FIRST DIVISION
August 19, 2013

No. 1-11-2694

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANGEL MENDEZ, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County No. 09 CR 3704 Honorable Clayton J. Crane, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** There was sufficient evidence to support defendant's convictions for attempted murder. Notably, the identification testimony of the two victims and two police officers was reliable based upon the factors used to evaluate such testimony. In addition, defendant's mittimus must be corrected to reflect two convictions for attempted murder, rather than one. Accordingly, defendant's convictions and sentences are affirmed, we direct the circuit clerk to correct the mittimus to reflect two convictions for attempted murder, and we remand this matter for sentencing on the unsentenced conviction.

¶ 2 Following a jury trial, defendant Angel Mendez was found guilty of two counts of attempted first degree murder (720 ILCS 5/24-1.6(a)(1) (West 2010)) and two counts of aggravated battery with a firearm (720 ILCS 5/24-1.1(A) (West 2010)). The trial court merged three of the convictions into one of the attempted first degree murder convictions, and imposed a ten-year prison sentence on defendant. On appeal, defendant challenges the sufficiency of the evidence. The State argues, and

defendant essentially concedes, that the mittimus is in error. We affirm defendant's convictions as modified, and remand this case with directions.

¶ 3 BACKGROUND

¶ 4 Defendant Angel Mendez was charged by information with two counts of attempted first degree murder of Ruben Roman, two counts of attempted first degree murder of Hugo Cortes, two counts of aggravated battery with a firearm, two counts of aggravated discharge of a firearm, and two counts of aggravated battery. The charges alleged that, during the early morning hours of January 9, 2009, defendant repeatedly shot at the car that Roman, Hugo, and Hugo's brother, Ricardo Cortes, were riding in, resulting in injuries to Roman.

¶ 5 At trial, Roman and the Cortes brothers testified that, at around 1:30 a.m. on January 9, 2009, Roman was at the Cortes brothers' house, when Hugo Cortes received a call from a friend who was having car trouble. The three individuals decided to help the friend, and the three left in Roman's black Chevrolet Blazer. Roman drove, Hugo Cortes was sitting in the front passenger seat, and Ricardo Cortes was sitting directly behind Hugo in the rear passenger seat.

¶ 6 They drove northbound on Kimball Avenue in the left lane, eventually stopping at a traffic light at the intersection of Kimball and Belmont Avenue near the Kennedy expressway. A maroon Jeep Cherokee stopped next to them in the northbound right lane of Kimball. No other cars were present. Hugo and Ricardo both described the area as well-lit with light from under the Kennedy expressway overpass, nearby businesses, and streetlights. The brothers also stated that the other car had tinted rear windows, but they could see there were other people in the back and two people in

the front. Roman testified that he did not see the Jeep or the people inside because his attention was focused on the road.

¶ 7 The light turned green, and Roman began driving. Roman and the Corteses all testified that, soon after they started driving, the Jeep started off and drove directly behind Roman's Blazer, and then drove around to pull alongside the Blazer on the driver's side. All three said that the Jeep was traveling northbound in one of the southbound lanes. When it was next to the Blazer, the Jeep was about two feet from Roman and four feet from the Cortes brothers.

¶ 8 Hugo and Ricardo Cortes then saw the front passenger-side window lower and an individual point a gun out the window at their vehicle. They described the individual as having long hair, a tattoo on his neck, and very light skin color. Hugo Cortes added that he saw the individual for about five to ten seconds, and the individual also had a "pointy nose." Both brothers identified defendant in court as the individual who pointed the gun at their vehicle. Then, both Hugo and Ricardo cortes ducked down, and defendant opened fire.

¶ 9 Hugo Cortes testified, "there was [*sic*] bullets going everywhere," and his brother heard about nine shots fired. Bullets struck the driver's window, the driver-side rear passenger window, a window on the passenger side, and the body of the Blazer. Although Roman did not see who fired or any other occupants in the car next to him, he did see that the shooting was coming from the maroon Jeep next to him. Roman was shot through his left arm and was scared, so he started accelerating.

¶ 10 The Cortes brothers helped Roman steer the Blazer, and they kept driving, eventually stopping at the intersection of West Irving Park Road and North Pulaski Road because of pain

Roman had in his left arm. At the intersection, Hugo Cortes got out and sought help from bystanders, who told him that he was bleeding from his neck. He did not realize that a bullet had grazed him; he only felt a burning sensation in his neck. Roman stayed in the Blazer because he did not feel well. An ambulance and police officers arrived, and Roman was taken to a hospital, where he was treated and released after three days.

