2014 IL App (2d) 120947-U
No. 2-12-0947
Order filed July 30, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RUBEN HERNANDEZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-CF-903 Honorable Allen Anderson, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved the defendant guilty beyond a reasonable doubt of murder and attempted murder on an accountability theory where the State presented the testimony of the driver of the van who observed the defendant holding open the van door for the shooter.

¶ 2 Defendant, Ruben Hernandez, appeals his convictions for first degree murder and attempted murder. He argues that the evidence was insufficient to establish his guilt beyond a reasonable doubt because the State relied on the testimony of an admitted accomplice to the crime, who testified in exchange for a reduced term of imprisonment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2009, defendant was charged with first degree murder, attempted first degree murder, and armed violence in connection with a November 28, 2005, shooting in which Michael Moore was killed and Jamarain Tuggles injured. The State *nolle prossed* the armed violence charge, and the case proceeded to a bench trial on the remaining counts.

¶ 5 Tuggles testified for the State that, in November 2005, he and Michael Moore were members of the Gangster Disciples street gang. (Hereinafter, we distinguish Michael Moore from another individual in the case, Quentin Moore, by using their first names.) Tuggles' nickname with the Gangster Disciples was "Car Booty," or "C.B.," while Michael's nickname was "Lebeau." Tuggles testified that, a few days before the shooting that killed Michael and injured Tuggles, Michael dropped off Tuggles at a barbershop in Aurora. Also present at the barbershop was Quentin, who Tuggles knew was a member of the Latin Kings street gang. Quentin's nickname was "Midnight." Quentin was with several other individuals whom Tuggles knew by nickname alone, such as "Chi" and "Stunner." Tuggles knew that "Chi" was a Latin Kings member, and assumed that the remaining individuals with Quentin were Latin Kings as well. (The record establishes that "Chi" was Salvador Gonzalez and "Stunner" was defendant, Ruben Hernandez, both members of the Latin Kings.) Tuggles testified that, while inside the barbershop, he had a "lightweight" argument with Quentin. Tuggles then stepped outside with Quentin and his associates. Tuggles challenged them to fight in a nearby alley. Defendant then pulled what Tuggles recognized as a nine millimeter handgun from his belt. As Tuggles was not armed, he withdrew his challenge. Defendant placed the gun back into his belt. At that point, Michael pulled up in a white Oldsmobile. Michael waved Tuggles away from the car; Tuggles presumed that Michael did not want the Latin Kings to know what car he was driving. When,

however, defendant pulled out his gun again, Tuggles "jumped" into the white Oldsmobile and Michael drove off.

¶ 6 Tuggles stated that, subsequently, on the morning of November 28, 2005, he drove to a parole office in Aurora for a 9 a.m. appointment. Afterward, he drove to Michael's girlfriend's place of employment. There, he met his cousin, Cornelius Poole, and Michael. Tuggles left the car he was driving (which belonged to Michael's girlfriend), and Michael drove him and Poole to the same parole office, where Poole had an appointment. Michael was driving the same white Oldsmobile as he drove on the day of the barbershop confrontation. After dropping off Poole, Michael and Tuggles drove east on Galena Boulevard. As Tuggles was slouched back in the front passenger's seat speaking on his cell phone, he heard 15-20 gunshots from the left side of the car. Tuggles dropped his phone and covered his head with his left arm. A couple of seconds after the final shot, the white Oldsmobile crashed into a tree and stopped. Tuggles looked over and saw that Michael had bullet wounds to his head, neck, and hand. Tuggles kicked out the window of his door and climbed out. A nearby police officer detained him. Tuggles realized only later that a bullet had lodged in his arm. Tuggles did not see the shooter or know from which the direction the gunshots came.

¶ 7 Aurora police officer Dan Peterson testified that, on November 28, 2005, at 11:10 a.m., he was processing an accident report at Hickory and East Galena when he heard gunshots coming from the area of Smith and East Galena, which was a short distance away. Peterson ran toward the sound and saw a white Oldsmobile travel on East Galena before leaving the roadway and hitting a tree. Peterson observed two African-American males inside the car. He later identified them as Michael and Tuggles. Michael was slouched back in his seat and had multiple gunshot wounds to his upper body and face. Tuggles climbed out of the car and attempted to run

away before Peterson detained him. Peterson noticed that Tuggles had a graze wound on his left arm.

