SECOND DIVISION
MARCH 20, 2012

No. 1-10-0670

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 1489
	)	
EDWARD TRAYWICK,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

O R D E R

¶1 *Held*: The trial court properly denied the defendant's two pre-trial motions to suppress statements; the State proved beyond a reasonable doubt that the defendant committed first-degree murder; and the defendant's challenge of the legal consistency of his first-degree murder conviction and acquittal of armed robbery charge must fail.

¶2 Following a jury trial in the circuit court of Cook County, defendant Edward Traywick was convicted of first-degree murder and sentenced to 40 years of imprisonment. On direct appeal, the defendant argues that: (1) the State failed to prove beyond a reasonable doubt that he committed first-degree murder; (2) the jury's verdicts of guilty of first-degree murder and not guilty of armed

robbery were legally inconsistent; and (3) the trial court improperly denied his two pre-trial motions to suppress statements. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶3 BACKGROUND

¶4 This case has an extensive factual background and only the most pertinent facts necessary to resolve the issues are included in this order.[1] On December 4, 2003, Bryan Ricks (Ricks) was shot near 7947 South Ada Street in Chicago, Illinois. Ricks died several days later at a hospital.

¶5 On January 14, 2004, the defendant was charged[2] with armed robbery and first-degree murder of Ricks. On August 20, 2004, the defendant filed a pre-trial motion to suppress the inculpatory statements that he made while in police custody (2004 motion to suppress), arguing that they were not made freely and voluntarily. On March 21, 2005, the defendant made a second motion to suppress the inculpatory statements that he made while in police custody (2005 motion to suppress), asserting that the police lacked probable cause to arrest him.

¶6 From March 21, 2005 to October 11, 2005, a hearing on the 2005 motion to suppress was

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[1]In complete violation of Supreme Court Rules 342(a) and 612(j), the defendant's brief on appeal fails to include, *inter alia*, as an appendix, "a complete table of contents, with page references, of the record on appeal," which hindered this court's efforts to locate pertinent documents in the record. See Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005); Ill. S. Ct. R. 612(j) (eff. Sept. 1, 2006). We caution the defendant that supreme court rules are mandatory, rather than discretionary. Nonetheless, this court was able to locate the necessary documents in resolving the issues before us, and the defendant's violation of these rules was not a factor in our disposition of the case.

[2]Another individual, Jesse Wilkes, was also tried separately for committing the same offenses against Ricks.

held. At the hearing, Detective Derail Easter (Detective Easter) testified that, on December 12, 2003, he was assigned to investigate the shooting death of Ricks, and that the defendant was a witness, rather than a suspect, during the initial stages of the investigation. From the police reports, Detective Easter learned that Ricks had been shot in a car near 7950 South Ada Street in Chicago, and had stumbled across the street before collapsing. Detective Easter also learned that the defendant had spoken to two responding police officers at the crime scene regarding what he had witnessed, by informing them that he was in Ricks' car prior to the shooting, that he had exited the vehicle and walked across the street before hearing gunshots, and that he had observed two black males–"Black" and "Fudd"–fleeing from Ricks' vehicle. Detective Easter also learned from the police reports that the defendant was later unable to identify "Black" and "Fudd" from a police photographic array.

¶7 Detective Easter also testified that on December 13, 2003, he left his business card at the defendant's home and spoke with William Eldridge (Eldridge) about what he had witnessed. Eldridge, who resided near the crime scene on South Ada Street, informed Detective Easter that the defendant was present at the crime scene when Ricks stumbled across the street and collapsed. Eldridge also told Detective Easter that he overheard Ricks state either "you set me up" or "did you set me up" to the defendant as he fell to the ground.

¶8 On the morning of December 14, 2003, Detective Easter received a telephone call from the defendant, who agreed to come to the police station for "a further interview." During this telephone call, the defendant changed the name of a suspect that he saw fleeing the scene from "Black" to "Block." On that same day, Detective Easter visited the stepmother of Ricks, Gertrude Ricks (Gertrude), who informed him that the defendant was in the vicinity after the shooting and that she

overheard him stating "it was not supposed to go like that." On December 14, 2003, at approximately 5:30 p.m., the defendant arrived at the police station where Detective Easter and his partner, Detective Marianne Swain (Detective Swain), interviewed him in a conference room. The defendant's statement to the police regarding his observations of the shooting was substantially the same as what he had told other police officers on December 4, 2003. The defendant then identified an individual named Anthony Davis as "Block" from a photographic array, but denied any involvement in the shooting when confronted with what Eldridge had observed. Detective Easter then asked the defendant for assistance in creating a composite sketch of the other suspect, "Fudd," and asked him to take a polygraph test. The defendant agreed to do so and then went home.