¶ 11 Hugo Cortes initially testified that, when he spoke to police on the scene, he only told them that the shooter was in a maroon Jeep. On cross-examination, however, Hugo Cortes stated that he told police that the shooter was a Hispanic male in his twenties with a light complexion, long black hair, and a "pointy" nose, and that the shooter was wearing a hat and a "hoodie." Hugo Cortes added that he told police that the shooter had a neck tattoo. Ricardo Cortes testified that he told police at the scene that the shooter was light-skinned, and had long hair and a tattoo on his neck. He added that he also told police detectives at the station about the shooter's neck tattoo while they took notes.

¶ 12 Hugo Cortes further admitted on cross-examination that, since the shooting, he had been convicted of burglary, which violated the terms of his probation, resulting in a three-year prison sentence. During his cross-examination, Ricardo Cortes denied ever being a member of the "Latin Pachuco" street gang, but conceded that he associated with Latin Pachuco gang members and that he had told police in the past that he was a Latin Pachuco. Both brothers, however, testified that, on January 17, 2009, they identified defendant as the shooter when police detectives showed them a photographic array.

¶ 13 Chicago police officers Davis Murillo and Seung Cho testified that, between 1:40 a.m. and 2:15 a.m., they learned of the shooting and that a police car was following a possible suspect. Based

upon the information they heard over their radio dispatch, they drove to the intersection of Irving Park and Pulaski and met with their sergeant. Their sergeant was parked facing north in the northbound lane of Pulaski. Murillo and Cho stopped next to the sergeant with their car facing south in the northbound lane (blocking all northbound lanes) so that they could have a window-to-window conversation with the sergeant. Between 20 and 40 minutes after the shooting, they saw a maroon Jeep exit the expressway and approach them at a high rate of speed. They testified that they had an unobstructed view of the Jeep through their windshield. The Jeep was 25 to 40 feet away, and because the officers were blocking all northbound lanes on Pulaski, the Jeep made an abrupt turn onto Irving Park heading east. Murillo and Cho each testified, however, that they saw the driver of the Jeep for a "split second" or "second," respectively. Murillo described the driver as very light-skinned with long hair coming out from under a skull cap, and that the driver was wearing a dark coat or sweater pulled up around his neck. Cho said the driver was a light-skinned Hispanic male wearing a black hat and black jacket or "hoodie" that covered the neck area. Cho added that defendant and his brother, Josue, look very similar and the main difference between their appearance was defendant's neck tattoo. Cho reiterated, however, that he did not see anything other than the driver's face because "[e]verything else was covered."

¶ 14 As the Jeep proceeded eastbound on Irving Park, Cho and Murillo gave chase. There were no cars between them, and while Cho was driving, Murillo gave a description of the Jeep and its license plate number to their dispatch. The trial court sustained defendant's objection to the State's question as to what information Murillo received from dispatch. Cho stated that, at one point, they were with one-half of a car length from the Jeep, but the Jeep kept accelerating. Cho estimated that

their speed along Irving Park ranged from 100 miles per hour to possibly in excess of 115 miles per hour. Cho said that the Jeep started pulling away from them, however, and a supervisor ordered Cho and Murillo to terminate the chase because of the risk to others.

¶ 15 The officers returned to the police station and obtained the name and photograph of the Jeep's registered owner as well as photographs of the Jeep owner's associates. Upon viewing these photographs, the officers believed the driver to be either defendant or his brother, Josue. The officers testified that they believed the driver was more likely Josue because they did not notice a neck tattoo on the driver. Murillo learned that Josue had been arrested, but when Murillo saw Josue in person, Murillo changed his opinion and decided that defendant was the driver because Josue's nose and complexion were different from that of the driver. Cho subsequently viewed a lineup that included defendant, but not Josue, and positively identified defendant as the driver of the Jeep.

¶ 16 On cross-examination, however, Murillo admitted that a supplementary report he wrote indicated that the license plate of the Jeep was "unknown" and that Josue was the only listed suspect. Cho conceded during his cross-examination that they did have the license plate information at the time the report was prepared.

