

NOTICE  
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2012 IL App (4th) 110576-U

NO. 4-11-0576

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 9, 2012

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DIYEZ RAMON OWENS,	)	No. 10CF763
Defendant-Appellant.	)	
	)	Honorable
	)	James E. Souk,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1     *Held:* When all the evidence in the record is regarded in the light most favorable to the prosecution, a rational trier of fact could find the elements of first degree murder to be proved beyond a reasonable doubt.

¶ 2             In a bench trial, the trial court found defendant, Diyez Ramon Owens, guilty of the first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) of Barry E. Lewis. The court sentenced him to imprisonment for 50 years. Defendant appeals, challenging the sufficiency of the evidence. When we view all the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find the elements of first degree murder to be proved beyond a reasonable doubt. Therefore, we affirm the trial court's judgment.

¶ 3   I. BACKGROUND

¶ 4             In the bench trial, which occurred in February 2011, the witnesses testified

substantially as follows.

¶ 5

#### A. The State's Case in Chief

¶ 6

##### 1. *Curtis Lewis*

¶ 7

Curtis Lewis testified that his brother, Barry Eugene "Boo" Lewis, was addicted to cocaine and that he consequently was incapable of keeping an apartment. Another of Barry Lewis's brothers, Dwight Lewis, had to be the representative payee of Barry Lewis's social security benefits, or else Barry Lewis would have spent all the money on crack cocaine. (The record does not appear to reveal what kind of social security benefits Barry Lewis was receiving or the reason why he was receiving them.)

¶ 8

According to Curtis Lewis, Barry Lewis was a rather passive crack addict who never would have hurt anyone. He would have done whatever he was told to do. He was quiet and had a lot of friends.

¶ 9

Curtis and Dwight Lewis began asking around, among Barry Lewis's friends and acquaintances after not seeing him for a couple of weeks. The last time Curtis Lewis saw Barry Lewis was February 4, 2005, when Barry Lewis turned 41.

¶ 10

On March 7, 2005, the Bloomington police came to Curtis Lewis's residence, bringing bad news. Curtis and Dwight Lewis went to the police station. There, Curtis Lewis was shown a photograph of a dead man. He confirmed that the man in the photograph was his brother, Barry Lewis.

¶ 11

Curtis Lewis did not know any of the people involved in this case. He had never seen Barry Lewis with any of them.

¶ 12

##### 2. *Dan Donath*

¶ 13 On March 7, 2005, a crime-scene detective, Dan Donath, performed some print work inside a Buick parked in the sally port of the Bloomington police station. (The "sally port," Donath explained, was a large garage.) This Buick was of particular interest because a dead man had been found in the trunk. On the inside of the driver's-door window, Donath found the fingerprint of Tommy Slayton.

¶ 14 *3. Ade McDaniel*

¶ 15 Ade McDaniel, age 30, admitted he had been in trouble his whole life. He had previous felony convictions for theft, forgery, unlawful delivery of a controlled substance, and aggravated battery. He currently was in trouble yet again, awaiting sentencing in another case after pleading guilty to unlawful possession and delivery of cannabis.

¶ 16 Other than a reduction in bond, no promises had been made to McDaniel in return for his testimony in the present case. He anticipated, though, that his testimony would receive favorable mention in his sentencing hearing—but the State did not have any obligation to make this favorable mention.

¶ 17 McDaniel's testified as follows. In January and the early part of February 2005, he was in residential drug treatment at Chestnut Health Systems (Chestnut). (The parties stipulated that McDaniel was in residential treatment at Chestnut from January 21 to February 5, 2005, for cannabis dependence and that defendant was in residential treatment there from January 21 to February 18, 2005, likewise for cannabis dependence.) Defendant was his roommate at Chestnut—by defendant's own choice, McDaniel assumed. McDaniel already knew defendant, nicknamed "Devo." In the past, they had bought cannabis from each other and had smoked cannabis together.

¶ 18 Around 12:30 a.m., near the end of McDaniel's two-week course of treatment at

Chestnut, defendant said something to him—disclosed something to him—that, in the light of later events, McDaniel found to be disturbing. At the time, defendant gave McDaniel no explanation as to why he was confiding in him, other than to remark that McDaniel was "a cool cat." Defendant told him that Boo (again, that is Barry Lewis) owed an overdue debt to Damoni "Money" Clemon and that "[t]hey wanted to fuck him up." In the past, McDaniel had seen Boo buying drugs from Damoni Clemon on Gridley Street.

¶ 19 The prosecutor asked McDaniel:

"Q. What else did [defendant] say?

A. They was going to beat his ass real bad.

Q. Did he say that they were going to do anything worse?

A. They'd kill him if it came to it.

Q. Did they say anything else about vehicles or anything?

\* \* \*

A. He said they'd put him in a trunk if they had to."

Defendant used the phrase "they" because Damoni Clemon wanted defendant to "take care of his business."

¶ 20 Later, McDaniel read in the March 9, 2005, edition of The Pantagraph (People's exhibit No. 39) that Barry Lewis's body had been found locked in the trunk of a stolen car and that he probably had been murdered. Reading this newspaper article prompted McDaniel to contact the police and to recount to them what defendant had told him in Chestnut only a few weeks before.

¶ 21 On cross-examination by defense counsel, McDaniel denied he had obtained all his information from the Pantagraph article instead of from a midnight conversation with defendant in

Chestnut. As McDaniel observed on redirect examination, the newspaper article said nothing about Damoni Clemon, an unpaid loan, or drugs.

¶ 22 *4. James Sutherland*

¶ 23 A Bloomington police officer, James Sutherland, testified that, around 10:15 a.m. on March 5, 2005, he went to apartment No. 11, 109 Urban Street, in response to a report that a car had been stolen. The car was a Buick Riviera from the mid-1980s, and its owner was Don Nelson, who lived at that address.

¶ 24 *5. Joshua Swartzentruber*

¶ 25 At 5:23 p.m. on March 5, 2005, a Bloomington police officer, Joshua Swartzentruber, went to 1103 South Livingston Street because Nelson's stolen Buick had been found parked on the side of the street there. Swartzentruber noticed the steering column had been stripped—an indication that the car had indeed been stolen. To avoid spoiling any evidence, he refrained from opening the doors or trunk of the car. He called a towing truck, which took the Buick to the sally port, or secured garage, of the Bloomington police department.

¶ 26 *6. Russell Thomas*

¶ 27 Russell Thomas was a Bloomington detective assigned to the crime laboratory forensic unit. On March 7, 2005, at 1 p.m., he was called to the sally port. The corpse of a naked black man had been found in the trunk of an old Buick Riviera. Thomas took photographs of the body lying on its side in the trunk, and an autopsy was performed the next day.

¶ 28 After Tommy Slayton was arrested on March 11, 2005, Thomas collected his clothing. People's exhibit No. 36 was a photograph of Slayton's pants with a braided leather belt in the belt loops.

¶ 29 In their "Third Evidence Stipulation," the parties agreed that, according to deoxyribonucleic acid (DNA) analysis, "Barry Eugene Lewis [could] be excluded from having contributed to the DNA identified in the swabs from Tommy Lee Slayton's belt."

¶ 30 In their "Fourth Evidence Stipulation," the parties agreed that no blood or other forensic evidence had been found on the fingernail clippings collected from Barry Lewis during the autopsy.

¶ 31 *7. Matthew Dick*

¶ 32 Matthew Dick was a Bloomington detective. On March 9, 2005, during the daylight hours, he and another detective, named Wheeler, went to 802 West Oakland Avenue because they had been informed that Jesse Owens lived there and that he was a friend or acquaintance of Barry Lewis. The detectives hoped that, by talking with people who knew Lewis, they might be able to reconstruct his final days and identify a potential suspect.

¶ 33 Jesse Owens came out onto the front porch, followed, a few seconds later, by defendant. A minute or two later, Damoni Clemon and another man, whom the detectives did not know, came out onto the porch as well.

¶ 34 Defendant was rather agitated and confrontational. He demanded that the detectives stop harassing his uncle. Eventually, though, defendant calmed down enough to discuss Lewis while Wheeler had a separate conversation with Jesse Owens.

¶ 35 Everyone knew Lewis as "Boo," and Dick clarified with defendant that, by "Boo," they both meant Barry Lewis. According to defendant, Boo "was a fairly nice guy"; defendant "[c]ouldn't understand why anyone would want to hurt him." Dick testified:

"[Defendant] said that [Lewis] was a crack user, but didn't

really give anybody problems, just one of those guys that just kind of hung around, and, like I said, wouldn't cause anybody any problems, but would just sit around and drink with you for a while and then be on his way or about his business.

He also had mentioned that he would do odd jobs around the neighborhood there, whatever, to try to get some money to buy drugs."

¶ 36 Dick asked defendant at least five times when he last saw Barry Lewis. Defendant "would never answer the question. He would always change the subject." For example, he would revert to his complaint of harassment, or he would ask, "[']Isn't there better things you guys should be doing?[']"

¶ 37 *8. Joseph Butcher*

¶ 38 In March 2005, Joseph Butcher was a day-shift patrol commander of the Bloomington police department. When he came to work on March 7, 2005, a Buick was parked in the sally port. The sally port, Butcher testified, was physically connected to the crime laboratory and was a secure facility—so secure that evidence could be collected from a vehicle in the sally port and could be taken directly to the crime laboratory.

