¶ 31 Defendant also calls into question the evidence that defendant made a custodial inculpatory oral statement to law enforcement personnel. The State presented testimony that defendant made inculpatory admissions to police Sergeant Raymond Pierce, Detective Patrick Ford, and assistant State's Attorney Jeanne Bischoff. Defendant initially denied to the police that he had any involvement with the shooting. After being identified in a lineup as the shooter by Wray, however, defendant gave an inculpatory statement to Pierce and Ford, acknowledging he

knew Reco had stolen the Jeep Cherokee, knew the police had recovered it at 82nd and Bishop near his home, and admitted he (defendant) had been in the Cherokee. Defendant recounted how Wray had received the Cherokee from Reco but failed to return it. Reco phoned defendant, told him the Cherokee had been found in the 6900 block of South Michigan, and asked defendant to help recover it. Reco arranged for his cousin Melvin to drive defendant to 69th and Michigan. During the drive, Reco was in communication with defendant by cell phone and told him to hurry because the Jeep was going to leave the location on Michigan, so defendant ordered Melvin to drive the wrong way on Michigan so they could reach the Cherokee before it drove off. Reco also instructed defendant to reach under the Chrysler's passenger seat, and defendant found and took possession of a 9-millimeter handgun. When defendant ordered Melvin to stop the car defendant got out, approached the Cherokee with gun in hand, and saw Deon Gardner exiting from the back seat of the Cherokee. Defendant thought Deon might be armed, so defendant shot him once. Subsequently, defendant gave essentially the same statement to Bischoff but told her that when he thought Deon was reaching for something at his waist, defendant shot toward the ground, and that Reco took the gun from him and fired at Deon. In a later statement to Bischoff and Ford, defendant admitted he fired two shots at the two front-seat passengers (Wray and Lamar) as they fled.

¶ 32 Defendant asserts it is suspicious that the police officers and prosecutor failed to reduce defendant's inculpatory statements to writing or to tape-record or video-tape them. However, the credibility and accuracy of the testimony of the State's witnesses who testified to defendant's incriminatory statements was subject to cross-examination by the defense. The determination of the weight to be given the testimony of those witnesses, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony were the responsibility of the trier of fact. *People v. Bannister,* 378 Ill. App. 3d 19, 39

(2007). We will not substitute our judgment for that of the trial judge as the trier of fact with respect to the credibility of the witnesses. *People v. Castillo*, 372 Ill. App. 3d 11, 20 (2007).

¶ 33 Defendant also argues that, at the time his non-recorded custodial statements allegedly were made, section 103-2.1 of the Code of Criminal Procedure (Code) (725 ILCS 5/103-2.1) (West 2003)) had been enacted. Section 103-2.1(b) states that an oral, written or signed statement of an accused resulting from custodial interrogation shall be presumed inadmissible as evidence against the accused in any criminal proceeding unless an electronic recording is made of the custodial interrogation and the recording is substantially accurate and not intentionally altered. Defendant concedes, however, that this statutory provision was not applicable here. The provision was enacted in 2003, but the General Assembly intentionally delayed its effective date until 2005. Defendant's custodial statements were made in 2004, prior to the date the electronic recording requirement went into effect. *People v. Amigon*, 239 Ill. 2d 71, 85 (2010). Consequently, defendant's custodial statements were not inadmissible.

¶ 34 Defendant acknowledges that Melvin Wilson's trial testimony of June 2008 was at odds with the testimony he had given before a grand jury in April 2004, but defendant contends that the grand jury testimony was merely impeaching evidence and could not be considered as substantive evidence of defendant's guilt. The parties agree that the controlling statutory provision is section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2003)). Under that provision, evidence of a witness's statement which, as in this case, the witness acknowledged under oath that he made, is not made inadmissible by the hearsay rule if (a) the statement is inconsistent with his testimony at 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.

¶ 35 Defendant acknowledges Melvin admitted making the statements before the grand jury but only because Melvin was told to recite those statements at the direction of an assistant State's Attorney and police officers. Defendant contends that the requirements of section 115-10.1 were not met because Melvin had no personal knowledge of the events he was describing. However, as the State correctly notes, under the plain language of the statute, the "personal knowledge" component was not required where the statements before the grand jury were made under oath. All of the requirements of section 115-10.1 were met for purposes of introducing Melvin's grand jury statements as substantive evidence, and they were properly received in evidence as such. See *People v. Dawson*, 403 Ill. App. 3d 499, 512 (2010).