¶ 17 Chicago police detective Hector Alvarez testified that he had been assigned to investigate the shooting of Ruben Roman and Hugo Cortes. Alvarez was informed that defendant's brother, Josue, had been taken into custody, and spoke to Josue regarding the shooting. After speaking to Josue and other individuals, Alvarez concluded that Josue was not involved in the shooting, and Josue was released from custody. According to Alvarez, defendant then became their suspect. Alvarez and his partner then compiled a "photo spread" of defendant, Josue, and four other individuals, and showed

the photo spread to Hugo Cortes, while his partner showed the photo spread to Ricardo Cortes. Alvarez said that Hugo Cortes identified defendant in the photo spread as the shooter.

¶ 18 On February 5, 2009, Alvarez learned that defendant had been arrested, and arranged to have the Cortes brothers, Roman, and Officer Cho separately view defendant in a lineup. Alvarez confirmed that Cho positively identified defendant as the driver of the Jeep that was involved in the high-speed chase shortly after the shooting. In addition, Alvarez testified that the Corteses, after viewing the lineup separately, identified defendant as the shooter. Finally, Alvarez stated that Roman was unable to identify anyone in the lineup as the shooter. On cross-examination, Alvarez stated that he could not recall either Cortes brother ever saying that the shooter had either a neck tattoo or a pointy nose. Alvarez also confirmed that his case report did not include in its description of the shooter that the shooter had a neck tattoo.

¶ 19 The State rested, and the defense presented its case-in-chief by recalling Alvarez. Alvarez stated that, when he interviewed defendant, Alvarez learned that defendant had owned a Jeep that defendant had sold to an individual with the nickname of "Pupie," but Alvarez could not find any information on anyone with the nickname "Pupie" in the police database.

¶ 20 The defense then called Reinaldo DeJesus, who testified that his nickname was Pupie, that he had been arrested 10 or 20 times, and that he had told the police of his nickname. DeJesus admitted that he was released on bond after being charged with aggravated battery with a firearm. On cross-examination, he also conceded that he had a 2008 felony drug conviction and had previously been a member of the Latin Kings street gang when he was 14.

¶ 21 DeJesus said that he had known defendant for three or four years and had purchased a black Jeep from defendant in December 2008. DeJesus explained that, rather than pay defendant cash, he exchanged his van for defendant's black Jeep. DeJesus added that he had the black Jeep titled in his uncle's name in order to save on insurance. DeJesus said defendant was never in the black Jeep after the sale, and DeJesus sold the black Jeep to a third party on the previous February.

¶ 22 Following DeJesus's testimony, the parties stipulated that defendant owned a black Jeep that was sold to DeJesus's uncle. Certified copies of records from the Secretary of State's office that reflected this transaction were also admitted. After this stipulation, the defense rested.

¶ 23 The parties then presented their closing arguments. Defense counsel argued that Hugo Cortes was a "little liar" because Alvarez testified that no one mentioned that the shooter had a tattoo, whereas Hugo Cortes testified of telling the officers that the shooter had a neck tattoo. Defense counsel further argued that Ricardo Cortes's identification of defendant was not credible in part because Ricardo Cortes also claimed during his testimony that he told police the shooter had a neck tattoo, but "the beat cops" and the detectives did not put that in their reports.

¶ 24 At the conclusion of closing arguments, the trial court instructed the jury, and the jury began its deliberations. During its deliberations, the jury sent multiple notes to the court. The first note requested, *inter alia*, a supplementary report written by Murillo and the initial police report written by the officers who first responded to the scene. The court, without objection from either side, denied the jury's request and asked it to continue its deliberations. The jury then asked why the maroon Jeep's license plate number did not appear in the supplementary police report. Again without objection, the trial court responded that the jury had heard the testimony and received the

exhibits, and that it should continue to deliberate. The jury's third note asked for the transcripts of the Cortes brothers' testimony. The trial court's response was that the transcripts were not available, and that the jury should continue its deliberations. Next, the jury asked how long it would take to obtain copies of the Cortes brothers' testimony, and soon thereafter sent another note asking what it should do if it could not get a "100% verdict." The trial court reiterated that transcripts were unavailable and that the jury should keep deliberating.

¶ 25 At around 7:40 p.m., the trial court stated on the record that the jury had sent another note indicating that it was unable to reach a "100% decision" and that the jurors on opposing sides were unwilling to change their finding. Without objection by the State or defendant, the trial court instructed the jury to continue deliberating, but separately told the State and defendant that, if no verdict were reached by 8:30 p.m., the trial court would suspend deliberations until the following morning. The jury was then sent home at 8:30 p.m. with instructions to return the next morning.