¶ 39 Don Nelson called in to the police station, requesting that the Buick be released to him. Even though the police had not yet looked through the car for evidence, Butcher saw no reason to hold the car, so he told Nelson he could come pick it up. Nelson arrived. Butcher told Gary Norman, the community service officer, to make sure that Nelson looked through the car, to see whether any property was missing. Soon, Norman returned to Butcher's office, saying a body was

in the trunk. Butcher went down to the sally port and saw the nude body of a man in the trunk. He called the criminal investigation division and established a perimeter around the car.

¶ 40 *9. Tim McCoy*

¶ 41 Tim McCoy was a Bloomington detective assigned to the narcotics unit, and on March 11, 2005, he executed a warrant to search the two-story house at 1202 West Olive Street. McCoy was the evidence custodian in this search—meaning that other detectives searched the house and whenever they found any item of possible evidentiary significance, they left the item in place and fetched McCoy, who then photographed the item and bagged it.

¶ 42 Hanging on the refrigerator in the kitchen was "a bill from Chestnut Health Systems addressed to Diyez Owens, 1202 West Olive."

¶ 43 Also, the police found two "metal pipe spoon[s]," used for preparing cocaine or heroin for inhalation. One pipe spoon was in the doorway of the basement. The other was in a stereo speaker in a second-story bedroom. The pipe spoon in the basement doorway had cocaine residue on it.

¶ 44 In bedrooms on the second story, the police found the following items: two digital scales, both of which field-tested positively for cocaine; "a Sprint cell phone, labeled to Damoni Clemons [*sic*], 1202 West Olive"; and "an envelope addressed to Money Clemons [*sic*], 1202 West Olive." (At trial, several witnesses referred to Damoni Clemon as "Clemons," but defendant informs us, in his brief, that his cousin's last name actually is "Clemon.")

¶ 45 On the main level of the house, the police found "[m]ail for Damoni Clemons [*sic*], 1202 West Olive, and a .25-caliber Winchester round."

¶ 46 In the basement, in front of the washing machine, the police found a comforter,

People's exhibit No. 37-10. McCoy described this comforter as follows:

"A. It's multi-pattern with American flag, plaid pattern on one side.

Q. What is on the other side?

A. Another color of plaid patterns."

¶ 47 *10. Kenneth Hutchison*

¶ 48 Kenneth Hutchison lives at 1103 South Livingston Street. Around 7 p.m. on Friday, March 4, 2005, his wife, Becky Hutchison, left for her mother's house, and he left for the riverboat casino in Peoria. When they left home that evening, no unfamiliar vehicles were parked in front of their house.

¶ 49 When Kenneth Hutchison returned home, however, at 11:50 p.m., a Buick was parked in front of the house. (His temporal point of reference was a favorite TV show.) The Buick still was there when he went to work the next morning, Saturday, March 5, 2005. When he returned home in the afternoon, he took a closer look at the Buick and noticed the steering column was damaged. Surmising that the Buick had been stolen, he called the police.

¶ 50 *11. Niki Swanson*

¶ 51 Niki Swanson testified that she lived with Don Nelson, the owner of the Buick. (At the time of trial, Nelson was undergoing treatment for cancer; he was not called to testify.) After she got off work at 4:30 p.m. on March 4, 2005, Nelson picked her up in the Buick, and they went out to eat. They returned to the apartment around 6 p.m., and Nelson parked his Buick in his assigned carport, where he always parked it. The next morning, the car was gone, and they called the police.

¶ 52 Swanson's comforter was in the backseat of the car when the car was stolen. Nelson had been using the comforter to wrap samples of glass in it, to keep them from bumping together (apparently, he was in some line of business involving panes of glass). The comforter used to belong to Swanson's daughter, but "[w]hen she moved out, she didn't want it because it was country." Swanson identified People's exhibit No. "37-1" as the comforter. (The number "37-1" might be a slip of the tongue for "37-10," or "37-10" might be a slip of the tongue for "37-1." The record does not contain an exhibit bearing either number—which is not surprising, considering that the exhibit in question was the actual comforter. In any event, defendant does not appear to dispute that the comforter that Swanson identified at trial was indeed her comforter and that the police had found this particular comforter in the basement at 1202 West Olive Street.)

¶ 53 The prosecutor asked Swanson:

"Q. How are you able to identify this as something you bought for your daughter?

A. Because it has pillow ticking on the back side, which I like. I like country stuff, and the quilt is country with the flag and the kittens and the hearts and stuff.

Q. So you recognize the flag and the kittens and the hearts on this?

A. Yeah, and the teddy bears.

Q. And on the other side, you described the pattern as being—

A. Pillow ticking is old fashioned. It's what they used to cover pillows with back in the '30s and '40s.

Q. It looks like a white and blue stripe?

A. Uh-huh.

Q. Was this part of a set?

A. Yeah, it came with sheets—a bottom sheet, top sheet, and pillow case.

Q. That all matched?

A. The pillow ticking. They were all pillow ticking design."

¶ 54 *12. Jonathan Cook*

¶ 55 Jonathan Cook was Swanson's son-in-law, and he was acquainted with her companion, Don Nelson. On Monday, March 7, 2005, Cook gave Nelson a ride to the police station, to pick up Nelson's Buick. At the police station, when Nelson opened the trunk to see if any tools were missing, he asked if someone were playing a joke on him: a body was in the trunk. The community service officer ran upstairs to fetch the lieutenant, and the police asked Nelson and Cook to step outside the sally port.

¶ 56 *13. Carlos Warrack*

¶ 57 a. Direct Examination

¶ 58 On direct examination, Carlos Warrack testified that, on Friday, March 4, 2005, around dusk—at 6:30 or 7:30 p.m., by his rough estimate—he went to 1202 West Olive Street to visit his friend, Damoni Clemon, nicknamed "Money." Warrack had not been invited there; he just spontaneously showed up.

¶ 59 He entered the kitchen of 1202 West Olive Street, where he found Damoni Clemon, Tommy Slayton, and defendant sitting around, drinking. He sat down and had mixed drinks with

them.

¶ 60           While they were drinking in the kitchen, defendant asked a question about Warrack. Defendant directed this question not to Warrack but to Damoni Clemon: he asked Clemon, in so many words, if Warrack were trustworthy and whether Warrack had enough honor to do some as-of-yet unspecified thing they intended to do. More exactly, defendant's question to Clemon was, "[D]o you think he's ready?[']" As they continued drinking, the question arose as to whether anyone knew how to steal a car. According to Warrack's testimony on direct examination, defendant, Slayton, Clemon, and he were all present during this conversation.

¶ 61           Evidently, someone professed to have the know-how, because the four of them left to steal a car. They rode together. Clemon was the driver. Defendant rode in the front. Slayton and Warrack rode in the back.

¶ 62           They went to an apartment complex on Tracy Drive (which intersects with Urban Street). Slayton used a tool resembling a hanger to unlock the door of a Buick while Warrack kept watch. Defendant and Clemon were parked about 40 feet away. Slayton got into the Buick, started it up, and drove it back to 1202 West Olive Street, with Warrack riding along. Defendant and Clemon followed in their vehicle. Slayton parked the Buick in a detached garage at the Olive Street address, and Warrack helped empty out the trunk. He did not recall if defendant actually helped empty out the trunk, but he testified, on direct examination, that defendant was present while the trunk was being emptied out. Warrack helped wipe down the Buick so as to remove any fingerprints.

¶ 63           Then, around 10:30 or 11 p.m., they returned to the kitchen and had some more drinks. Again, defendant asked his cousin, Damoni Clemon, if Warrack were honest or trustworthy. This time, Clemon turned to Warrack and asked him if he was ready to do whatever they were

preparing to do. Warrack answered yes.

¶ 64 They went down into the basement of 1202 West Olive Street. Warrack saw a naked African-American man, apparently stiff and dead, lying on the basement floor, wrapped in a white blanket with a flower design on it. Warrack recognized the dead man as Barry Lewis, whom he had seen in the past but whom he did not know personally. Slayton also was in the basement, looking nervous and paranoid, fidgeting and talking with his hands. Warrack attempted to leave; he turned around and headed back upstairs, but Damoni Clemon was waiting for him upstairs with a pistol. Clemon ordered Warrack to return to the basement and help or else he would lose his life.

¶ 65 So, Warrack went back down into the basement and helped carry Lewis's dead body up out of the basement, into the garage, and into the trunk of the stolen Buick. Warrack then went to the kitchen and fortified himself with another drink. Slayton drove away in the Buick, leaving Clemon, defendant, and Warrack in the house. Clemon then drove Warrack home.

¶ 66 b. Cross-Examination

¶ 67 (1) *The Question of When Warrack "Arrived" at Clemon's House*

¶ 68 On cross-examination, Warrack testified he remembered talking with a detective, Michael Johnson, in October 2005. Warrack was in custody at that time on burglary charges, and the interview was at Warrack's own request. Warrack admitted telling Johnson, in this interview, that he arrived at 1202 West Olive Street early in the day on March 4, 2005. This statement that he had made to Johnson was consistent with his trial testimony, Warrack explained, because he "arrived" at 1202 West Olive Street *twice* on March 4, 2005: once in the morning, when he dropped by to pick up some parts for his Chevrolet Caprice, and the second time around 6:30 or 7:30 p.m., when he joined the group drinking in the kitchen. When Warrack arrived the first time, he did not

go into the house, and he saw only one person outside: Slayton.