¶9 On December 17, 2003, the defendant telephoned Detective Easter regarding his assistance with generating a composite sketch of "Fudd" and to participate in a polygraph test. Detective Easter noted that the defendant arrived at the police station in the morning on his own. Upon the defendant's arrival, he was escorted into a conference room on the second floor of the police station, where he waited for approximately 20 to 30 minutes before completing a composite sketch of "Fudd" with Detective Gurtotowski. Thereafter, at approximately 12:05 p.m., Detective Easter informed the defendant that he wanted to speak with him "one more time" before the polygraph test, which was scheduled for 1:30 p.m., at which point the defendant stated that, "now I'll tell the truth." Detective Easter then Mirandized the defendant, who then waived his rights. During this conversation, the defendant was not told where he had to sit. He then gave Detectives Easter and Swain essentially the same statement he had given to the police on December 4, 2003 and December 14, 2003, but added that "he had arranged for 'Fudd' to make a purchase of marijuana from [Ricks]" on the day of

the shooting. The defendant continued to deny any involvement in the shooting. However, when Detective Easter confronted the defendant with the fact that Anthony Davis, the individual whom the defendant had identified as "Block," was actually a homeless man; the defendant admitted that he had lied about "Fudd" and "Block" and proceeded to name Brian Jett (Jett) and Jesse Wilkes (Wilkes) as the real perpetrators.

¶10 Detective Easter further testified that he did not provide the defendant with the opportunity to drive himself to the polygraph test location. Instead, Detectives Easter and Swain drove the defendant to the test site in an unmarked police vehicle, although they were not present in the examination room. Following the polygraph test, which lasted about an hour, Detectives Easter and Swain returned the defendant to the same conference room of the police station after the defendant stated that he was "willing to stay [at the police station] as long as needed." The entire trip to and from the polygraph test lasted between 1 1/2 to 2 hours. Detective Easter stated that he did not inform the defendant that he was free to leave once they returned to the police station. The defendant then waited in the conference room for approximately 15 to 20 minutes before Detectives Easter, Swain and Detective Dion Boyd (Detective Boyd) interviewed him at approximately 4:10 p.m (the 4:10 p.m. interview). During this interview, which lasted "an hour or [two]," the defendant never asked for an attorney nor was he handcuffed. Following the 4:10 p.m. interview, the defendant "was brought some food out of the [vending] machine," and Detectives Easter, Swain and Boyd left the police station for about an hour to "[look] for other people in connection with this case," while the defendant waited in the conference room of the police station. Subsequently, at approximately 10 p.m. or 11 p.m., the defendant was moved to an interview room, where Detectives Boyd and Swain

interviewed him. On December 18, 2003, at approximately 12:15 a.m., the defendant was formally placed under arrest.

¶11 Detective Swain also testified that the defendant arrived at the police station around noon on December 17, 2003, and was escorted to a conference room where he was left alone for approximately 10 or 15 minutes with the door open. The defendant was not handcuffed at that time. Detective Swain explained that the defendant had to be escorted to the conference room because it was located in a secluded area of the facility, but that he would have been allowed to visit the bathroom unaccompanied. She testified that the defendant was not told that he could leave nor was he informed that he could travel to the polygraph test location on his own. However, the defendant never asked to leave nor requested an attorney, and he was told that he had "an option" to take the polygraph test or not. Following the polygraph test, at approximately 4:10 p.m., she and Detective Easter interviewed the defendant. At approximately 11:30 p.m., she and Detective Boyd interviewed the defendant again, at which time the defendant stated that "he had arranged for [Jett] and [Wilkes] to rob the victim."

¶12 On October 11, 2005, the trial court denied the defendant's 2005 motion to suppress.

¶13 From February 1, 2006 to October 24, 2008, a hearing on the 2004 motion to suppress was also conducted. At the hearing, Detective Boyd testified that on December 4, 2003, the day of the shooting, he spoke with the defendant as a witness in a conference room at the police station, where the defendant looked at photographic arrays of potential suspects, "Fudd" and "Black." Detective Boyd testified that on December 17, 2003, at approximately 4:10 p.m., he and Detectives Easter and Swain had a 45-minute conversation with the defendant in a conference room at the police station

after he had advised the defendant of his constitutional rights. The defendant was not handcuffed and agreed to speak with the detectives. Later that evening, at approximately 11:30 p.m., Detectives Boyd and Swain had another 45-minute conversation with the defendant in an interview room at the police station, during which the defendant, who was not handcuffed, was again advised of his constitutional rights and agreed to speak with the detectives (the 11:30 p.m. interview). Following the 11:30 p.m. interview, at approximately 12:15 a.m., the defendant was formally placed under arrest. Subsequently, Detective Boyd contacted Assistant State's Attorney Ted Lagerwall (ASA Lagerwall), who arrived at the police station to interview the defendant. Before proceeding to interview him, ASA Lagerwall first advised the defendant of his constitutional rights, which the defendant again waived. Detective Boyd noted that ASA Lagerwall asked Detective Boyd to exit the interview room for a few minutes, after which he returned and remained for the duration of ASA Lagerwall's interview with the defendant. Detectives Boyd and Swain again spoke with the defendant at approximately 11:50 a.m. on December 18, 2003, and at approximately 1:50 a.m. on December 19, 2003. The defendant was advised of, and waived, his *Miranda* rights during each of these conversations, which lasted about 40-45 minutes. At approximately 3:35 a.m. on December 19, 2003, the defendant, after waiving his constitutional rights, spoke with ASA Lagerwall and Detective Boyd and chose to give a videotaped statement. Detective Boyd stated that neither he nor anyone else in his presence ever hit the defendant, made any false promises of leniency to him, or denied him food, drink, sleep or to the right to an attorney. He further denied threatening or punching the defendant into giving a videotaped statement, nor did he require the defendant to read aloud a scripted and fabricated version of the facts as his videotaped statement. Detective Boyd

further testified that he was not present in the room where the defendant eventually made his videotaped statement.