¶ 26 The following day, the jury found defendant guilty of attempted murder as to Hugo Cortes as well as Ruben Roman, and signed separate verdict forms reflecting those verdicts. The jury further found defendant guilty of aggravated battery with a firearm as to both Cortes brothers, also signing separate verdict forms. The jury, however, made a special finding that the State did not prove that, during the commission of the offense, defendant personally discharged a firearm that proximately caused great bodily harm to another person. Following a sentencing hearing, the trial court found the "appropriate sentence in this case to be ten years in the Illinois Department of Corrections." Defendant's mittimus indicates that counts IV (one of the attempted murder counts as to Roman) and V and VI (the two aggravated battery counts) were merged into count II (one of

the attempted murder counts as to Hugo Cortes), and a ten-year prison sentence was imposed on count II. The report of proceedings contains no discussion as to the merger of any counts. In addition, no sentence was imposed on count III (the other attempted murder count as to Roman). This appeal follows.

¶ 27 ANALYSIS

¶ 28 Defendant contends that the evidence was insufficient to support the jury's verdict. Specifically, defendant argues that (i) the identification testimony of Hugo Cortes and his brother, Ricardo Cortes, was unreliable and impeached with respect to their testimony that they had described the offender as having a neck tattoo; (ii) the identification testimony from two police officers regarding the driver of a maroon Jeep (the same type of vehicle in the shooting) was also unreliable and impeached because the officers had initially identified defendant's brother as the offender; and (iii) the State's theory of the case was fatally weakened by evidence that defendant had sold a black Jeep two weeks prior to the shooting.

¶ 29 When presented with a challenge to the sufficiency of the evidence, this court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is for 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. *Id.* at 211. As a result, mere allegations that a witness was not credible will not justify

reversal. *Id.* at 211-12; see also *People v. Manning*, 182 Ill. 2d 193, 211 (1998) (rejecting a similar challenge based upon "speculation that another person might have committed the offense"). In essence, this court will not reverse a conviction unless the evidence is "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 30 With respect to identification testimony, the State has the burden to prove the identity of the person who committed the crime beyond a reasonable doubt. 720 ILCS 5/3-1 (West 2012); *People v. Dante*, 35 Ill. 2d 538, 540 (1966). While an identification that is vague or doubtful will not support a conviction, merely a single witness's identification of the accused will, if the witness viewed the accused under circumstances permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In assessing identification testimony, reviewing courts generally rely upon the factors set forth by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972): (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Slim*, 127 Ill. 2d at 307-08.

¶ 31 Turning first to the testimony of Hugo and Ricardo Cortes, their degree of attention (the second factor), their level of certainty (the fourth factor), and the length of time between the offense and the confrontation (the fifth factor) strongly favor the State. Neither witness testified that he had been distracted–even momentarily–from the time they saw the maroon Jeep pull alongside Roman (going the wrong way in the southbound lanes) until the time defendant began shooting at the Blazer. In addition, both brothers were unequivocal in their identification of defendant in a photo array, in

a subsequent lineup, and in court during their testimony. Finally, as to the length of time between the offense and the confrontation, the brothers separately identified defendant in the photo array eight days after the shooting, and they identified defendant in a physical lineup within a month after the shooting. This is not an unreasonable delay. See, *e.g.*, *People v. Rodgers*, 53 Ill. 2d 207, 214 (1972) (conviction upheld despite two-year passage of time between offense and identification); *People v. Dean*, 156 Ill. App. 3d 344, 352-53 (1987) (two and a half years), *overruled in part on other grounds*, *People v. Jackson*, 149 Ill. 2d 540, 552-53 (1992)*; People v. Smith*, 215 Ill. App. 3d 1029, 1036-37 (1991) (two-year passage of time), *appeal denied*, 141 Ill. 2d 556 (1991) (table); *People v. Cox*, 377 Ill. App. 3d 690, 699 (2007) (two months), *appeal denied*, 227 Ill. 2d 587 (2008) (table).