¶ 8 The parties stipulated that Michael died from multiple gunshot wounds. The parties further stipulated that 13 shell casings were recovered from the scene, and that ballistics testing determined that the casings were from two firearms.

¶ 9 Ezequiel Rivera also testified for the State. He stated that, in 2007, he was in custody in Lake County on charges of first degree murder, aggravated battery, and criminal damage to property. In October 2007, Rivera received from the State's Attorney a proposed proffer contract. Rivera signed the contract and, on May 21, 2008, sat for an interview with Aurora police officer John Munn, in which Rivera reported what he knew about the shooting of Michael and Tuggles. The parties entered into a stipulation based on Munn's report of May 21. The stipulation was submitted in writing and admitted as defense exhibit 5. When the parties read the stipulation into the record, they orally added content from Munn's report that was not contained in the stipulation. Defense exhibit 5 was admitted for impeachment alone.

¶ 10 Rivera testified that, on September 30, 2008, he signed an agreement to provide testimony in the present case and 11 other murder/attempted murder cases, in 9 of which he was a participant. In exchange, Rivera would receive a favorable disposition of his pending charges. Specifically, Rivera would serve, at 50%, a 20-year prison term for armed violence. Rivera explained that the first degree murder charge would be "kept open until completion of [the] agreement." Rivera asserted that, when he signed the agreement in 2008, he believed he was facing 35 years in prison "or something like that." However, he acknowledged stating, at Salvador Gonzalez's trial in September 2009, that the agreement saved him from a potential life sentence.

¶ 11 Rivera testified that, in November 2005, he was associating with the Latin Kings. He explained that, to earn one's "crown" and become a full member of the Latin Kings, one must "commit a violent act." Rivera earned his crown on November 25, 2008, for his involvement in the shooting of Tuggles and Michael.

¶ 12 Rivera testified to the events leading up to Michael's murder. On the morning of November 25, Rivera drove his mother's Ford Windstar minivan to an appointment at his parole office. He then drove to a friend's home to provide her a ride to work. Arriving there, he was approached by Augustine Montez, Chavez Saulsberry, Max Aguilar, and defendant. All four had "crowns" and were full members of the Latin Kings. They "jumped in the van and [Montez] said we're going somewhere else." Because, at the time, Rivera was only a "shorty" in the gang and had no crown, he was obligated to obey the others or face punishment from the gang. Montez told Rivera that they were going to Joel Zapata's house to pick up two guns. At Joel's house, Montez left the van and spoke with Rudy Zapata, Joel's father. The two argued, and Montez returned to the van with only one gun, a black semiautomatic handgun. Montez passed the handgun to Saulsberry and told Rivera to drive to "Chi's," *i.e.*, Salvador Gonzalez's. Montez was missing a gun and wanted to speak to Gonzalez about it. On the way to Gonzalez's, all of the occupants except Rivera spoke about the missing gun. Arriving at Gonzalez's home, Rivera saw Quentin and Gonzalez. Montez left the van to speak with Gonzalez. The two of them then entered the van. Quentin did not enter the van.

¶ 13 Rivera described the seating in the van and where each of the six occupants were positioned when Rivera left Gonzalez' house. Immediately behind the driver's and passenger's seats was a row of two bucket seats. In the far back was a bench seat. Gonzalez was in the front passenger's seat. Behind Gonzalez in the right bucket seat was Saulsberry. Behind Rivera in the

left bucket seat was Montez. Aguilar was on the left side of the bench seat (behind Montez) and defendant was on the right side (behind Saulsberry). The van had a sliding door in the right side.

¶ 14 Rivera left Gonzalez's house and began driving around "the east side of Aurora." If, while driving, they saw "opposition" or "rivals," there "would be like a shooting." At one point, Saulsberry, who was still holding the gun, observed an African-American man and said "there goes one right there." Saulsberry did not shoot the man, however, because Montez remarked that the man was a "nobody," or not gang-affiliated. At a later point, Gonzales received a phone call and directed Rivera to drive to Temple Hill, which was near the parole office. When Rivera arrived, he saw Quentin and his car. Gonzalez left the van and spoke with Quentin inside his car. When Gonzalez returned to the van, he told Rivera to follow Quentin to the parole office because there were "flakes," or rival gang members, there. Rivera and the others were to provide security for Quentin. Rivera followed Quentin to the parole office and parked across the street. Quentin came over to the van and handed a puppy to Saulsberry. Quentin then entered the parole office. Rivera testified that the van's occupants were still in the same seats as when they left Gonzalez's house.