¶14 Detective Easter's testimony at the hearing on the 2004 motion to suppress substantially paralleled his testimony at the 2005 motion to suppress, with the exception of a few additional statements. Detective Easter testified that the defendant was "dropped off" by a black female individual when he arrived at the police station on December 14, 2003, but did not recall seeing anyone accompany the defendant when he again arrived at the police station at 11:00 a.m. on December 17, 2003. On cross-examination, Detective Easter denied that either he or Detective Swain made a statement such as, "you know, it's not looking good for you," to the defendant prior to the polygraph test. Detective Easter also stated that, prior to the polygraph test, the defendant never asked to speak with an attorney, never asked to make a telephone call, nor did he request any food or drink. Detective Easter further denied informing the defendant on that day that the defendant would only be at the police station for an hour. Detective Easter denied that he, or anyone else in his presence, directed the defendant on how to answer the polygraph test questions. He testified that, on the return trip to the police station following the polygraph test, he and Detective Swain stopped at a hot dog stand near Lake Street and California Avenue, where they purchased food for themselves and the defendant.

¶15 Detective Kevin Howley (Detective Howley) also testified at the hearing on the 2004 motion to suppress. On December 17, 2003, at 1:30 p.m., at his office location at 1011 South Homan Avenue in Chicago, he conducted a polygraph test on the defendant outside the presence of Detectives Easter and Swain. Prior to the start of the polygraph test, Detective Howley informed the

defendant that the test was voluntary, and that he was not required to submit to it. Detective Howley then read a "polygraph consent form" aloud to the defendant and advised the defendant of his *Miranda* rights. He stated that the polygraph consent form also included a pre-printed *Miranda* warning. Detective Howley stated that both he and the defendant signed the polygraph consent form prior to the start of the polygraph test, and that the defendant never requested an attorney. Detective Howley testified that he never informed the defendant that the polygraph test was inadmissible at trial, and that the defendant did not complain of any ill treatment by the police.

¶16 Brenda Bonaparte (Bonaparte) testified at the hearing on the 2004 motion to suppress that she was the defendant's "church sponsor" and that, on December 17, 2003, at approximately 9 a.m., she drove the defendant to the police station and waited for him outside. After waiting for approximately 1 to 1 1/2 hours, Bonaparte entered the police station where Detective Easter informed her that the defendant would be "right out." Following another hour of waiting, Bonaparte was informed by Detective Easter that the police officers would "deliver him to the church." Bonaparte testified that the defendant never arrived at their church later that day. Willie McGrew (McGrew), the defendant's stepfather, also testified that he telephoned Detective Easter at approximately 3 p.m. on December 17, 2003, who assured him that the defendant was not under arrest and that he had been fed by the police.

¶17 The defendant testified at the hearing on the 2004 motion to suppress that on December 17, 2003, at approximately 9:30 a.m., he arrived at the police station at the request of Detective Easter for the purpose of reviewing photographs, creating a composite sketch and taking a polygraph test. The defendant testified that after generating a composite sketch, Detective Easter informed him that

"it was not looking good for [the defendant]." The defendant testified that he was never given the option of not taking the polygraph test, and that Detective Easter did not allow him to contact an attorney. Instead, Detective Easter informed the defendant that he did not need an attorney because "they just wanted [him] to be a witness and they wanted [him] to go down and take the [polygraph] test to make sure [he] wasn't hiding anything about what happened." During an interview with Detectives Easter, Swain and Boyd at the police station, all three detectives informed him that he did not need an attorney. Following his formal arrest on December 18, 2003, the defendant was informed by the detectives that he was required to make a videotaped statement, and that when he refused, Detective Boyd began to punch his ribs and lower back areas repeatedly until the defendant agreed to make the statement. Detective Boyd then provided the defendant with a "white pad with some writing on it *** and said this is what [the defendant] [was] going to say on tape." The defendant testified that following his arrest, he did not appear before a judge until December 20, 2003. While the defendant was detained at the Cook County Department of Corrections, he sought medical treatment from a physician for a rib injury. The medical staff at the correctional facility diagnosed him with contusions on his rib cage and chest wall, for which he was prescribed medication. The parties then stipulated that in February 2004, Dr. Cheng treated the defendant at Stroger Hospital for his rib injury and diagnosed him with contusions in his chest walls based on his x-ray results.

¶18 On October 24, 2008, the trial court denied the defendant's 2004 motion to suppress.

¶19 On November 17, 2009, a jury trial commenced during which the State and the defense presented the testimony of multiple witnesses.