¶ 32 In addition, the opportunity the Cortes brothers had to view the shooter at the time of the crime–the first factor–somewhat favors the State. They both testified that the area was well-lit and the window in the maroon Jeep was lowered, at which time they saw defendant, who was two feet from Roman and about four feet from them. Hugo Cortes stated that, for five to ten seconds, he had an unobstructed view of defendant lower the window and pull out a gun. Thus, even assuming, *arguendo*, that defendant is correct is claiming that the Blazer's "dirty" windows[1] impaired the Cortes brothers' view, we find that this factor still modestly favors the State.

¶ 33 The third factor, the accuracy of the brothers' prior description, is at best neutral. Hugo Cortes's testimony was that he told police that the shooter was in a maroon Jeep, was a Hispanic male in his twenties with a light complexion, long black hair, neck tattoo, a "pointy" nose, and

[1] Defendant does not cite to any testimony in the record as to the condition of the Blazer's windows that were shot out; the photographic exhibits defendant refers to do not conclusively establish that the windows were dirty at the time of the shooting.

wearing a hat and a "hoodie." Ricardo Cortes testified that he told police at the scene and detectives at the station that the shooter was light-skinned with long hair and a neck tattoo. Detective Alvarez, however, testified that (i) he could not recall either Cortes brother ever saying that the shooter had either a neck tattoo or a pointy nose, and (ii) his case report did not include in its description of the shooter that the shooter had a neck tattoo. Defendant here, as at trial, argues at length that the brothers' testimony, notably as to the neck tattoo, was entirely impeached by Alvarez's testimony that Alvarez could not remember either brother mentioning the presence of a neck tattoo. We note, however, that the brothers' description of defendant's physical characteristics are not challenged as inaccurate; instead, defendant argues that the brothers left out the neck tattoo, implying that defendant's brother, Josue, was the actual shooter. The evidence at trial, however, indicated that Josue did not have the "pointy" nose his brother had, and his skin complexion was noticeably darker. These two distinguishing features caused Officers Murillo and Cho to change their initial suspicion as to the shooter's identity from Josue to defendant. As such, we cannot hold that this individual factor weighs so heavily in favor of defendant (and outweighs the other factors favoring the State) that we should deem the Cortes brothers' testimony to be wholly unreliable and unsupportive of a conviction. The conflicting testimony of the Cortes brothers as well as Alvarez were thoroughly presented and argued to the jury. As noted above, this court may not retry defendant. *Evans*, 209 Ill. 2d at 209. It was the jury's duty to assess the witnesses' credibility, weigh the testimony, and resolve conflicts or inconsistencies in the evidence. *Id.* at 211. The evidence, however, was not "so unreasonable, improbable or unsatisfactory" that it raises a reasonable doubt of defendant's guilt. *Id.* at 209. Defendant's claim is thus unavailing.

¶ 34 Moreover, *People v. Herrett*, 137 Ill. 2d 195 (1990), and *People v. Rodriguez*, 312 Ill. App. 3d 920 (2000), on which defendant relies in his reply brief, are inapposite. At the outset, we note that the supreme court affirmed the defendant's conviction in *Herrett*. *Herrett*, 137 Ill. 2d at 216. Nonetheless, defendant argues that *Herrett* favors his claim because the witness in *Herrett* "observe[d] the assailant's face for several seconds when the robber reached down to cover his eyes with duct tape" and was two feet from the robber's face, but was "only" 90% certain that the defendant was the man who robbed him. *Id.* at 204. Defendant concludes that, on this basis, the Cortes brothers' identification of him was not credible because they did not view the shooter for several seconds (as did the witness in *Herrett*) and they did not express any doubt as to their identification (again, as with the *Herrett* witness). Defendant's attempt to equate an attempted murder of individuals while they were traveling in an automobile to a robbery of a pawnshop is meritless. *Herrett* and this case differ widely, both in terms of the type of crime, the circumstances of the crime, as well as the testifying witnesses. In addition, the witness in *Herrett* conceded on cross-examination that (i) he saw the offender's face for only a few seconds, (ii) the lighting was dim, and (iii) the photograph of the defendant looked like the offender, but the hair in the photograph looked different than the offender's hair. *Id.* at 200-01. *Herrett* is therefore unavailing.