¶ 69                   (2) *The Question of When, and How Long, Defendant Was Present at Clemon's House During Warrack's Evening Visit*

¶ 70                   On direct examination, Warrack testified that defendant already was present at Clemon's house when Warrack arrived there at 6:30 or 7:30 p.m. on March 4, 2005, and that, later on in the evening, defendant helped carry Lewis's body out of the basement and into the trunk of the Buick. On cross-examination, however, defense counsel impeached Warrack with the statement he made to Johnson in October 2005. Defense counsel said to Warrack:

"Q. Mr. Warrack, I want to take you back to October of '05 when you were talking to Detective Johnson and to a point in your statement when you were telling him about wiping down the car, and you've already testified today that you did wipe down the car. Do you recall doing that?

A. Yes, sir.

Q. Okay. And Detective Johnson said to you, 'Are your hands covered or anything?' And did you tell him, 'No, no really. I had my jacket or hoodie-looking thing. I'—and here the tape is inaudible, 'but what—after that, that's when I went back to the house trying to figure out what the fuck was going on.'

Do you remember telling Detective Johnson that?

A. Yes, sir.

Q. His next question was, ['O]kay, is it still just you three[']?

And you answered, 'Yeah, then,' and here it's inaudible, 'cousin [(defendant)] was there, and he left.' Inaudible.

Did you tell Detective Johnson that?

A. Yes, sir.

\* \* \*

Q. \*\*\* When you told Detective Johnson that it was just you three cleaning out the trunk and then Diyez showed up, you meant that he hadn't been there earlier that day.

A. No, I didn't.

Q. Well, isn't that the first time in your interview with Detective Johnson that you ever mentioned Diyez Owens?

A. Yes, sir.

Q. And in fact you hadn't said that he was there at any point earlier than when you cleaned out the trunk?

A. No, sir.

Q. At what other time did you say he was there to Detective Johnson?

A. I believe I said that when we returned back from getting the vehicle. I also said he was there before we left to go get the vehicle.

Q. You said that to Detective Johnson?

A. Yes, sir.

Q. And you told Detective Johnson and it's your testimony

here today that, in any event, Diyez Owens left right after you cleaned out the trunk.

A. Yes, sir."

¶ 71 c. Redirect Examination

¶ 72 On redirect examination, Warrack testified that the only person he saw at 1202 West Olive Street in the morning was Slayton because Slayton was the only person outside. Warrack did not know if anyone was inside the house at that time.

¶ 73 d. Examination By the Trial Court

¶ 74 In response to questioning by the trial court, Warrack testified that, during the entire evening of March 4, 2005, no one else was present at 1202 West Olive Street other than Clemon, defendant, and Slayton (and Warrack, of course). He further testified that none of them ever said anything about Lewis or how he ended up dead in the basement.

¶ 75 14. *Richard Barkes*

¶ 76 a. Interview of Defendant

¶ 77 Richard Barkes was a Bloomington detective who had worked with Johnson in investigating the murder of Barry Lewis. In the course of the investigation, Barkes and Johnson interviewed defendant on September 7, 2005. He agreed to come to the police station and talk with them.

¶ 78 In the interview, defendant appeared to Barkes to be about 6 feet 2 inches tall and to weigh 250 pounds or more. He looked muscular and maybe a little flabby.

¶ 79 Defendant said he had known Barry Lewis for about a year and a half. He would see Lewis at 1202 West Olive Street, the residence of defendant's cousin, Damoni "Money" Clemon.

Lewis did odd jobs there in return for cash.

¶ 80 Defendant said he was "tied to both" 1202 West Olive Street and 802 West Oakland Avenue, where his aunt, Cassandra Owens, lived. His connection to 1202 West Olive Street was purely for purposes of "Section 8." He denied selling drugs—an activity he had given up after getting caught with a delivery.

¶ 81 Defendant knew Slayton, whom he called "Tim." But he adamantly denied speaking with Slayton about a March 11, 2005, arrest.

¶ 82 Defendant told the detectives that, on his birthday, March 4, 2005, he went to a party at the residence of Camilla Blaxton; that they then went to an establishment called "Bob's"; that they afterward returned to Blaxton's residence; and that, finally, around 4 a.m., they went to 802 West Oakland Avenue.

¶ 83 b. The Various Interviews of Slayton, as Recounted By Barkes

¶ 84 (1) *The Interview of March 11, 2005*

¶ 85 Barkes testified that March 11, 2005, was the date when he first talked with Slayton about Lewis's murder. This interview took place in the Bloomington police department. Slayton was under arrest because his fingerprint had been found in the stolen Buick (with Lewis's body in the trunk). Johnson also attended this interview.

¶ 86 Initially, in this interview, Slayton told the detectives he had not seen Lewis since the end of February 2005 and that he went to Chicago on March 5, 2005. Eventually, though, after the detectives revealed to him that his fingerprint had been found in the Buick, Slayton changed his story. He admitted he had been in the Buick and that he had seen Lewis—but he denied any knowledge of how Lewis was killed; he denied seeing anyone do anything to Lewis.

¶ 87            Instead, Slayton told the detectives, he was out walking, the night of March 4, 2005, when he ran into Lewis and bought some drugs from him. Slayton went his way, to consume the drugs, and when he ran out of drugs, he returned to Lewis to buy more. That was when he saw Lewis lying on the ground, shaking. Slayton left and then came back, and Lewis still was lying on the ground, on his left side, but this time, Lewis was naked. (According to photographs in the record, Lewis was lying on his left side, naked, in the trunk of the Buick.) Slayton thought that perhaps someone had tried to do something to Lewis sexually. Slayton left again, to find a car. He found a car that apparently already had been stolen, and he drove the car to where Lewis was lying, naked on the ground. He picked Lewis up off the ground, put him in the trunk of the car, and drove the car to a cemetery. (Livingston Street does in fact run alongside Park Hill Cemetery.)

¶ 88 (2) *The Interview of December 8, 2005*

¶ 89 The next time Barks talked with Slayton about Lewis's death was December 8, 2005. This interview occurred at Lawrenceville Correctional Center, and it was occasioned by a letter the State's Attorney received from Slayton the day before in which Slayton said he wanted to discuss Lewis's murder.

¶ 90 In this second interview, Slayton explained to Barkes that he had regained his religious convictions, that he was trying to reform his life, and that he therefore wanted to tell the truth about what had happened to Lewis.

¶ 91 Slayton told Barkes that, in the morning of March 4, 2005, Barry Lewis, Damoni Clemon, and he were at 1202 West Olive Street. Slayton was doing yard work and moving vehicles for Clemon, and Lewis was in the house, cleaning up dog feces. Around noon, Clemon drove away and then returned, dropping off defendant. Then Clemon drove away again. Defendant asked

Slayton who was in the house. Slayton answered that Lewis was in there. Defendant entered the house. Slayton finished his chores and then went into the house, after defendant. Once inside, Slayton yelled for defendant, and he went downstairs into the basement. In the basement, he saw Lewis's legs shaking. He advanced farther and saw that defendant had Lewis in a choke hold from behind. Something else might have been around Lewis's neck in addition to defendant's arm, but Slayton was not sure.

¶ 92 After witnessing defendant strangling Lewis, Slayton went back upstairs, and defendant followed him. Soon afterward, Clemon returned to the house and asked defendant what Slayton had done. Defendant replied that Slayton had done nothing. Slayton "was told" he would have to commit another crime since he had failed to participate in the murder of Lewis: Slayton was to murder Stacy Andrews because Andrews (who was male) might have fathered a child by Damoni Clemon's ex-wife.

¶ 93 When Slayton refused to murder Andrews, Clemon told him he would have to steal a car so that they could use the car to move Lewis's body. So, Slayton stole a car on March 4, 2005.

¶ 94 Defense counsel asked Barks:

"Q. \*\*\* Did [Slayton] tell you whether Carlos Warrack was there?

A. Later on that evening, yes.

Q. Did he tell you at what point in the proceedings Mr. Warrack arrived?

A. He never gave me a time.

Q. Did he tell you Mr. Warrack assisted in moving the body?

A. Yes."

¶ 95 (3) *The Interview of May 30, 2006*

¶ 96 Barks interviewed Slayton again on May 30, 2006. On this occasion, Slayton made a statement that was consistent with the statement he made on December 8, 2005, except he added a couple of things: (1) defendant also strangled Lewis with a belt for about 1 1/2 minutes; and (2) at defendant's command, Slayton did the same, pulling on the belt around Lewis's neck for about 1 1/2 minutes.

¶ 97 (4) *The Interview of December 12, 2006*

¶ 98 Barks next interviewed Slayton on December 12, 2006, and in this interview, Slayton reiterated many of the details he had divulged in the previous interview, but he added a few more details: he said that after strangling Lewis to death, "Diyez commented that this was a hell of a birthday present." Also, Slayton told Barks he did not know if, by pulling on the belt after defendant pulled on it, he actually caused Lewis's death; Slayton did not know who "took Barry's last breath away": he or defendant. In addition, Slayton said that Lewis lay on the basement floor for 8 to 12 hours before they picked him up and carried him into the trunk of the Buick.

¶ 99 15. *John Denton*

¶ 100 John Denton, M.D., is a coroner and a forensic pathologist. He testified he had reviewed materials relating to Barry Lewis's death and that, on June 1, 2010, he wrote a report on the basis of those materials. Specifically, in writing his report, he relied on Dr. Brian Mitchell's autopsy report, the autopsy photographs, the transcripts from the coroner's inquest, the coroner's file, the transcripts of Slayton's grand-jury testimony, the police reports, and the DVDs of the car.