¶20 Officer Kelly Liakopoulos (Officer Liakopoulos), Detective Mark Pacelli (Detective Pacelli) and Forensic Investigator Peter Larcher (Forensic Investigator Larcher) testified on behalf of the State that they responded to the crime scene after the shooting. Forensic Investigator Larcher processed the crime scene, recovered a white plastic bag of suspect narcotics on the driver's seat of the green car, and subsequently recovered two t-shirts from the hospital where Ricks was being treated after the shooting. Both Officer Liakopoulos and Detective Pacelli testified that they found suspect narcotics on the driver seat of the green car upon their arrival at the crime scene. Officer Liakopoulos and Detective Pacelli then spoke with several witnesses, including the defendant. Detective Pacelli testified that the defendant informed the police officers that, prior to the shooting, he spoke with Ricks inside Ricks' car. The defendant relayed to the police officers that Ricks had asked the defendant "to take a ride with him to drop some marijuana off," to which the defendant agreed and exited the green car in order to secure his apartment door. At that point, the defendant noticed two individuals named "Fudd" and "Black" walk past Ricks' car, and subsequently heard four gunshots as the defendant approached his nearby apartment building.

¶21 ASA Lagerwall's testimony at trial established that he advised the defendant of his *Miranda* rights at the start of each of two separate interviews following his formal arrest on December 18, 2003. The defendant acknowledged that he understood those rights each time, and agreed to speak with ASA Lagerwall. ASA Lagerwall testified that the defendant never asked to speak with an attorney, and indicated, outside the presence of any police officers, that he was treated "fine" by them. ASA Lagerwall's first interview with the defendant lasted approximately 30-45 minutes, and the second interview, which occurred at least 50 minutes following the conclusion of the first

interview, lasted approximately 45 to 60 minutes. The defendant then chose to document his statement to the police by videotape, signed a consent form, and made an incriminating videotaped statement. At that point at trial, the defendant's videotaped statement was published to the jury. In the statement, the defendant admitted that, on December 4, 2003, he, Jett and Wilkes had hatched a plan to rob Ricks of his marijuana, that he called Ricks to meet with him under the pretense of purchasing marijuana, and that he was aware Wilkes and Jett had a firearm in their possession when they met with Ricks.

¶22 Detectives Easter's and Boyd's trial testimony was substantially similar to their testimony in the pre-trial hearings on the motions to suppress. Detective Boyd's trial testimony additionally revealed the substance of what the defendant stated to the police during the 11:30 p.m. interview on December 17, 2003. During the 11:30 p.m. interview, the defendant admitted that he arranged a meeting between Ricks, Jett and Wilkes for the purpose of purchasing marijuana from Ricks, but denied setting Ricks up to be robbed.

¶23 The parties stipulated that Medical Examiner Eupil Choi (Dr. Choi), if called to testify, would testified to a reasonable degree of medical certainty that Ricks died of a gunshot wound to the chest and that the manner of death was homicide.

¶24 The defendant testified in his own defense at trial. In his testimony, the defendant denied hatching a plan with Jett and Wilkes to rob Ricks, but rather, the three men only discussed purchasing marijuana from Ricks. The defendant's testimony established that when Ricks arrived at the meeting location, the defendant entered the passenger side of Ricks' vehicle. The defendant then observed Jett approach the driver's side of Ricks' car and aim a gun at Ricks. At that point, the

defendant, who wanted nothing to do with Jett's conduct, exited the vehicle and walked across the street to his home. As he approached his home, he heard gunshots, turned around and observed Jett firing his gun at Ricks and fleeing from the crime scene. The defendant also testified that during his time at the police station from December 17, 2003 to December 19, 2003, the police officers denied his repeated requests to leave, to use the telephone, and to have the presence of an attorney. He further testified that he was never advised of his *Miranda* rights, that he was denied the opportunity to sleep, and that he was only given minimal food and drink at the police station. According to the defendant, Detective Boyd punched him several times in the ribs and lower back area until he agreed to make a videotaped statement from a script provided by Detective Boyd.

¶25 The parties then stipulated that, if called to testify, Dr. Cheng would testify to a reasonable degree of medical certainty that he examined the defendant at Stroger Hospital in February 2004 and diagnosed him with "chest wall contusions consistent with being punched in the ribs."

¶26 In rebuttal, the State presented the testimony of Alphonse Loveless (Loveless), which established that, on December 20, 2003, he was a paramedic at the Cook County Cermak Health Services. His duties included performing medical assessments of the inmates' admission into prison. He testified that, upon questioning, the defendant made no complaints of recent trauma or injury, nor did he indicate that he was punched in the ribs by a police officer. The defendant did not appear to be injured or in pain based on Loveless' visual assessment of the defendant.

¶27 The jury found the defendant guilty of first-degree murder but not guilty of armed robbery.

¶28 On February 11, 2010, the trial court denied the defendant's motion for a new trial, and subsequently sentenced him to 40 years of imprisonment. On February 26, 2010, the defendant filed

a notice of appeal before this court.