¶ 15 Rivera and the others waited for Quentin about 15 minutes before a Hispanic male wearing the colors of the Vice Lords, a rival gang, exited the parole office. Montez and Gonzalez became "excited," and Saulsberry asked aloud if there was "a way to get him." Just then, according to Rivera, a "white car with rims" approached, and Gonzalez said, " 'There goes Lebeau.' " The white car stopped and an African American male exited the car and went into the parole office. The white car then drove off. Gonzalez and "a majority of everybody" told Rivera to follow the white car. Rivera did not know who "Lebeau" was, but assumed he was a rival

gang member. Rivera followed the white car down Galena because he had been so ordered and did not want to incur a gang violation for disobedience.

¶ 16 When Rivera was asked if defendant had said anything during this time, Rivera recalled that he was driving "kind of crazy" and defendant admonished him to "slow down and try not to bring attention." According to defense exhibit 5, however, Rivera "mentioned [to Munn] someone said 'slow down' or 'try not to bring attention[,]' but [Rivera] did not attribute these statements to [defendant]."

¶ 17 Rivera testified that he caught up with the white car and saw two African-American men inside. Gonzalez told Rivera to get ready to turn. Rivera then heard the sound of the van's sliding door open. He did not see who opened the door. He then heard multiple gunshots. Rivera was "shocked," "panicked," and "scared" during the shooting. He turned around for a "quick second" and saw that the sliding door was open, defendant was "holding the sliding door," and Saulsberry was aiming a handgun at the white Oldsmobile. Rivera saw that Saulsberry was using the same handgun Montez had given him earlier. When Rivera looked back, he could also see Aguilar (seated in the far back on the left) but not Montez (seated just behind Rivera). Rivera recalled that Gonzalez's window was open at the time of the shooting. While Rivera was looking back, he was also "concentrating" on "[m]aking that turn, driving." Rivera heard Gonzalez say, "He got yoked," meaning he was killed. According to defense exhibit 5, however, Rivera told Munn "someone said 'he got yoked' but [Rivera] did not attribute this statement to [Gonzalez]."

¶ 18 At Gonzalez's direction, Rivera turned onto Smith. He took the turn slowly. After he completed the turn, Rivera heard the sliding door shut. He drove fast down Smith and turned left onto Fulton. He disregarded a stop sign on Fulton. Gonzalez told Rivera to slow down. Rivera

drove to the home of Jorge Alanis, also known as "Shark," at Fulton and State. All passengers exited the van, and Rivera drove home and cleaned the van. Rivera found two shell casings inside the van and flushed them down the toilet. In his grand jury testimony, which was admitted into evidence for impeachment purposes, Rivera testified that he found one shell casing.

¶ 19 Rivera was asked further questions about the van door. He testified that the door opened manually and had no power assist. Rivera did not recall whether the door would lock in place once it was opened fully. Rivera acknowledged stating in his May 21, 2008, interview with Munn that, while Saulsberry was shooting, defendant was behind him holding the sliding door open because it was faulty and would not remain open without assistance.

¶ 20 Rivera testified that he did not see Gonzalez, Montez, Aguilar, or defendant with a weapon while they were in the van. Defendant did not direct Rivera where to drive the van, either before or after the shooting. Also, defendant did not indicate to the others that he wanted to shoot the African-American man they saw with Vice Lords colors.

¶ 21 Max Aguilar was called as a defense witness. He admitted that he was in Rivera's van on November 28, 2005. On repeated questioning, however, Aguilar consistently denied any further recollection of the events of November 28. Aguilar ultimately invoked his right against self-incrimination, and his testimony was stricken on the State's motion. The court agreed, however, to consider Aguilar's two statements to the police.