¶ 35 *Rodriguez* is also factually distinguishable. There, the witness's description of the shooter "was generated from a seven- to nine-second observation made at the scene *while his hands covered his face*." (Emphasis added.) *Rodriguez*, 312 Ill. App. 3d at 933. In addition, the witness's testimony was directly contradicted by another witness. The witness, Bolton, testified that he saw the shooter a week later loading a snow blower onto a red pickup truck. *Id.* at 934. Another witness,

Salamy, testified at trial that the person who sold Salamy the snow blower on the date Bolton saw the shooter was not the defendant and that the computer-generated composite sketch of the shooter that Bolton prepared after the shooting was inaccurate "because the nose was different and the person who came into the store [and shot the victim] did not have a mustache." *Id.* Here, by contrast, none of the four identification witnesses had their hands over their eyes when they observed the defendant. In addition, no witness directly contradicted the description any of the witnesses provided; at most, Alvarez's testimony merely raised the question whether the Cortes brothers included defendant's neck tattoo in their description of the shooter. In other words, Alvarez's testimony (that he could not recall whether the brothers also described a neck tattoo) raised the possibility of an omission in the offender's description, not an error in it. *Rodriguez* is thus unavailing, and we must reject defendant's challenge to the Cortes brothers' testimony.

¶ 36 Defendant also challenges the identification testimony of Officers Murillo and Cho. Specifically, defendant argues that their testimony was fatally impeached when they initially identified defendant's brother, Josue, and not defendant, as the driver of a maroon Jeep they saw shortly after the shootings and with which they engaged in a high-speed chase. Defendant observes that the officers only viewed the driver of the maroon Jeep for either a "second" or a "split-second," and neither officer noticed a neck tattoo on the driver. Defendant's claim is without merit.

¶ 37 Turning again to the *Neil* factors, the officers' degree of attention (the second factor) and the length of time until the confrontation (the fifth factor) heavily favor the State. As with the Cortes brothers, the area was well-lit and there was no testimony that the officers were distracted at the time they saw the maroon Jeep exit the expressway and drive toward them at a high rate of speed. In

addition, the length of time between the termination of the high-speed chase and the confrontation was not excessive. Murillo and Cho saw the driver of the maroon Jeep about 20 minutes after the shooting, or approximately 2 a.m. on January 9th, and by 7:30 p.m. that same day, Murillo returned to the police station and he viewed the person he and Cho initially believed was the driver, Josue. At that point, Murillo told Detective Alvarez that defendant and not Josue was the driver. This amounts to about 19 hours between the offense and the confrontation, which is not excessive.

¶ 38 As to the third factor (the accuracy of their description), the facts slightly favor the State. Both officers consistently, albeit somewhat generically, described the driver of the maroon Jeep as a Hispanic male with long hair and light skin. Although defendant is correct that neither officer noticed a neck tattoo on the driver, the officers stated that the neck area of the driver had been covered. Murillo described the driver as wearing a dark coat or sweater pulled up around his neck, and Cho said the driver was wearing a black hat and black jacket or "hoodie" that covered the neck area. Furthermore, Cho added that defendant and Josue look very similar and the main difference between their appearance was defendant's neck tattoo.

¶ 39 Regarding Murillo's and Cho's level of certainty at the identification confrontation, this fourth factor is neutral, favoring neither the State nor defendant. Although Murillo and Cho were certain that defendant was the driver of the maroon Jeep after they had seen Josue in person, they initially suspected Josue after viewing photographs of Josue and defendant. Murillo explained that, after seeing Josue in person, he saw that Josue's nose was different and Josue's complexion was darker than the person Murillo saw driving the maroon Jeep. Therefore, we cannot hold that this factor is favorable to either the State or defendant.

¶ 40 Finally, the first factor, the opportunity to view the offender, clearly favors defendant. Murillo testified that he only saw the driver of the Jeep for a "split second," and his partner, Cho, saw the driver for "a second." Although the subsequent high-speed chase lasted for about a mile, both officers testified they were behind the Jeep during the chase, and Murillo confirmed that they did not get another look at the driver's face once the driver turned on Irving Park.

¶ 41 Therefore, while the first factor (the witness's accuracy of the description) favors defendant and the fourth factor (the witness's level of certainty at the identification confrontation) is neutral, these factors are substantially outweighed by the other factors favoring the State. Moreover, as with the claim regarding the Cortes brothers' testimony, this argument was thoroughly argued to the jury, who was responsible for weighing the credibility of the witnesses and resolving any discrepancies. *Evans*, 209 Ill. 2d at 211. Therefore, defendant's claim on this point is without merit.