¶29 ANALYSIS

¶30 We determine the following issues: (1) whether the trial court improperly denied the defendant's pre-trial motions to suppress statements; (2) whether the State failed to prove beyond a reasonable doubt that he committed first-degree murder; and (3) whether the jury's verdicts of guilty of first-degree murder and not guilty of armed robbery were legally inconsistent.

¶31 We first determine whether the trial court improperly denied the defendant's pre-trial motions to suppress statements. In examining this issue, we give great deference to factual findings by the trial court and will only reverse such findings if they are against the manifest weight of the evidence. *People v. Rivera*, 409 Ill. App. 3d 122, 130, 947 N.E.2d 819, 829 (2011). However, the trial court's legal determination of whether suppression is warranted under those facts are reviewed *de novo*. *Id.* A reviewing may consider both evidence presented at trial and at the pre-trial hearing in determining whether the trial court erred in denying a motion to suppress. *People v. Harris*, 389 Ill. App. 3d 107, 118, 904 N.E.2d 1077, 1087 (2009).

¶32 In pre-trial proceedings, the defendant filed two motions to suppress statements. The 2004 motion to suppress asserted that his incriminating statements to the police should be suppressed on the basis that they were not made freely and voluntarily. The 2005 motion to suppress asserted that suppression of his incriminating statements to the police was warranted on the basis that the police lacked probable cause to arrest him. The record reveals that the hearing on the 2005 motion to suppress was held prior to the hearing on the 2004 motion to suppress. We examine each of these motions to suppress in turn.

¶33 The defendant argues that the 2005 motion to suppress was improperly denied because his incriminating statements to the police were made as a product of illegal seizure, without probable cause to detain him, upon his arrival at the police station on December 17, 2003.

¶34 The State counters that the 2005 motion to suppress was properly denied because a reasonable person would not have believed that he was seized by the police upon his arrival at the police station where he voluntarily came to the police station, participated in a polygraph test and voluntarily remained there to assist the police in their investigation. The State contends that the defendant was not seized by the police until after he provided an inculpatory statement to the police.

¶35 The fourth amendment prohibits unreasonable searches and seizures. U.S. Const., amend. IV, XIV; Ill. Const. 1970, art. I, §6. "[A] person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained." *U.S. v. Mendenhall*, 446 U.S. 544, 553, 100 S. Ct. 1870, 1877 (1980); *People v. Luedemann*, 222 Ill. 2d 530, 550, 857 N.E.2d 187, 199 (2006). Seizure occurs when, under all of the facts and circumstances, a reasonable innocent person would not feel free to leave. *People v. Melock*, 149 Ill. 2d 423, 437, 599 N.E.2d 941, 946 (1992); *People v. Wead*, 363 Ill. App. 3d 121, 132, 842 N.E.2d 227, 237 (2005). "The test is objective and it is irrelevant whether the defendant believed he was under arrest or whether the police intended to detain the defendant against his will, unless that intent was conveyed to the defendant." *People v. Buie*, 238 Ill. App. 3d 260, 267, 606 N.E.2d 279, 284 (1992). Factors that courts consider in determining whether a reasonable person would not have felt free to leave include "the time and place of the encounter, the use of restraints, the beliefs of the officers and [the] defendant, whether the defendant was transported in a police vehicle, and what the defendant was told by the officers."

People v. Jackson, 391 Ill. App. 3d 11, 35, 908 N.E.2d 72, 94 (2009).

¶36 The trial court found that the police had probable cause to arrest the defendant during an interview with him on December 17, 2003, just prior to the defendant's 1:30 p.m. polygraph test, when the defendant stated that he had arranged for "Fudd" to purchase marijuana from Ricks on the day of the shooting. The trial court further found that the fact that the police did not place the defendant under arrest immediately following the defendant's statement, which gave rise to the existence of probable cause, was "of no significance because [the defendant] had no [constitutional] right to be arrested."

¶37 We find the trial court's findings to be supported by the evidence in the record. "Probable cause exists when the police possess enough evidence to lead a reasonable man to believe that a crime has been committed, and that the defendant committed it. *** The totality of the circumstances known to the police officers must be considered." *Buie*, 238 Ill. App. 3d at 268, 606 N.E.2d at 284. At the hearing on the 2005 motion to suppress, Detectives Easter testified to the investigative steps he took in locating the perpetrators responsible for Ricks' death, by stating that, on December 13, 2003, he left his business card at the defendant's home requesting that the defendant call him. The defendant telephoned him on the morning of December 14, 2003, and agreed to come to the police station for "a further interview." During this telephone call, the defendant changed the name of a suspect he saw fleeing the crime scene to "Block," which was contrary to what he had informed other police officers on the day of the shooting. Detective Easter noted that the defendant went to the police station voluntarily on December 14, 2003, at which time he identified an individual named Anthony Davis as "Block" from a photographic array but

continued to deny any involvement in the shooting. On December 17, 2003, Detective Easter received another telephone call from the defendant, who continued to offer his assistance in the police investigation by agreeing to create a composite sketch of "Fudd" and to participate in a polygraph test. Detective Easter then testified that, during a conversation with the defendant at the police station at 12:05 p.m., prior to the 1:30 p.m. polygraph test, the defendant waived his *Miranda* rights and informed them that he had arranged for "Fudd" to purchase marijuana from Ricks on the day of the shooting. We find that, based on the totality of the circumstances known to the police officers during the 12:05 p.m. conversation with the defendant on December 17, 2003, a reasonable person could believe that the defendant had committed a crime. Therefore, we find that the evidence supports the trial court's finding that probable cause existed at the time the defendant made the statement that he had arranged for "Fudd" to buy marijuana from Ricks on the day of the shooting.