¶ 22 In his first statement, dated September 12, 2007, Aguilar told the police that the shooting occurred two hours after the argument at the barbershop. At the time of the shooting, Aguilar was in the van with six others: Rivera, Gonzalez, Quentin, Saulsberry, Hernandez, and "Montes" (presumably, Augustine Montez). Rivera was in the driver's seat, Quentin in the front passenger

seat, Saulsberry and Gonzalez in the middle bucket seats, and Montez, Aguilar, and defendant in the back seat. Aguilar did not say which person occupied which seats in the middle and back. According to Aguilar, both Saulsberry and Gonzalez were armed with handguns. When the van approached the white Oldsmobile, Saulsberry and Gonzalez "opened and hung out of the van's sliding passenger door and started firing their weapons at [the white Oldsmobile]."

¶ 23 In Aguilar's second statement, dated November 8, 2007, he told officers that the shooting happened two days after the argument at the barbershop, not the same day. According to Aguilar, Rivera drove to the parole office with Saulsberry in the front passenger's seat, Gonzalez in the right bucket seat behind Saulsberry, Quentin in the left bucket seat behind Rivera, Montez in the right back seat behind Saulsberry, defendant in the middle back seat, and Aguilar in the left back seat behind Quentin. When they arrived at the parole office, Quentin went inside while the others waited. While Quentin was inside, the white Oldsmobile arrived. When Quentin came back to the van, the white Oldsmobile pulled away, and Rivera pursued in the van. As the van pulled alongside the white Oldsmobile, Saulsberry, who at some point had switched to the front passenger seat, moved to one of the bucket seats next to Gonzalez. After the two cocked their guns, Gonzalez "open[ed] the sliding door and both (Gonzalez and Saulsberry) start[ed] shooting handguns at [the white Oldsmobile]." During this time, defendant was still in the middle of the back seat.

¶ 24 In closing argument, the State asserted that defendant was guilty of the shootings on an accountability theory because he held open the van door while other occupants shot.

¶ 25 The court found defendant guilty of the murder and attempted murder charges. The court acknowledged that Rivera had received a promise of leniency for his testimony and that the

account he gave at trial varied at points from his prior statements and testimony in other venues. Nonetheless, the court found Rivera credible:

> "I found the core of Rivera's testimony[,] after considering and watching and listening to him[,] to be credible and believable as to the events that are [at] the heart of the prosecution's case."

¶ 26 The trial court explained the basis for its finding:

> "[I] conclude from the evidence that the defendant shared the criminal intent of others in the van as demonstrated by his holding the van's sliding door during and at the time of the shooting when the shooting was done at the Oldsmobile. That he had prior knowledge of the group's intended purposes of driving around Aurora looking for rival gang members after securing at least one firearm and learning of possible locations of rival gang members and continuing his presence and association with the group despite his opportunities to leave the van and to leave the group.
>
> [Defendant] was more than just present in this case. Knowing that this was going—that was a gang activity; knowing that the common purpose of driving around that day with a firearm, looking for rival gang members for the purpose of a shooting; holding onto the sliding van door during the shooting of both Michael Moore and Tuggles makes his participation on that day accountable for the acts of the shooters in that he intended to promote and facilitate the shooting of [Michael] and Tuggles and did so assist, at least if nothing else, by the holding of that door."

¶ 27 The court sentenced defendant to a natural life term of imprisonment for the murder of Moore and a 30-year term of imprisonment for the attempted murder of Tuggles, to be served

consecutively. Defendant received an additional 15-year term of imprisonment for using a firearm in the commission of the crimes. He timely appeals.

¶ 28 II. ANALYSIS

¶ 29 Defendant contends that the evidence was inadequate to sustain the murder and attempted murder convictions. We disagree.

¶ 30 Where the sufficiency of the evidence supporting a criminal conviction is challenged, the question on review is 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). We must allow all reasonable inferences from the record in favor of the prosecution. *Id.* The trial court had the responsibility, as finder of fact, "to resolve alleged inconsistencies and conflicts in the evidence, as well as to weigh the testimony and determine the credibility of the witnesses." *People v. Bannister*, 236 Ill. 2d 1, 18 (2009). However, while "the fact finder's decision to accept testimony is entitled to great deference, [it] is not conclusive and does not bind the reviewing court." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 31 The court found defendant guilty under an accountability theory. A person is legally accountable for the criminal conduct of another person when "[e]ither before or during the commission of an 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." 720 ILCS 5/5-2(c) (West 2004).