¶ 101 Denton concluded that Lewis had died by strangulation, judging by the bruises and

abrasions on his neck, the congestion around his eyelids, the ruptured blood vessels in the whites of his eyes, and the bite marks on his protruding tongue.

¶ 102           The locations and appearance of the bruises and abrasions on Lewis's neck were consistent with Slayton's account of how Lewis had been strangled, according to Denton. There were no ligature marks or patterned impressions on Lewis's neck, no sharply defined bruises that would suggest Lewis had been strangled to death with a hard ligature, such as a belt or a rope. The ill-defined marks on the neck instead were suggestive of something wider, such as an arm; they were "most consistent with either a choke hold, like in the crook of the arm, or something called a bar hold where the front of the arm at the forearm will be across the trachea, or something very soft, like a soft belt or cloth-type ligature."

¶ 103           After 30 seconds of severe pressure on the neck from such a choke hold, the victim would lose consciousness. To cause irreversible brain damage and death, the choke hold had to be maintained another 3 to 4 1/2 minutes after the loss of consciousness.

¶ 104           According to Slayton's account, the choke hold was not the only trauma inflicted on Lewis's neck. Slayton alleged that after defendant administered the sleeper hold, defendant—and then Slayton as well—pulled a leather belt tight around Lewis's neck. And, indeed, Denton found evidence that, in addition to the choke hold, a ligature was used on Lewis, but because of the lack of any patterned impressions, Denton thought the ligature was something softer than a leather belt. From the abrasions and faint bruising on the back of Lewis's neck, Denton inferred that the ligature had been pulled vertically, with Lewis lying on his back, facing upward.

¶ 105           Denton explained:

"In this instance, [the pressure] appears to be vertical based on

the abrasion on the back of the neck and also the bleeding on the back of the neck and the bleeding on the front, so it forms almost like a circumferential ring, so there's bleeding on the back and bleeding on the front.

What's interesting about the bleeding on the back is a choke hold, which I demonstrated before with the crook of the arm, doesn't cause bleeding in the back of the neck, so that bleeding is inconsistent with a choke hold, but the front is very consistent with a choke hold.

The back is consistent with something soft that's going around the neck on the back."

¶ 106 Denton thought that Slayton's account "fit" with what was shown in the photographs from the autopsy. He testified: "The belt would account for the bruising on the back of the neck, and then the choke hold would account for the absence of findings on the front of the neck."

¶ 107 Also, the faintness of the bruises left by the belt suggested that Lewis was either dying or already dead when the belt was applied. The prosecutor asked Denton:

"Q. And the bruising, how would that impact as far as blood pumping being fainter? Explain that.

A. There's not a lot of bruising around the neck from the belt, so at that point, he's either—Mr. Lewis is either dying or he's already dead. He's one of those two things. It's not for certain.

Q. And that is due to the blood not pumping?

A. Right. As you pass into unconsciousness and death, your

blood pressure drops, there's less bleeding, and that's why you don't get really bruises after death. There's not a lot of blood pressure pumping through those broken blood vessels."

¶ 108 The prosecutor asked Denton what appeared to be "the primary cause of death between those two chokes." Denton answered:

"A. The primary cause of death would be the initial event that caused him to be unconscious or that the choke hold would be putting on the unconscious first and then the belt would follow.

The autopsy can't tell you whether he's already dead or not. It can tell you whether he's in the process of dying, so the main event would be the event that caused him to become unconscious and lead to that circumstance of dying, and then the belt would follow.

Q. And does it appear to you at that point it was past the point of no return?

A. That would be most consistent, yes, because there's not a lot of bruising on the back of the neck."

¶ 109 Denton suggested that the lack of any DNA or blood underneath Lewis's fingernails was consistent with a choke hold applied from behind because it would have been difficult for Lewis to grab his attacker in that position.

¶ 110 A cocaine metabolite, Denton noted, was found in Lewis's blood—evidence that Lewis used cocaine several hours before he died. Because the cocaine was already metabolized, or passed from his system, it did not affect his heart so as to contribute to his death.

¶ 111

16. *Michael Johnson*

¶ 112 Michael Johnson testified he was a Bloomington detective and that, on March 7, 2005, he was called to the sally port to help identify a body in the trunk of a car. "From the tattoos and general appearance, [Johnson] used [the police department's] in-house system to come up with a name, Barry Lewis." Curtis Lewis then positively identified the decedent as his brother.

¶ 113 It soon became evident that Lewis had been murdered, and Johnson became the lead detective in the murder investigation. After the discovery of Slayton's fingerprint in the Buick, no further leads were forthcoming, and the murder investigation stalled. The prosecutor asked Johnson:

"Q. The first week of December, 2005, what was the status into the investigation of the strangulation death of Barry Eugene Lewis[?]

A. The case was stagnant. We were exhausted in leads.

Q. Was there anybody you were talking to at that time additionally?

A. No.

Q. Is it fair to say it was inactive?

A. Yes.

Q. Now it was obviously a murder case, correct?

A. Yes, sir.

Q. It wasn't closed; is that true?

A. Yes, sir.

Q. How did it get reopened again?

A. I was informed that Mr. Slayton submitted a letter to the McLean County State's Attorney's Office.

Q. And then you and Detective Barkes went and did multiple follow-up interviews?

A. Yes, sir."

¶ 114 Slayton admitted involvement in Lewis's murder, and he "end[ed] up getting convicted on that." Johnson believed that Slayton received "15 years, 16 years" for the murder of Lewis.

¶ 115 Also, in the course of the interviews, Slayton confessed to a separate crime: "a September 2004 armed robbery known as the Circle K." The prosecutor asked Johnson:

"Q. Did he get convicted of [the armed robbery]?"

A. Yes, sir.

Q. What leads did Bloomington have at that time linking Tommy Slayton or evidence as far as any charging?

\* \* \*

A. To this particular incident, sir?

Q. Before he confessed to it.

A. None.

Q. Now these statements ended up involved in those convictions against him?

A. Yes, sir."

¶ 116 Slayton's statements about Lewis's murder led Johnson to seek out Carlos Warrack

and to speak with him. Johnson seemed to recall Warrack's telling him that defendant arrived at 1202 West Olive Street after the Buick was stolen and that defendant was not there beforehand.

¶ 117

*17. Tommy Slayton*

¶ 118 a. How Slayton Came To Be Acquainted With Damoni Clemon and Defendant

¶ 119 Tommy Slayton, age 43, testified that, from age 13 onward, he had been getting in trouble with the law and that his misconduct always was related to cocaine. He had supported his addiction by selling drugs.

¶ 120 In McLean County case No. 2002-CF-1431, he was convicted of selling crack cocaine, for which he was sentenced to three years' imprisonment. In April 2004 he was released from prison. He returned to Chicago, where he originally was from, and then, in May or June 2004, he moved to Bloomington. There he met Damoni Clemon and began selling crack cocaine for him while residing in his house at 1202 West Olive Street (Slayton testified he also resided on Gridley Street).

¶ 121 Defendant, whose nickname was "Devo," likewise sold crack cocaine for Clemon, according to Slayton's testimony. Because Slayton and defendant had many of the same customers, Slayton personally was present on more than one occasion in 2004 when defendant made sales of cocaine. He saw defendant collecting money both "for past drug debts" and "for drugs that were conveyed at the time." Also, Slayton was present on 10 to 20 occasions when defendant paid cash over to Damoni Clemon at various locations in Bloomington.

¶ 122 b. The Convictions That Slayton Incurred as a Result of the Discovery of His Fingerprint in the Stolen Buick

¶ 123 Because the police had found Slayton's fingerprint in the stolen Buick containing Lewis's dead body, the State charged Slayton with concealing a homicide and possession of a stolen motor vehicle. On June 6, 2005, Slayton pleaded guilty to those charges. He was sentenced to 4 1/2 years' imprisonment.

¶ 124 c. The Convictions That Slayton Incurred  
After His Confessions to Barkes and Johnson

¶ 125 In December 2005, when Slayton had one more year to serve of his 4 1/2-year prison sentence for concealment of a homicide and possession of a stolen motor vehicle, he wrote a letter to the State's Attorney. In this letter (People's exhibit No. 3), he said: "My name is Tommy Slayton and I was arrested on 3-10-05 for concealment of a homicide and possession of a stolen vehicle. Today I've changed my life, I've turn[ed] my life over to God. And I would like to tell you everything I know about the murder of Barry Lewis."

¶ 126 In response to this letter, two detectives, Barkes and Johnson, came to prison to talk with Slayton. They did several follow-up interviews of him as well. In these interviews, Slayton divulged to them not only his "participation" in Lewis's murder but also his participation in a September 2004 armed robbery, even though the State had not charged Slayton with either offense. (With regard to the murder of Lewis, we are putting "participation" in quotation marks because, on the record before us, it is unclear that Slayton actually helped murder Lewis. Slayton's testimony and the medical evidence raise a strong possibility that Lewis already was dead when Slayton pulled on the belt. By acting after someone else already has completed the murder, one cannot become legally accountable for the murder. See *People v. Modrowski*, 296 Ill. App. 3d 735, 742 (1998). Strangling

a corpse is not murder, not even on a theory of accountability.)