¶ 36 We also decide, for the reasons given below, that the posttrial testimony of Charles Jones and Pamela Mitchell, at the hearing on defendant's motion for a new trial based on newly discovered evidence, did not cast doubt on defendant's guilt. We conclude that, after viewing the trial evidence in the light most favorable to the prosecution, any rational trier of fact could have found defendant guilty of the essential elements of the crimes beyond a reasonable doubt.

¶ 37 We reject defendant's second claim of error, that the trial court erred in denying his posttrial motion for a new trial based on newly discovered evidence that codefendant Reco Wilson admitted he fatally shot Deon Gardner.

¶ 38 Newly discovered evidence warrants a new trial only when: (1) it has been discovered since the trial; (2) it is of such a character that it could not have been discovered prior to the trial by the exercise of due diligence; (3) it is material to the issue and not merely cumulative; and (4) it is of such a conclusive character that it would probably change the result on retrial. *People v. Gabriel*, 398 Ill. App. 3d 332, 350 (2010). The denial of a motion for a new trial will not be reversed absent an abuse of discretion. *Id.*

¶ 39 Charles Jones testified at the hearing on defendant's posttrial motion that shortly before the shooting incident, he stole the keys to the Jeep Cherokee from Reco and drove the vehicle for two or three days without Reco's knowledge or permission. Reco came after Jones and threatened him with a gun, but Jones was able to run away. About four days after the shooting incident that left Deon Gardner dead, Reco approached Jones again and showed him a newspaper article about the shooting. Both Jones and his sister, Pamela Mitchell, testified that Reco told Jones, "This is what I do to mother f***ers that steal from me." Reco also said he should have killed Jones too. Defendant contends this was conclusive evidence that Reco, not defendant, shot at the occupants of the Jeep Cherokee and fatally wounded Deon Gardner.

¶ 40 We conclude the testimony of Charles Jones and Pamela Mitchell was not of such a conclusive character that it would probably change the result on retrial. We note that both defendant and Reco Wilson, who were tried in separate but simultaneous bench trials, were found by the court to be guilty of and accountable for all charges, including the murder of Gardner and the attempted murders of Wray and Murphy. It is apparent from the evidence adduced at trial that defendant and Reco were acting in concert, with Reco manipulating defendant and orchestrating the recovery of the Cherokee. The court concluded that Reco was equally culpable for Deon Gardner's death by failing to withdraw from the aggravated vehicular hijacking of the Cherokee. Assuming *arguendo*, Reco did, in fact, tell Jones, "this is what I do to mother f***ers that steal from me," his statement was accurate where he was also culpable for the murder and attempt murders, although it was defendant who actually did the shooting. Consequently, a statement by Reco attributing the crimes to himself did not establish conclusively that he, not defendant, was the actual shooter.

¶ 41 Moreover, Jones's claim that Reco stated he killed Gardner was rebutted by an assistant State's Attorney who had taken a statement from Jones that was reduced to writing. Jones's

signed and witnessed written statement was that Reco had told him, "This is what happens to mother f***ers that steal from me," and not "This is what I do to mother f***ers that steal from me." Even assuming the State had not presented evidence rebutting Jones's testimony and that Reco had told Jones and Mitchell that he (Reco) had killed Deon Gardner, the statement was made in a situation that did not compel the truth of the matter asserted where Reco's purpose in showing Jones the newspaper article was to threaten and intimidate Jones. Additionally, eyewitness Sergio Wray had known Reco prior to the shooting and testified positively at trial that Reco was not the man shooting at him. The trial court's conclusion, that Reco's statement to Jones was merely braggadocio, was a factual determination within the trial court's authority and we find nothing in the record to indicate an abuse of the court's discretion in reaching its findings. We conclude that the trial court did not abuse its discretion in finding that the allegedly newly discovered evidence provided by Jones and Mitchell did not warrant a new trial.

¶ 42 For the reasons stated, we affirm the judgment of the trial court.

¶ 43 Affirmed.