¶ 32 For the following reasons, we hold that the evidence supports the trial court's finding that defendant held open the sliding door of the van while other occupants fired at the white Oldsmobile. By this action, defendant intended to, and did, facilitate the shooting, and therefore defendant was legally accountable for the results of the shooting. We do not know whether the trial court believed there was enough evidence to hold defendant accountable apart from his action with the sliding door. Regardless, we need not, and do not, consider whether there was such independent evidence on which to hold defendant accountable.

¶ 33 Rivera's testimony was the core of the State's case, and defendant attacks that testimony on several grounds. First, defendant asserts that the State's agreement, by which Rivera would obtain a favorable disposition of several serious charges, "provided Rivera with a significant motive to testify in a way that curried favor with the State." "The fact alone that an accomplice has been promised leniency does not necessarily require that his testimony be disregarded [citation], although it must be considered in determining his credibility and the weight to be given to his testimony." *People v. Mullins*, 28 Ill. 2d 412, 415 (1963). The supreme court has further explained:

> "[T]he testimony of an accomplice witness has inherent weaknesses as the testimony of a confessed criminal fraught with dangers of motives such as malice toward the accused, fear, threats, and promises or hopes of leniency or benefits from the prosecution [citation]. Because accomplice testimony is attended with serious infirmities, it should be accepted only with utmost caution and suspicion and have the absolute conviction of its truth. [Citation.] Nevertheless, while subject to careful scrutiny, the testimony of an accomplice, whether it is corroborated or uncorroborated, is sufficient to sustain a

> criminal conviction if it convinces the [fact finder] of the defendant's guilt beyond a reasonable doubt. ***. [Citation.]" *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998).

¶ 34 As the law requires, we do not reject Rivera's testimony simply because of the favorable disposition he received in return for it. Rather, we view the testimony with caution as we consider defendant's remaining credibility arguments.

¶ 35 Defendant contends that a "discrepancy" exists between Rivera's trial testimony and the ballistics finding that bullets from two handguns were recovered from the scene of the shooting. This is not necessarily an inconsistency or discrepancy. When Rivera was asked what he saw when he turned around briefly during the shooting, he testified that he witnessed Saulsberry holding a handgun aimed outside the car and defendant holding open the sliding door. Rivera did not mention any other shooters, but as the State notes, this does not entail that there were none. Rivera described himself as panicked during the shooting. Still concentrating on his driving because he was about to turn the car, Rivera looked back in the van momentarily—not long enough to see what Montez was doing. According to Rivera, Gonzalez had his window open. We draw the reasonable inference, as our standard of review requires, that Rivera may have been too distracted to notice another occupant of the van fire at the white Oldsmobile. This would account for the ballistics evidence that two guns were involved in the shooting.

¶ 36 While Rivera testified that he saw no one with a gun in the van except Saulsberry, Rivera never claimed to have exhaustive knowledge of what each individual possessed, especially concealed items. And again, Rivera may well have been too distracted to see another person besides Saulsberry produce a weapon and fire it.

¶ 37 Defendant points to Aguilar's version of events, namely that Gonzalez was seated next to Saulsberry when they both fired at the white Oldsmobile. Defendant submits that "if Saulsberry

and Gonzalez were right next to each other, shooting from the open sliding van door, Rivera had to have seen Gonzalez, if he saw Saulsberry shooting." Defendant seems to assume that Aguilar's account was definitive because it was consistent with the ballistics evidence. The ballistics evidence, however, indicated only that two guns were involved, not where the shooters were positioned.

¶ 38 Defendant also notes that, at trial, Rivera attributed statements to Gonzalez and defendant that he did not attribute to any specific individual when he reported them to Munn in the May 21, 2008, interview. The trial court, however, considered Rivera's grand jury testimony and the May 21, 2008, interview, yet still found Rivera credible. We have no cause for upsetting that determination.