¶ 127 In December 2006, three days before Slayton was to be released from prison after serving his sentences for concealment of a homicide and possession of a stolen vehicle, the State charged him with armed robbery on the basis of his interviews with Barkes and Johnson. He was convicted of the armed robbery, for which he was sentenced to six years' imprisonment.

¶ 128 Later, in May 2009, also on the basis of his interviews with Barkes and Johnson, the State charged Slayton with the first degree murder of Lewis. Pursuant to a plea agreement with the State, in which Slayton agreed to testify truthfully in any proceedings against defendant or others relating to Lewis's death, Slayton was permitted to plead guilty to second-degree murder, for which he received an agreed-upon sentence of 15 years' imprisonment.

¶ 129 d. The Murder of Lewis and the Transportation of His Body

¶ 130 Slayton testified that, at 7 or 8 a.m. on March 4, 2005, he woke up at 1202 West Olive Street. He, Damoni Clemon, and Lewis had overnighted there: he and Clemon had slept in rooms on the main floor, and Lewis had slept in the basement. Slayton typically spent the night at the Olive Street address, but Lewis did so only infrequently. Slayton had known Lewis since 1995 only as a fellow crack-user. Lewis did odd jobs in return for cocaine.

¶ 131 Slayton arose, went outside, and began raking leaves and moving cars. Clemon owned quite a few cars, which Slayton worked on, and the cars had to be moved periodically, or else they would receive a parking ticket. Lewis was in the basement, cleaning up dog manure.

¶ 132 While Slayton was outside doing his chores, Clemon called him into the house, and the two of them sat down at the kitchen table and talked. Their conversation had nothing to do with Lewis. During their conversation, Lewis came upstairs from the basement, got something out of the

refrigerator, and returned to the basement. Clemon rose from the table, went outside, and drove away. Slayton resumed his outside chores.

¶ 133 Twenty or thirty minutes later, Clemon returned in his car, and defendant walked up to Slayton and asked him what he was doing. At the same time defendant approached Slayton, Clemon drove away again. Slayton replied to defendant that he was moving cars as he was supposed to do. Defendant asked him who was in the house. Slayton replied that Lewis was in there. Defendant went into the house.

¶ 134 When Slayton finished moving the cars, it was close to lunchtime, and he went into the house to fix himself something to eat. He went downstairs into the basement, intending to ask defendant and Lewis if they wanted him to fix them something as well. In the basement, Slayton looked to the left, toward a back room, and saw Lewis's legs kicking. Slayton drew closer and froze: Lewis was in a sitting position on the basement floor, with his legs stretched out in front of him, and defendant had him in a choke hold—a sleeper hold—from behind. Lewis's legs did not kick for long; soon he stopped moving at all, and his arms hung limp at his sides. Defendant had a strained expression on his face, as if he were lifting weights; he appeared to be applying a lot of pressure to Lewis's neck. He maintained this choke hold for two to four minutes, and then he let go of Lewis and moved away from him, whereupon Lewis fell back and his head hit the concrete floor.

¶ 135 Defendant stood up, and as he walked past Slayton, he asked him, "[Are] you okay? You all right? [Are you] cool?[']" Fearing that defendant might do to him what he had just done to Lewis, Slayton answered, "[Y]eah, I'm okay, I'm cool.[']" Because Lewis was bigger than defendant and Slayton was smaller than either of them, it seemed apparent to Slayton that defendant was physically capable of strangling him, too.

¶ 136 Defendant went over to a pile of clothing by the washer—his clothing—and picked up a braided leather belt belonging to him. He tied the belt into a knot, the kind of knot one would make when tying a shoe. He walked back to Lewis, who was lying on his back, limp and motionless; he slipped the loop over Lewis's head and around his neck; and then he placed his foot on the belt buckle and pulled the other end of the belt upward with both hands. He held the belt tight in this manner for a minute or two. Then he said to Slayton, "[Y]ou know what you got to do.[]"

¶ 137 When Slayton drew near, Lewis was not moving, and he did not appear to be breathing. Still fearing for his life, Slayton took the end of the belt from defendant and, standing on the buckle, pulled on the belt for a minute or two, as defendant had done. Then Slayton took the belt off Lewis's neck and left it in the basement. Defendant went upstairs, and Slayton followed.

¶ 138 Slayton and defendant went to the dining room and started drinking. Until then, Slayton had not consumed any alcohol that day. Defendant said nothing to Slayton as to why he had strangled Lewis, and Slayton never found out the reason (there was an "unwritten rule" not to ask). Instead, defendant told Slayton, "[N]ext time, you know, you got, you know, to do something, too,[]"—a remark that puzzled Slayton, considering that he, too, had pulled on the belt, as defendant had directed. Defendant also remarked that "this was a hell of a birthday present."

¶ 139 After Slayton and defendant had drunk brandy for several hours, Damoni Clemon returned. By then, it was dark outside. Clemon asked defendant, "[W]ell, what did she do[?]" By "she," Slayton understood Clemon to be referring derisively to him, Slayton. "[T]hat bitch froze,[]" defendant replied.

¶ 140 Slayton went down into the basement, undressed Lewis, and put his clothes in a garbage bag, which, eventually, he threw into a dumpster near the Salvation Army. (Slayton recalled

telling Barkes—inaccurately—that defendant undressed Lewis.)

¶ 141 Later that evening, Carlos Warrack showed up at 1202 West Olive Street. Then Clemon called one of his cousins, Stacy Andrews, to come over to the house.

¶ 142 Also Clemon's girlfriend, Monica Poole, showed up. She became hysterical when she saw the body in the basement; Slayton heard her crying and talking with Clemon. Then she left.

¶ 143 Around midnight, Slayton and Warrack went out to steal a car. Initially, they were in Andrews's car, and Clemon and defendant followed them in Clemon's white Cadillac. (Apparently, Andrews did not come along on the car-stealing errand, because when the prosecutor asked Slayton to clarify "who all went out around midnight" to steal a car, Slayton answered: "Carlos, myself, Damoni and Diyez.") The four of them stopped on the east side of town, at 109 Urban Street, where a Buick was parked. Because the Buick had rotary windows, Slayton was able to pull down the driver's-side window with his hands. He was not wearing gloves, and consequently his fingerprint ended up on the inside of the driver's-side window. Using a screwdriver, he broke into the steering column, and he started the Buick. Warrack had to climb in through a window of the Buick because the door would not open on the passenger side.

¶ 144 Slayton drove the Buick to 1202 West Olive Street and backed it into the garage. He began wiping down the car, to remove his fingerprints. Defendant interrupted him in this task, ordering him to help clean out the trunk and assuring him that defendant would finish wiping off the fingerprints. Slayton and Warrack cleaned out the trunk. Then Slayton, Warrack, and defendant went down into the basement. Warrack looked shocked and scared when he saw Lewis's body.

¶ 145 The three of them—Warrack, defendant, and Slayton—carried Lewis's body up from the basement, in a blanket, and laid it in the trunk of the Buick, parked in the garage. Slayton drove

the Buick to a place near a cemetery and left it there. No one rode with Slayton on this trip in the Buick. Defendant, Clemon, and Warrack followed in Clemon's white Cadillac, driven by Clemon. After parking the Buick by the cemetery, Slayton climbed into the backseat of the Cadillac. Clemon dropped Warrack off on the west side of town. He dropped defendant off at the residence of Clemon's mother—Slayton believed her name was Cassandra. Then Clemon and Slayton went to Clemon's other residence, on Gridley Street. Slayton went upstairs to a bedroom and fell asleep.

¶ 146 He was awakened the next morning (Saturday, March 5, 2005) by defendant. Clemon also was in the bedroom. Defendant told Slayton, "[T]he next time you see me doing something, you better join in or there's going to be two bodies in the car.[']" Defendant said nothing else. He just sat there in the bedroom for 10 to 20 minutes, gazing at Slayton. Then defendant stood up and left.

¶ 147 d. The Telephone Conversation of March 11, 2005

¶ 148 Slayton testified that, on March 11, 2005, after he was arrested for concealment of a homicide and possession of a stolen motor vehicle, he called Cassandra's house just to let someone know where he was and what was going on. He did not know that defendant would be there. Someone put defendant on the line. Slayton recognized his voice, having spoken with him many times before, including on the telephone.

¶ 149 A CD recording (People's exhibit No. 5) and transcript of the telephone conversation (People's exhibit C) are in the record. In the transcript, Slayton tells defendant: "[S]tolen car is my charge and moving a moving a [*sic*] body in a homicide." Defendant asks him:

"DIYEZ OWENS: They say they say [*sic*] you stole a car?"

TOMMY SLAYTON: My fingerprints was in the car.

DIYEZ OWENS: They say you moved the car?

TOMMY SLAYTON: Yeah.

DIYEZ OWENS: Ain't that about a bitch."

Nevertheless, Slayton tells defendant that "it's cool for now"—"[a]s long as it ain't no death"; Slayton can "go with the two to ten [years' imprisonment]."

¶ 150 Then defendant tells Slayton:

"DIYEZ OWENS: Better not put me in that shit, Joe. You know what I'm saying?

TOMMY SLAYTON: Man, I mean. I'm it and that's all.

DIYEZ OWENS: Ain't no putting me in that shit.

TOMMY SLAYTON: I'm it and that's all.

DIYEZ OWENS: That's what Phyllis going to talk about when they was asking about Debo [*sic*]. Ain't no Debo shit.