¶38 Having determined that probable cause existed to arrest the defendant as of the 12:05 p.m. conversation on December 17, 2003, we can conclude that any seizure of the defendant by the police following this conversation was warranted. Thus, although the trial court found that the defendant was not seized within the meaning of the fourth amendment until he was formally placed under arrest at 12:15 a.m. on December 18, 2003, we need only determine whether the defendant was illegally seized by the police from the time of his arrival at the police station on the morning of December 17, 2003, until the 12:05 p.m. conversation when sufficient probable cause existed to arrest him. We find that the defendant failed to establish that he was improperly seized by the police upon his arrival at the police station on December 17, 2003.

¶39 The record reveals that on the morning of December 17, 2003, the defendant initiated a

telephone call to Detective Easter and arrived at the police station on his own volition to assist in the police investigation. Upon his arrival, the defendant was escorted into a conference room, where he waited a short time with the door open before generating a composite sketch of "Fudd" with Detective Gurtotowski. Detective Swain explained at the hearing that the defendant had to be escorted to the conference room because it was located in a secluded area of the facility. However, the record shows that the defendant was not handcuffed, nor was there a display of weaponry or force by the police at that time, and that the defendant would have been allowed to visit the restroom unaccompanied. Although Detective Swain testified that the defendant was not told he could leave, the defendant never asked to speak with an attorney and did not ask to make a telephone call. Testimony reveals that following the completion of the composite sketch, at approximately 12:05 p.m., the defendant decided that he would "tell the truth," and, after waiving his *Miranda* rights, made an incriminating statement to Detectives Easter and Swain that he had arranged for "Fudd" to purchase marijuana from Ricks on the day of the shooting. Thus, based on the foregoing, we conclude that a reasonable person would have felt free to leave the police station from the time of his arrival at the police station, through the completion of the composite sketch, and until at least the 12:05 p.m. conversation during which the police possessed sufficient probable cause to arrest the defendant. Therefore, we find that the trial court's finding that the defendant was not seized upon his arrival at the police station on December 17, 2003 was not against the manifest weight of the evidence.

¶40 While the defendant's version of what took place on the morning of December 17, 2003, differed from the testimony of the detectives, it is the function of the trial court to determine the

credibility of the testifying witnesses and to resolve any conflict in their testimony. *Id.* The trial court found the detectives' testimony to be credible, noting that any inconsistencies in their testimony was insignificant.

¶41 The defendant relies on *People v. Centeno*, 333 Ill. App. 3d 604, 776 N.E.2d 629 (2002), in support of his argument that he was not free to leave–thus, illegally seized by the police–after he arrived at the police station. We find the facts of *Centeno* to be distinguishable from the facts of the instant case where, in *Centeno*, the defendant had not previously assisted in the police investigation, had denied any knowledge of the crime and failed to provide any information that would have implicated himself, had been left by the police in a small interview room for almost eight hours until he made an incriminating statement which supplied probable cause for his arrest. *Id.* at 617, 776 N.E.2d at 639 (2002). We further reject the defendant's contention that he was *per se* illegally seized by the police because he was advised of his *Miranda* rights, where here, the totality of the circumstances supports the finding that the defendant actively and voluntarily assisted in the police investigation over the course of several days, that the defendant informed the police that he was "willing to stay as long as needed," and that, as discussed, a reasonable innocent person would have felt free to leave. See *People v. Maxson*, 285 Ill. App. 3d 585, 673 N.E.2d 1110 (1996) (murder defendant voluntarily chose to stay at the police station for 44 hours prior to his confession where he voluntarily went to the police station; said that he wanted to help in any way that he could; was advised of his *Miranda* rights; consented to a lie detector test and to have his blood drawn; never asked to leave the police station; and was calm and cooperative toward police); *People v. Wicks*, 236 Ill. App. 3d 97, 603 N.E.2d 594 (1992) ("being extra cautious" by informing the person of his

Miranda rights does not automatically convert a consensual conversation into a custodial situation). Therefore, we hold that the trial court did not err in denying the defendant's 2005 motion to suppress.

¶42 The trial court also denied the defendant's 2004 motion to suppress, finding that his incriminating statements to the police were made freely and voluntarily.

¶43 The defendant points to some inconsistencies in the detectives' testimony and argues that the trial court's determination that the detectives testified credibly was against the manifest weight of the evidence. He contends that his incriminating statements to the police, including the videotaped statement, were not made voluntarily.

¶44 The State counters that the record contains ample evidence to support the trial court's conclusion that the defendant's will was not overborne when he made incriminating statements to the police during his time at the police station.