¶ 39 Finally, defendant compares the facts of this case to *People v. Washington*, 375 Ill. App. 3d 1012 (2007). In *Washington*, this court reversed the defendant's convictions arising from a July 4, 2004, drive-by shooting in which shots were fired from a van. There was no dispute that the defendant was riding that night with his companions Jonathan Phillips, Dontal Rayford, and Lorenzo Ingram. Neither the victim nor other eyewitnesses could identify who drove the van or fired the shots. The State relied on the testimony of Phillips, Rayford, and Ingram. Phillips testified as part of a plea bargain, while Rayford and Ingram were granted use immunity. These witnesses, we found, provided "no remotely consistent account of the events that occurred on July 4, 2004, or defendant's role in them." *Id.* at 1019.

¶ 40 The first witness, Phillips, testified that the defendant both drove the car and fired the shots. On cross-examination, however, Phillips acknowledged telling the police after his arrest that the van's occupants were not involved in a shooting and that Ingram drove the van the entire evening. Phillips explained that he said this to the police because he was not a snitch, but later,

when he learned that the defendant was implicating him, Phillips decided it was " 'every man for their self.' " *Id.* at 1017-18. In exchange for his testimony against the defendant, the State would not charge Phillips as an adult, Phillips would plead guilty to one count of aggravated discharge of a firearm, and the State would dismiss the remaining charges and recommend probation and 30 days in a juvenile detention center. *Id.* at 1018.

¶ 41 The second witness, Rayford, spoke to the police on three separate occasions between the shooting and the trial. Rayford initially denied to the police that he was involved in any shooting, but affirmed later statements that a shooting did occur and that the defendant was driving at the time. Rayford, however, did not claim that the defendant fired the shots. Rayford did not know who fired the gun, but said that after he (Rayford) heard a gunshot, Phillips came to the back of the van with a gun in his hand. In his third statement to police, Rayford commented both that he was drunk at the time of the shooting and that he had general memory problems from drug usage. The State also introduced into evidence a taped conversation between Rayford and his guardian in which Rayford remarked that the defendant " 'did it' " and the State was attempting to reach a deal with Rayford to implicate the defendant. *Id.* at 1018-20.

¶ 42 At trial, Rayford initially testified that he was intoxicated from drugs and alcohol on the night in question and did not recall seeing any shooting. Later in his testimony, however, Rayford claimed he saw the defendant shoot the gun. *Id.* at 1020. Asked why, after several police interviews, he was only now claiming that the defendant was the shooter, Rayford explained that he did not want to be prosecuted for what someone else did. *Id.* We commented that, in his various statements to police and trial testimony, Rayford's account "was that there was no shooter, he did not remember the shooting, he did not know who was the shooter but

Phillips had the gun, and defendant was the shooter." *Id.* at 1026. Also, contrary to his statements to police, Rayford testified that Ingram drove the van. *Id.* at 1019.

¶ 43 The third witness, Ingram, gave two statements to the police in which he contradicted himself as to whether he or the defendant was driving at the time of the shooting. *Id.* at 1022. At trial, Ingram testified that Phillips was the shooter and that the defendant was driving at the time. Ingram suggested that the defendant did not want Phillips to shoot. *Id.* at 1021. Ingram acknowledged that he was the defendant's cousin. As impeachment evidence against Ingram, the parties stipulated that Ingram told an investigator that he would not " 'trick' " on his cousin. *Id.* at 1022.

¶ 44 Defendant claims that the facts of *Washington* are "very similar" to those at hand, but we wholly disagree. The accounts in *Washington* of who drove the van and who did the shooting were irreconcilably diverse, with the accomplices contradicting themselves and each other. Here, Rivera did not provide an inconsistent account of who drove the van, who held open the sliding door, and who fired at the white Oldsmobile. Moreover, Rivera and Aguilar agreed that Saulsberry shot at the white Oldsmobile. Aguilar observed two shooters, and the ballistics evidence confirmed two guns were involved, but Rivera's testimony did not foreclose the possibility that there were two shooters. Also, since Aguilar did not describe what defendant was doing while the shooting occurred, his statement did not contradict Rivera's testimony that defendant held open the van door during the shooting.

¶ 45 Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find defendant guilty of the murder of Michael and the attempted murder of Tuggles under an accountability theory. Therefore, we affirm defendant's convictions.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we affirm the decision of the circuit court of Kane County.

¶ 48 Affirmed.