TOMMY SLAYTON: Yeah they had her down, they had all three of us down here at the same time.

DIYEZ OWENS: None of that shit (inaudible) I'm in Chestnut nigger. I'm following up on my motherfucking recovery. That's what I'm doing. Other than that, I don't know shit about no other shit and I ain't in that shit.

TOMMY SLAYTON: I know.

DIYEZ OWENS: On the real. (pause) That's fucked up man.

TOMMY SLAYTON: But as far as I know, I'm it and that's

all."

¶ 151

## B. Defendant's Case

¶ 152

### 1. *Defendant*

¶ 153

Defendant, age 35, testified he was an inmate in Stateville Correctional Center, where he was serving a sentence for armed robbery, an offense with which he was charged in 2006. Four other people participated in this armed robbery: Johnny Bankston, Damoni Clemon, Tommy Slayton, and Dorothy Tucker. In addition, defendant had previous felony convictions of aggravated battery and unlawful delivery of a controlled substance.

¶ 154

Defendant turned 30 on Friday, March 4, 2005, and according to his testimony, he was 6 feet 1 inch tall and weighed 180 pounds at that time. He awoke that morning at 802 West Oakland Avenue, where he lived at that time. This was his aunt's residence, and she was receiving housing subsidies under section 8 of the United State Housing Act of 1937 (42 U.S.C. § 8 (2000)). Because recipients of housing assistance were forbidden to have convicted felons residing with them, defendant used 1202 West Olive Street as his mailing address. When defendant was released from prison in 2004, James Clemon, Phyllis Johnson, and Damoni Clemon lived at the Olive Street address.

¶ 155

After defendant woke up at 802 West Oakland Avenue on Friday, March 4, 2005, the morning of his 30th birthday, his cousin Rodney Chappell came by and picked him up. Before leaving with Chappell around 11 a.m. or noon, defendant saw Lavarsia Ware at 802 West Oakland Avenue.

¶ 156

Defendant and Chappell went to West Side Liquors, bought some alcohol, and then rode around. They ended up at the residence of Chappell's father.

¶ 157 At the Chappell residence, defendant got in a vehicle with someone named Stacy, a "friend or cousin of the family." Defendant was unsure of Stacy's last name, so defense counsel gave him a hint:

"Q. Do you know whether his last name is Andrews?

A. Yeah, I think that's it."

¶ 158 Andrews and defendant first went to Sunset Inn, where a couple of Andrews's friends were staying, and then they went to 1202 West Olive Street, arriving there probably around 2 or 3 p.m. When Andrews and defendant arrived at the Olive Street house, only Damoni Clemon, Monica Poole, and Tommy Slayton were there. Defendant did not see Carlos Warrack there. Defense counsel asked defendant:

"Q. Did you see Barry Lewis there?

A. No.

Q. Did you know who Barry Lewis was at that time?

A. No."

¶ 159 People began gathering at 1202 West Olive Street to celebrate defendant's birthday. He testified:

"A. People started showing up, but I'm not for sure who all showed up.

Q. Okay. Who did you talk to while you were there?

A. I talked to me [*sic*] and Tommy, Money was talking, Stacy and Monica was in the kitchen smoking, and we was all like in the patio.

Q. Did anybody take notice of your birthday?

A. Yeah, it was all about my birthday that day."

Monica Poole gave him \$20 as a birthday gift.

¶ 160 Andrews and defendant stayed at 1202 West Olive Street for an hour or so, until 4 or 5 p.m., and then Andrews took defendant to the east side of town, to Camilla Blaxton's house. Defendant remained at Blaxton's house until the next day.

¶ 161 Defense counsel asked defendant:

"Q. Okay, what was going on there [(at Blaxton's house)]?

A. They was partying. We was celebrating my birthday.

When I came up, they was already partying. I just joined the party basically.

Q. Do you think it was for your birthday or just coincidental?

A. It was just coincidental."

¶ 162 In the party at Blaxton's house, defendant saw the following persons:

"A. It was me, Mimi, Phyllis, Jessica, Marcus, Shenita, her stepfather. That's it.

Q. Okay. Is Shenita, Shenita Gregory?

A. Yes.

Q. And Phyllis is Phyllis Johnson?

A. Yes, and Roosevelt Williams."

¶ 163 Around 11 p.m., "Mimi, Camilla Blaxton, Roosevelt Williams, Shenita," and defendant went to a club. They left the club at 2 a.m., whereupon defendant returned to Blaxton's

house.

¶ 164 At some point, Camilla Blaxton and Phyllis Johnson brought Jessica Piper to Blaxton's house. Around 4 or 5 a.m., defendant left Blaxton's house, and Piper was with him. The two of them went to 802 West Oakland Avenue, and defendant went to bed. At 9 a.m., defendant walked Piper home, and he returned to 802 West Oakland Avenue.

¶ 165 Immediately before his birthday, defendant spent some time at Chestnut Health Systems. Ade McDaniel was his roommate there, but he never requested that McDaniel be his roommate, and he never had any conversation with McDaniel about Lewis.

¶ 166 In answer to a question by the trial court, defendant testified he had been in Chestnut twice. The first period was from January 21 to February 18, 2005. The second period was for 32 days, ending on March 3, 2005, the day before his birthday.

¶ 167 On cross-examination, the prosecutor asked defendant:

"Q. And you just told the Judge, you didn't know who Barry Lewis was?

A. I didn't tell the Judge I didn't know who Barry Lewis was."

¶ 168 The trial court asked defendant:

"Q. Okay. What I'm trying to figure out is why, if these three gentlemen [(Slayton, McDaniel, and Warrack)] are trying to help themselves or get a better deal or less time or whatever in their own cases, why would they do that by implicating you?

A. I actually haven't, so I don't know why they choose to do what they did. I haven't had no altercation with none of them at all."

Defendant testified he did not even know Warrack on the street.

¶ 169

*2. Jerry O'Brien*

¶ 170 Jerry O'Brien was in prison for bank robbery. He had numerous felony convictions.

¶ 171 O'Brien testified that, in 2005 or 2006, while he was imprisoned with Slayton in Lawrenceville Correctional Center, Slayton talked with him about the murder of Barry Lewis.

Defense counsel asked O'Brien:

"Q. Okay, and what did he tell you about the killing of Barry Lewis[?]

A. He just said he did it. They was trying to fight—he was trying to fight the case. He just took a plea for concealing a homicide, and he axed [*sic*] me if they was going to bring him back for the murder, and I said, if you got convicted for concealing a homicide, they might do [*sic*] pick you up for the murder, you know.

So he was like I ain't taking it, I ain't taking the time. He was going to push it on Lamoni [*sic*] Owens there, because him and Owens had a falling out about some money and some drugs then, I guess. Owens had socked him up with something. They had a fight or something."

¶ 172

Defense counsel asked O'Brien:

"Q. So to be clear, Tommy told you that he was going to try to make it appear as though Damoni and Diyez Owens were responsible for the murder?

A. Yes.

\* \* \*

Q. Did Tommy Slayton tell you who killed Barry?

A. He said they did it by strangulation. Him and Barry was fighting in the car, and he say they got to tussling, and he strangled him to death, you know what I'm saying?

Q. Okay, and who was present when that occurred, did he say?

A. He said DD was present, but I don't know no DD, you know what I'm saying? But when Officer Johnson, they showed me a picture of Owens. That's not DD. I don't know him by DD. I only know him by Owens."

¶ 173

On cross-examination, the prosecutor asked O'Brien:

"Q. \*\*\* [Y]ou just told the Judge that Tommy Slayton told you 'they did it by strangulation.' That's what you said, right [?]

A. Okay, yeah.

Q. Who is they? Who is the second person?

A. He said someone named DD. That what he said. Someone named DD.

Q. Isn't it true that on January 15, 2008, that you told the two detectives that, 'Tommy replied, he just held Barry down and someone strangled Barry to death.'

Did you say that?

\* \* \*

A. I may have said that, that's what I'm saying.

\* \* \*

Q. And it's your testimony that you didn't say that it was D?

A. No."

¶ 174 In his own testimony in the State's case in chief, Slayton denied ever speaking with O'Brien about Lewis's death.

¶ 175 *3. Jessica Piper*

¶ 176 Jessica Piper, age 26, testified that she knew defendant only by his nickname, "D," and that she remembered being with him on his birthday on March 4, 2005. She saw him at 8 or 9 p.m. at "Millie's house." Piper did not know Millie's last name, but Millie was the woman who used to braid Piper's hair, and her house was, Piper thought, "on the corner of Jackson and McLean Street." "[A] whole bunch of people" were there at the party.

¶ 177 Defense counsel asked:

"Q. What was the purpose of the gathering?

A. Um, his birthday, I guess.

Q. How did you hear about it?

A. Um, Millie told me to come over for a party and stuff,  
because it was somebody's birthday."

¶ 178 Piper was with defendant from 9 or 10 p.m. on his birthday until late morning the next day. She had sex with him that night. That was the first and last time she had sex with him.

¶ 179 Defense counsel asked her:

"Q. \*\*\* Were you anywhere else with him?

A. Yes.

Q. Where was that?

A. This great big white house on Oakland and Allin Street, I believe so."

¶ 180 In the late morning of March 5, 2005, Piper went home. She probably walked. She could not remember if defendant walked her home.