¶45 The test for voluntariness is "whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he *** confessed." *People v. Gilliam*, 172 Ill. 2d 484, 500, 670 N.E.2d 606, 613 (1996). Whether a statement is voluntarily given depends upon the totality of the circumstances. *Id.* Factors to consider in determining the voluntariness of a statement includes "the age, education and intelligence of the accused; the length of the detention and the duration of the questioning; previous experience with the criminal justice system; falsely aroused sympathy; offers of leniency or other promises to induce a confession; whether the accused was advised of his constitutional rights; and whether the accused was subjected to any physical mistreatment." *People v. Ball*, 322 Ill. App. 3d 521, 531-32, 750 N.E.2d 719, 727 (2001).

¶46 We find that the trial court's finding that the defendant voluntarily made incriminating statements to the police was not against the manifest weight of the evidence. The record reveals that the defendant was 24 years old at the time of the shooting, and had graduated high school and attended some college classes. The defendant had some experience with the criminal justice system prior to the shooting death of Ricks.[3] As discussed, the defendant voluntarily came to the police station on at least three separate days to assist with the police investigation, during which his account of the crime evolved. There was no evidence in the record that the defendant confessed to his involvement in the crime based on any attempt by the police to arouse false sympathy, and that the detectives' testimony, which the trial court found credible, reveals that the police never made any false offers of leniency to the defendant in order to compel his confession. Testimonial evidence presented both at trial and in pre-trial proceedings show that the defendant was advised of, and waived, his constitutional rights at the 12:05 p.m. interview, the 4:10 p.m. interview, and the 11:30 p.m. interview on December 17, 2003, prior to speaking with the detectives. Likewise, following the defendant's formal arrest at 12:15 a.m. on December 18, 2003, each police interview was prefaced by the advisement of the defendant's *Miranda* rights, which he knowingly waived. The testimony presented also shows that most of the interviews conducted by the detectives averaged about 40-45 minutes, that the interviews were generally separated by periods of breaks, that the defendant informed the police he was "willing to stay as long as needed," and that the defendant was

[3]The parties both state in their briefs on appeal that the defendant did not have any prior experience with the criminal justice system. However, our review of the defendant's criminal history report revealed that the defendant had been convicted of drug charges prior to December 2003.

fed and given water. Although the defendant testified that he was physically coerced by Detective Boyd into making a videotaped statement, the trial court's finding that there was no credible evidence to show such coercion was not against the manifest weight of the evidence. The record shows that ASA Lagerwall testified that the defendant told him, outside the presence of the detectives, that he was treated "fine" by them, and that Detective Howley testified that the defendant never complained of any ill treatment by the police. The State's rebuttal evidence at trial showed that Loveless, the paramedic who examined the defendant during the intake process at prison, testified that the defendant did not appear to be injured or in pain, and that the defendant had no complaints of injury nor indicated that he was punched in the ribs by a police officer. Moreover, our review of the defendant's mannerisms in the videotaped statement to the police supports the trial court's finding that the defendant was cooperative and willing to speak with the detectives and ASA Lagerwall about his involvement in the crime.

¶47 While the defendant points to some inconsistencies in the detectives' testimony in arguing that the trial court erred in finding the detectives credible, we decline the defendant's invitation to substitute our judgment for that of the trier of fact. Thus, we find that the trial court properly resolved any conflicts or inconsistencies in the testimony and found the detectives and ASA Lagerwall to be credible. Therefore, under the totality of the circumstances, we find that the trial court's finding that the defendant's inculpatory statements were made freely and voluntarily was not against the manifest weight of the evidence. Accordingly, the trial court properly denied the defendant's motions to suppress his incriminating statements to the police.

¶48 We next determine whether the State failed to prove beyond a reasonable doubt that the

defendant committed first-degree murder.

¶49 The defendant argues that the State failed to prove beyond a reasonable doubt that he should be held accountable for the actions of Jett and Wilkes, that he shared in Jett and Wilkes' intent to shoot Ricks, or that he participated in a common criminal plan with them. The State counters that the evidence established the defendant's conviction for murder where he planned to rob Ricks with Jett and Wilkes, knew that Jett and Wilkes were armed with firearms, called Ricks and met with him under the pretense of purchasing marijuana, and repeatedly lied to the police during their investigation.

¶50 When the sufficiency of the evidence is challenged on appeal, we must determine " '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.' " (Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09, 910 N.E.2d 1263, 1271 (2009), quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781, 2789 (1979). A reviewing court affords great deference to the trier of fact and does not retry the defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73, 740 N.E.2d 1210, 1217 (2000). It is within the province of the trier of fact "to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1272. A reviewing court will not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). A criminal conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1271.

¶51 A person commits first-degree murder when, in performing the acts which cause death:

> "(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
>
> (3) he is attempting or committing a forcible felony other than second degree murder." 720 ILCS 5/9-1(a) (West 2008).