¶ 42 Defendant's final claim is that the evidence was insufficient to support defendant's guilt because the State's theory was critically undermined when evidence was introduced that defendant had sold a black Jeep shortly before the shootings. Defendant's argument on this point is that, although Murillo and Cho testified that they reported the maroon Jeep's license plate to their dispatch and obtained ownership information, Murillo's police report indicates the license plate of the maroon Jeep was unknown. Defendant infers from this that the police suspected either defendant or Josue (defendant's brother) based upon their knowledge of defendant's alleged gang affiliation and his prior ownership of a dark-colored Jeep (black, not maroon), and not based upon a search of the registered owner of the maroon Jeep. This final claim is meritless.

¶ 43 As a preliminary matter, defendant asserts that, since defendant had multiple previous arrests (which defendant states is confirmed by his criminal history report), the police "may have been aware" that defendant owned a dark-colored Jeep, because "an arrestee's vehicle often is included in the arrest report." These assertions, however, are unsupported in the record. Therefore, this is mere speculation, a basis upon which we may not reverse a conviction. See *People v. Nolan*, 291 Ill. App. 3d 879, 885 (1997). In addition, at trial the State sought the testimony of Murillo regarding the information from their dispatch as to who was the registered owner of the maroon Jeep, but the trial court sustained defendant's objection. Defendant cannot now complain of an error he invited. *People v. Carter*, 208 Ill. 2d 309, 319 (2003); *People v. Smith*, 406 Ill. App. 3d 879, 886 (2010). Finally, whether defendant owned a vehicle at any time is irrelevant to the issue of whether he shot at Roman's vehicle from the front passenger seat of the maroon Jeep and was seen shortly thereafter driving a maroon Jeep in the vicinity of the shootings. The State did not argue, and no evidence was presented, that the owner of the maroon Jeep committed the offenses. Defendant's sale of his black Jeep about two weeks prior to the shooting is irrelevant. His contention is therefore unavailing.

¶ 44 Finally, the State argues in its response that defendant's mittimus is incorrect. Specifically, the State notes that defendant was convicted of the attempted murder of both Ruben Roman and Hugo Cortes, but the trial court merged all convictions into one attempted murder conviction and sentenced defendant on that sole count. The State concludes that the mittimus should therefore be corrected to reflect two convictions for attempted murder, one conviction as to Roman and another regarding Hugo Cortes. In reply, defendant does not challenge the State's argument.

¶ 45 The supreme court has long held that "it is axiomatic that is there is no final judgment in a criminal case until the imposition of sentence, ***." *People v. Flores*, 128 Ill. 2d 66, 95 (1989), *cert. denied*, 497 U.S. 1031 (1990). Under Supreme Court Rule 615(b)(1), this court has the power to order the correction of the mittimus. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). In addition, where, as here, there is a conviction but no sentence entered upon that conviction, this court is empowered to remand the matter to the trial court for the imposition of a sentence. *People v. Scott*, 69 Ill. 2d 85, 88 (1977) ("*** in remanding the cause to the circuit court for entry of a sentence on [an unsentenced] conviction the appellate court acted within the scope of its powers.").

¶ 46 Here, the jury found defendant guilty of the attempted murders of both Ruben Roman and Hugo Cortes, and while a ten-year sentence was imposed for the attempted murder of Roman, no sentence was imposed on count III, one of the convictions for the attempted murder of Hugo Cortes. Although it could be inferred that a concurrent ten-year sentence was intended for the conviction for the attempted murder of Hugo Cortes based upon the trial court's finding that the "appropriate sentence in this case" was ten years' imprisonment, we believe a remand to the trial court for the imposition of an appropriate sentence is the better course. Accordingly, we direct the circuit clerk to correct the mittimus to include a conviction for attempted murder (count III) and remand the matter to the trial court for the imposition of a sentence as to that count.

¶ 47 CONCLUSION

¶ 48 There was sufficient evidence to support the jury's guilty verdict. In particular, the identification testimony of the two victims and two police officers was reliable based upon the factors used to determine the reliability of such testimony. In addition, defendant's mittimus must

be corrected to reflect convictions for an additional count of attempted first degree murder because defendant was convicted of the attempted murder of two individuals. Accordingly, for the foregoing reasons, we direct the circuit clerk to correct defendant's mittimus to reflect two convictions for attempted first degree murder, and we remand the matter to the trial court for the imposition of a sentence on the previously-omitted count. We otherwise affirm the judgment of the circuit court.

¶ 49 Affirmed as modified; remanded with directions.