¶ 181 On cross-examination, Piper testified she remembered being interviewed by Detective Barkes in October 2005 and she remembered telling him she went to a birthday party on March 3 or 4. When Barkes asked her how she knew it was defendant's birthday on that date, she answered that she had made a note on her calendar. When Barkes requested to see the calendar, Piper admitted to him she had lied about noting defendant's birthday on her calendar.

¶ 182 The prosecutor also asked Piper:

"Q. You went to this party, but you never went to any nightclub called Bob's or any other bar that night; did you?

A. No."

¶ 183 *4. Joseph Matthews*

¶ 184 Joseph Matthews had six felony convictions, including three convictions of obstruction of justice. He presently was in the custody of the Illinois Department of Corrections for manufacture or delivery of a controlled substance.

¶ 185 Matthews testified that, sometime in 2007, when he and Tommy Slayton were in

Pontiac Correctional Center together, he and Slayton had a conversation in which Matthews brought up the subject of Barry Lewis—"Boo Man," as Matthews called him. According to Matthews, Slayton told him that Slayton and Lewis were getting high together when Lewis began shaking and his eyes rolled back into his head. Slayton himself was high at the time, and he was scared and did not know what to do. So, he wrapped Lewis's body in a carpet, threw the body into the trunk of a car, drove the car someplace, and abandoned the car.

¶ 186 In his own testimony in the State's case in chief, Slayton denied ever speaking with Matthews about Lewis's death.

¶ 187 *5. Lavarsia Ware*

¶ 188 Lavarsia Ware, age 30, is defendant's cousin and Damoni Clemon's brother. She testified that, on defendant's birthday, March 4, 2005, she saw defendant in the morning at her mother's house, 802 West Oakland Avenue. She, her mother, and defendant were together in the house for two or three hours, and around 11 a.m., Ware left.

¶ 189 Ware saw defendant later that day at the residence of her sister, Camilla Blaxton, who was having a get-together to celebrate defendant's birthday. Damoni Clemon, whom Ware estimated to be 5 feet 4 inches tall, was at the party. She also saw a lot of people there whom she did not know. She spent the rest of the day at Blaxton's house, and because she became intoxicated, she stayed overnight there, too. Before falling asleep, she saw defendant in Blaxton's house. At some point in time—Ware did not know when—defendant left. When she awoke at 7 or 8 a.m. on March 5, 2005, and went to her mother's house, she saw him there.

¶ 190 C. The State's Case in Rebuttal

¶ 191 *1. Matthew Dick*

¶ 192 On March 9, 2005, in the course of his investigation of Lewis's murder, Matthew Dick encountered the following persons: Jesse Owens, defendant, Damoni Clemon, and two other men who came out onto the front porch. Defendant was the biggest of the bunch, at 6 feet 2 inches and approximately 230 pounds. He had a stocky, muscular build. Clemon, by contrast, was about 5 feet 5 inches tall and weighed 140 or 145 pounds.

¶ 193 Slayton was taller than Clemon and perhaps also a little heavier than Clemon because of his greater height. Even so, Slayton was "pretty thin."

¶ 194 *2. Todd McClusky*

¶ 195 Todd McClusky is a Bloomington detective. He testified he had known Tommy Slayton for years. On March 11, 2005, he brought Slayton to the police station to be interviewed. He estimated Slayton to be 5 feet 8 inches or 5 feet 9 inches tall and to weigh 170 or 175 pounds. Slayton was "fairly out of shape." His build was consistent with that of "a crackhead on the streets."

¶ 196 *3. Richard Barkes*

¶ 197 On January 15, 2009, Barkes and Johnson interviewed Jerry O'Brien, who was in custody at the time. The prosecutor asked Barkes:

"Q. And did Jerry O'Brien tell you what Tommy Slayton said  
as far as what happened to Boo Lewis?

A. Yes.

Q. What did he say?

A. Tommy—Jerry informed me during the interview that  
Tommy had conversation with him and told him dude by the name of  
D or DT choked Barry Lewis."

¶ 198

## II. ANALYSIS

¶ 199 A. Our Standard When Reviewing the Trial Court's Assessment of Credibility

¶ 200 Defendant argues that the State's witnesses are not believable. It is true, as defendant says, that the trial court's assessment of a witness's credibility in a bench trial is "not conclusive." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). In scrutinizing the trial court's assessments of credibility, however, we should not retry the defendant or substitute our own assessments of credibility. *Id.* at 279. Instead, we should ask whether a finder of fact could reasonably believe the witness's statement (*People v. Smith*, 185 Ill. 2d 532, 545 (1999)) or whether, alternatively, "the only reasonable conclusion from the record is that [the] particular statement remains subject to question" (*Cunningham*, 212 Ill. 2d at 280).

¶ 201 Even if, in the minds of all reasonable persons (who are thinking reasonably), a particular statement by a witness would be subject to question, it does not necessarily follow, *ipso facto*, that everything else the witness said on the stand must be subject to question—even if the questionable part of the witness's testimony was a lie. *Id.* at 283. Again, we apply the criterion of reasonableness, asking whether, in light of the record, a trier of fact could reasonably believe the rest of the witness's testimony, despite the parts of the testimony that have to be regarded as questionable. *Id.*

¶ 202 B. The Reasons Why, in Defendant's View,  
Slayton's Testimony Must Be Regarded as Questionable

¶ 203 1. *Quid Pro Quo*

¶ 204 According to defendant, one of the reasons why Slayton's testimony against him must be regarded as subject to question is that Slayton agreed to testify in return for two benefits: (1)

being allowed to plead guilty to second degree murder (instead of first degree murder) and (2) receiving a sentence of 15 years' imprisonment for second degree murder. Thus, according to defendant, Slayton "had a motive to [falsely] implicate [him] in order to save himself from a lengthy prison term."

¶ 205 This theory of defendant's, that Slayton falsely implicated him in order to save himself from a more severe punishment for the murder of Lewis, is difficult to square with the facts in the record. The main difficulty with this theory is that Slayton had not yet been charged with Lewis's murder when he first implicated defendant. The State did not charge him with the first degree murder of Lewis until May 2009: 2 years and 5 months *after* Slayton implicated defendant. In December 2005, when Slayton had one more year to serve of his prison sentence for concealment of a homicide and possession of a stolen motor vehicle, he wrote the letter to the State's Attorney, and in an interview with Barkes and Johnson the next day, he told them that defendant had strangled Lewis to death. As far as we can see from the record, no strings were attached to this statement, and no strings were attached to Slayton's subsequent statement that he, too, pulled on the belt.

¶ 206 Granted, at trial, Slayton admitted the possibility that the State still could have charged him with Lewis's murder in December 2005, six months after his convictions of concealing a homicide and possessing a stolen motor vehicle. But it is unclear how Slayton could have been under the impression that murder charges against him were imminent or likely at that point in time. As far as we can see from the record, he had no objective reason to suppose that the murder investigation was closing in on him. The discovery of his fingerprint in the Buick apparently was the last lead the police had, and the State already had charged him and tried him on the basis of that evidence. Six months later, in December 2005, the murder investigation had come to a dead end,

according to Johnson's testimony.

¶ 207 In addition to the stagnation of the murder investigation, another problem with defendant's theory of lies for leniency is that, from Slayton's professed religious conversion in December 2005 onward, he made gratuitous admissions against his penal interest. Defendant argues that "Slayton repeatedly lied to police about his own role in the murder while alleging [defendant's] culpability. [Citation to record.] It was not until December 2006 that Slayton admitted to detectives that by strangling Barry Lewis with a belt, he possibly killed him," defendant says. Even so, this observation overlooks the fact that Slayton did not have to admit anything at any time, either with regard to defendant or himself. If his accusation of defendant were false, it is unclear why he would implicate himself as well, even reluctantly. He could have implicated defendant without adding the information that he, too, had pulled on the belt—unless his motive were to tell the whole truth, albeit in a piecemeal manner.

¶ 208 Likewise, from an objective point of view and, for all that appears, from Slayton's subjective point of view as well, the police had no reason to suspect Slayton of the armed robbery. In his brief, defendant asserts that "[Slayton's] motivation [in confessing to the armed robbery] was purely self-serving and is reflected in his six-year sentence for the crime compared to [defendant's] ten-year sentence." That assertion is problematic, however, because if Slayton's motive were self-serving, he would have kept quiet about the armed robbery, and then he would have received no sentence at all for that offense. He did not have to say a word about the armed robbery, just as he did not have to say a word about the murder—unless his motive were to unburden his conscience. The record does not appear to reveal any constraining circumstances closing in on him at the time.

¶ 209

## *2. Previous Lies*

¶ 210 Defendant points out that, initially, Slayton lied to the police about what had happened to Lewis, "concoct[ing] a ridiculous story about happening across Lewis's body in an alley, finding a stolen car, and placing Lewis's mysteriously unclothed body inside it." We agree that this story was ridiculous. Obviously, Slayton's powers of invention are not formidable.

¶ 211 Just because a witness lied, a rational trier of fact would not necessarily have to disbelieve everything the witness subsequently says. *Cunningham*, 212 Ill. 2d at 283. Slayton's final version of what happened dovetails nicely with the medical evidence, according to Denton. And, arguably, another reason to believe the final version is that, evidently, was no external pressure on Slayton to implicate anyone in Lewis's murder, let alone himself; the pressure appears to be solely internal. To get out of a tight spot, a defendant might falsely say, "It was he, not I." But Slayton was not in a tight spot, and he said something very different: he said, "It was both he and I." Defendant argues: "Slayton had every reason to place the blame for the crime anywhere than upon himself. And he did." Ultimately, that is not true. Slayton confessed to pulling on the belt, and, as a consequence, his sojourn in prison was lengthened by another 15 years.