In the instant case, the defendant was convicted of first-degree murder under an accountability theory. A person is legally liable for the conduct of another when, "[e]ither before or during the commission of the offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 725 ILCS 5/5-2(c) (West 2008). To prove that the defendant possessed the intent to promote or facilitate the crime, the State must present evidence which establishes beyond a reasonable doubt that either: "(1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258, 1264-65 (2000). Under the "common design rule," where "two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *Id.* at 267, 725 N.E.2d at 1265. "Accountability may be established through a person's knowledge of and participation in the criminal

scheme, even though there is no evidence that he directly participated in the criminal act itself." *Id.* In determining a defendant's legal accountability, the trier of fact may consider factors such as the defendant's presence during the commission of the crime, his flight from the scene, his failure to report the crime, and his close affiliation with his companions after the commission of the crime. *Id.* Further, evidence that the defendant "voluntarily attached himself to a group bent on illegal acts, with knowledge of its design, also supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another." *Id.*

¶52 Viewing the evidence in the light most favorable to the State, we find that there was sufficient evidence for a rational trier of fact to find the defendant guilty of first-degree murder under an accountability theory. According to the defendant's videotaped statement, which was published to the jury, he, Jett and Wilkes created a plan to rob Ricks and that they shot Ricks in furtherance of that plan. On the day of the shooting, the defendant learned that Ricks had marijuana that Ricks wished to sell. The defendant, Jett and Wilkes set forth a plan whereby the defendant would telephone Ricks to meet with him, at which point, the defendant would try to "walk off with the [marijuana]." Jett then suggested that if that did not work, the defendant would tell Ricks that Wilkes wanted to buy the marijuana, after which Wilkes would enter the passenger side of Ricks' car under the pretense of making a purchase and Jett would approach the driver's side of the vehicle. At that point, Jett and Wilkes would draw their weapon and forcibly take the marijuana from Ricks. After devising this plan, the defendant telephoned Ricks under the pretense that he knew someone who wanted to purchase the marijuana and asked Ricks to come to the defendant's home. Following this telephone call to Ricks, the defendant accompanied Jett to Jett's home in order to retrieve a gun.

The trio then reviewed the robbery plan at Jett's home and later returned to the defendant's house. Subsequently, Ricks arrived at the meeting location, and the defendant, according to plan, entered Ricks' car. When the defendant was unable to walk away with the marijuana, he signaled for Wilkes to approach the vehicle. Wilkes and Jett then approached the vehicle under the pretense of purchasing the marijuana, while the defendant exited the car and walked across the street. Jett and Wilkes then engaged in a physical struggle with Ricks and shot him.

¶53 We note that the defendant's videotaped statement was also consistent with the details of the crime discovered through police investigation. After the shooting, Ricks and his car were found in the 7900 block of South Ada Street in Chicago, which the defendant had described in the videotaped statement as the meeting location. The State also presented evidence that the police recovered a white bag of suspect narcotics in the driver's seat of Ricks' car. Further, the parties stipulated at trial that medical examiner Dr. Choi determined that Ricks had died of a gunshot wound to the chest and that the manner of death was homicide. Thus, based on the evidence presented at trial, the jury could reasonably conclude that the defendant, Jett and Wilkes engaged in a common criminal design to rob Ricks, that the defendant aided and abetted Jett and Wilkes in carrying out the robbery plan by luring Ricks to the meeting location, that Jett and Wilkes shot Ricks in furtherance of this plan, and that the defendant must be equally responsible for the consequences of Jett and Wilkes' actions. Therefore, we find that there was sufficient evidence to prove the defendant guilty beyond a reasonable doubt of first-degree murder.

¶54 We next determine whether the jury's verdicts of guilty of first-degree murder and not guilty of armed robbery were legally inconsistent.

¶55 The defendant argues that his first-degree murder conviction should be overturned because it was legally inconsistent with the acquittal of his armed robbery offense. He contends that the jury's finding that he was not accountable for the offense of armed robbery necessarily meant that he could not be accountable for murder. The State counters that the defendant cannot challenge his conviction for first-degree murder on the basis that it was legally inconsistent with his acquittal on the armed robbery offense, and that the underlying facts of this case support the jury's verdict.

¶56 Our supreme court in *People v. Jones*, 207 Ill. 2d 122, 797 N.E.2d 640 (2003), in overruling its majority decision in *People v. Klingenberg*, 172 Ill. 2d 270, 665 N.E.2d 1370 (1996), has already spoken on this issue and held that defendants may no longer challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges. The *Jones* court found persuasive the reasoning set forth in the United States Supreme Court's decision in *United States v. Powell*, 469 U.S. 57, 105 S. Ct. 471 (1984), which stated that constitutional law did not require consistency in the verdicts, and that inconsistent verdicts can often be explained as a product of juror lenity. Specifically, the *Jones* court, citing *Powell*, found that:

> " '[t]he most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity.' " *Jones*, 207 Ill. 2d at 130, 797 N.E.2d at 645, quoting *Powell*, 469 U.S. at 63,

105 S. Ct. at 475.

Thus, based on the holding in *Jones*, we find that even assuming the defendant's conviction for first-degree murder and acquittal for armed robbery were legally inconsistent, the defendant's challenge of his conviction for first-degree murder on this basis must fail.

¶57 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶58 Affirmed.