¶ 212 *3. Discrepancies as to Time*

¶ 213 Defendant argues that, with respect to the time when Clemon allegedly left 1202 West Olive Street and returned with defendant, "Slayton's testimony at trial continued to deviate from various versions of events he told detectives." Defendant represents that "[o]riginally, Slayton told detectives Clemon left the home at noon to retrieve [defendant]." On the contrary, that is not what Slayton told the detectives. Instead, according to Barks's testimony, Slayton told them that, "*sometime around noon*, Damoni Clemon left, was gone a short period of time, and arrived back at the residence with Diyez Owens." (Emphasis added.) Likewise, at trial, Slayton testified that it

could have been 9, 10, or 11 a.m. when Clemon left to pick up defendant. Slayton testified: "I'm not sure what time it was. I didn't have a watch on. I'm speculating about the time." See *People v. Nitz*, 143 Ill. 2d 82, 104 (1991) ("[T]he weaknesses [that the] defendant alleges can be dismissed. \*\*\* [T]he witnesses stated that their time estimates were approximations only \*\*\*.").

¶ 214           4. *The Conflict Between Slayton's Testimony and Defendant's Alibi*

¶ 215           Defendant contends that Slayton's testimony "was insufficient to establish [defendant] was present at Clemon's home that morning considering [defendant's] alibi that he was at his home until he went out with his cousin, Rodney Chappell, at 11:00 a.m. or 12:00 p.m." The pages of the record that defendant cites, in this context, are his own testimony that Chappell picked him up at 802 West Oakland Avenue "probably around 11:00 or 12:00." The trial court did not have to believe defendant. See *People v. Singleton*, 367 Ill. App. 3d 182, 189 (2006); *People v. Marshall*, 9 Ill. App. 3d 1035, 1038 (1973).

¶ 216           C. Reasons Why McDaniel's and Warrack's Testimony Must  
Be Regarded as Questionable, in Defendant's View

¶ 217           Defendant dismisses McDaniel's testimony as derived solely from the Pantagraph article of March 9, 2005. But McDaniel told the police, and he testified at trial, that defendant had told him that Clemon wanted Lewis to be beaten up and perhaps even killed. The Pantagraph article said nothing about Clemon—and Swanson's distinctive-looking comforter, which was in the Buick when it was stolen, was found in Clemon's basement, the very place where, according to Slayton's testimony, Lewis was murdered.

¶ 218           Defendant criticizes Warrack's testimony as riddled with inconsistencies. One of these purported inconsistencies arguably is no inconsistency at all. At trial, Warrack testified he

"arrived" at 1202 West Olive Street in the evening on March 4, 2005, whereas he had told the police he arrived there in the morning. In his testimony, however, Warrack clarified that he "arrived" at the Olive Street address *twice* on March 4, 2005: once in the morning, to pick up some parts for his car, and the second time in the evening.

¶ 219 Nevertheless, defendant is correct that Warrack's testimony is muddled and inconsistent on the question of precisely when defendant was at the Olive Street address the evening of March 4, 2005. It is difficult to make out, from Warrack's testimony, when defendant arrived and when he left—and how many times he arrived and left. Perhaps the hard liquor that Warrack drank in the kitchen confused his memory.

¶ 220 Defendant also argues that "[b]oth McDaniel and Warrack were motivated to testify by bond reductions and the belief they would obtain leniency in the charges they were currently facing." McDaniel testified he was awaiting sentencing for delivery and possession of cannabis after having pleaded guilty to that offense and that, according to a plea agreement, the only consideration he was to receive for his cooperation in the present case was a reduction in his bond. Although no concession as to his sentence was promised him in return for his testimony in the present case, he anticipated (although he did not contractually expect) that his cooperation would be taken into account in his own sentencing hearing—which, in fact, had been delayed so as to await his testimony in the present case.

¶ 221 As for Warrack, he testified he had gotten in trouble a couple of days ago for driving under the influence (DUI) and driving with a suspended license. He denied, however, that anyone had made any promises to him. Nevertheless, it would be reasonable to suppose that his cooperation in the present case would be mentioned in his sentencing hearing if he ended up being convicted of

DUI and driving with a suspended license.

¶ 222 Because McDaniel and Warrack arguably were testifying in the hope of obtaining leniency, the trial court could have regarded their testimony as subject to question. Even so, the court could have believed Slayton's testimony. As defendant admits in his brief, the testimony of a single witness can support a conviction if the testimony is positive and credible. *People v. Parker*, 234 Ill. App. 3d 273, 279-80 (1992). We have discussed why the trial court reasonably could have found Slayton's testimony to be credible.

¶ 223 D. The Telephone Conversation That Slayton  
Had With Defendant, Recorded By the Jail

¶ 224 On March 11, 2005, Slayton called Cassandra Owen's house from the county jail and spoke with defendant on the telephone. This call was recorded. In the recording, Slayton tells defendant he has been charged with a "[s]tolen car" and "moving a body in a homicide." Defendant responds:

"DIYEZ OWENS: They say they say [*sic*] you stole a car?

TOMMY SLAYTON: My fingerprints was in the car.

DIYEZ OWENS: They say you moved the car?

TOMMY SLAYTON: Yeah."

This conversation is significant in part because of what defendant does *not* say. He does not ask what would seem the most obvious, most pressing question that someone would ask who is out of the loop, namely, "What body?" Instead, he appears to know immediately what Slayton is talking about.

¶ 225 For another indication that defendant knows what Slayton is talking about, consider

defendant's question "They say you moved the car?" But Slayton had said nothing about moving the car. Of course, to steal a car, one normally would have to move it, but when defendant asks Slayton, "They say you moved the car?" it is pretty clear he is not talking about the first-mentioned offense of "[s]tolen car"; rather, he is talking about the second-mentioned offense of "moving a body in a homicide." How did defendant know that Slayton *moved the body by moving the car*? In his testimony at trial, defendant never intimated that he and Slayton previously discussed this matter (before the telephone conversation) or that anyone else previously gave defendant this information. Granted, the Pantagraph article was published on March 9, 2005, two days before the telephone conversation, but it is unclear how defendant would have known that the car in this telephone conversation was the same car that was discussed in the newspaper article—unless he were involved. One could infer that the reason why defendant immediately knew what Slayton was talking about was that defendant was a participant, as Slayton testified.

¶ 226 Arguably, this inference grows stronger as the telephone conversation proceeds, especially when defendant abruptly tells Slayton, "Better not put me in that shit, Joe." Why would defendant think, just out of the blue, that Slayton would "put [him] in that shit"? A reasonable answer is, Because defendant *is* "in that shit."

¶ 227 Slayton assures defendant:

"TOMMY SLAYTON: Man, I mean. I'm it and that's all.

DIYEZ OWENS: Ain't no putting me in that shit.

TOMMY SLAYTON: I'm it and that's all.

DIYEZ OWENS: That's what Phyllis going to talk about  
when they was asking about Debo. Ain't no Debo shit."

The only "Phyllis" that appears to be mentioned in the record is Phyllis Johnson, who, defendant testified, was one of the residents of 1202 West Olive Street at the time defendant was released from prison. In context, "Debo" appears to be a variation of "Devo," one of the nicknames of defendant. Why would defendant be so anxious that Johnson would connect him, "Debo," to this stolen Buick with the body in the trunk? A reasonable answer is, Because he *is* in fact connected and because Johnson, a resident of 1202 West Olive Street, in which the murder occurred, can attest to that fact.

¶ 228 Over and over again, Slayton tries to reassure defendant by telling him, "I'm it and that's all." He tells defendant, "But as far as I know, I'm it and that's all," meaning that, as far as Slayton knows, the police have evidence only against him. But the clear subtext is: "You and I know that you're 'it,' too."

¶ 229 E. The Cases to Which Defendant Draws an Analogy

¶ 230 Defendant argues that the present case is like *People v. Smith*, 185 Ill. 2d 532 (1999); *People v. Hister*, 60 Ill. 2d 567 (1975); and *People v. Bellecourt*, 126 Ill. App. 2d 365 (1970), in which, because of major inconsistencies in the testimony of the State's witnesses, the courts found the evidence to be insufficient, as a matter of law, to support the convictions. Comparing these cases to the present case is like comparing an apple and a pear to an orange. For purposes of the sufficiency of the evidence, each case is *sui generis* because each case has its own unique facts. The cases that defendant cites do not stand for the proposition that any inconsistency at all is fatal to a conviction. Rather, the question is one of degree. As the supreme court has explained:

"[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a

reasonable doubt. In conducting this inquiry, the reviewing court must not retry the defendant. [Citation.] The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness. [Citation.] Testimony may be found insufficient under the *Jackson* standard [(*Jackson v. Virginia*, 443 U.S. 307, 318 (1979))], but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279-80.

In the present case, we do not find the inconsistencies in the State's evidence to be so extensive or so significant as to compel the conclusion that it would be impossible for a rational trier of fact to find the elements of first degree murder to be proved beyond a reasonable doubt.

¶ 231

### III. CONCLUSION

¶ 232

For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment we award the State \$50 against defendant as costs of this appeal.

¶ 233

Affirmed.