

No. 1-14-1187

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 9467
)	
MARK MURRELL,)	Honorable
)	Geary W. Kull,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for second degree murder is affirmed, where the evidence presented at trial, which included testimony from witnesses who recanted their prior inconsistent statements, was sufficient to establish defendant's guilt beyond a reasonable doubt.

¶ 2 After a bench trial, defendant-appellant, Mark Murrell, was convicted of second degree murder and sentenced to a term of 17 years' imprisonment. On appeal, defendant contends that the evidence presented at trial was insufficient to establish his guilt beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with multiple counts of first degree murder. Each count generally alleged that, on or about January 21, 2007, defendant shot and killed the victim, Terrell Hoggro. A bench trial was held in late 2013.

¶ 5 At trial, Gabriel Webb testified that he had previously been affiliated with a gang in Maywood, Illinois, had multiple prior felony convictions, and was—at the time of trial—incarcerated and serving a sentence for aggravated battery with a firearm. Mr. Webb testified that while he did know the victim in this matter, he did not know defendant. He also denied ever seeing defendant and the victim together on the day of the murder, and denied ever seeing defendant with a gun or seeing defendant shoot the victim.

¶ 6 He did acknowledge that, on January 29, 2007, he was arrested for selling crack cocaine in front of a liquor store at the intersection of 19th Avenue and St. Charles Road in Maywood, and as a result a drug charge was pending against him. Mr. Webb testified that he was in custody at a police station in Maywood on that date, when he met with a number of detectives—including Detective Charles Porter—and an assistant state's attorney (ASA). Mr. Webb acknowledged that on that date he signed every page of a four-page, typewritten statement with respect to the murder of the victim, but at trial he either denied he had provided most of the information contained therein or indicated that he could not recall if he had done so. Rather, Mr. Webb maintained that the Maywood police detectives promised that if he provided the ASA with the information contained in that typewritten statement, the drug charge would be dropped. Mr. Webb testified that he did as instructed, and that the drug charge against him was "thrown out."

¶ 7 Mr. Webb's typewritten statement was entered into evidence at trial, after the parties stipulated that ASA Robert Sparano would testify that he took the statement from Mr. Webb on the night of January 29, 2007. The statement, which indicates it was provided to ASA Sparano

and in the presence of Maywood police detectives Charles Porter and Joe Peck, was subject to the trial court's ruling that any third-party admissions contained in the statement would not be considered as substantive evidence.

¶ 8 In the written statement, Mr. Webb stated that around 5 p.m. on January 21, 2007, he was selling drugs with another man he knew as "Kemo," in front of a liquor store at the intersection of 19th Avenue and St. Charles Road in Maywood. He then observed defendant—whom Mr. Webb identified in a picture attached to the statement—drive up in a white Dodge Charger rental car. The victim was in the front passenger seat, and two other men were in the back seat, including a man Mr. Webb knew as "Rue Nuts."¹ Defendant exited the vehicle, and Mr. Webb overheard defendant tell Kemo that they were going to "take care of" the "shorty in the car," which Mr. Webb explained meant that they were going to shoot the victim. Defendant and the other men then drove away.

¶ 9 Sometime between 9 and 10 p.m. that same day, while Mr. Webb and Kemo were still selling drugs near the liquor store, Mr. Webb overheard defendant call Kemo's cell phone and say "watch the news, we took care of that. You owe me a bottle." Mr. Webb then tried to call the victim on his cell phone, but the victim did not answer. At 3 a.m. on January 23, 2007, Mr. Webb ran into defendant, who was carrying a "9mm or .45 caliber automatic" and was looking for another man known as "Big Mo." Defendant had heard that Big Mo had "told on" defendant for shooting the victim. Mr. Webb also indicated that he understood that defendant and the victim may have had "a problem between them" because the victim was sleeping with defendant's girlfriend, "Shawn," and that Kemo and the victim may have had a problem because "the four's, a street gang, were into it with each other shooting back and forth."

¹ Other evidence introduced at trial indicates that this person was Tyrone Carter.

¶ 10 Finally, Mr. Webb's statement indicates that it was given to ASA Sparano freely, and without threat or promise from either the police or the ASA. He also stated "[e]verything in this statement is true." The typewritten statement includes a number of handwritten corrections made by Mr. Webb, including corrections to his age, with whom he lived with at the time, the brand of phone used by Kemo, and the date Mr. Webb "ran into" defendant after the shooting. At trial Mr. Webb acknowledged that he made these corrections and that he was not told to make them. As to those corrections, Mr. Webb testified that he wanted to be "accurate" in order to "get out of jail."

¶ 11 Tyrone Carter testified at trial that he was then incarcerated and had multiple prior felony convictions. Defendant was Mr. Carter's lifelong friend, someone Mr. Carter described as being "like a brother."

¶ 12 With respect to the events of January 21, 2007, Mr. Carter testified that while he was on house arrest in Harvey, Illinois, he had removed his monitor and was in a house in Maywood when he spoke with defendant around 6:30 p.m. Thereafter, defendant picked Mr. Carter up, in either an Altima or Maxima, which was driven by Sam "Ese."² They then picked up defendant's girlfriend, Vonsheaa Haynes, and the victim. The group's activities that evening included purchasing liquor at a liquor store and driving around drinking and listening to music. They ultimately returned to Ms. Haynes' house, and defendant and Ms. Haynes went inside while Mr. Carter stayed on the porch drinking liquor. After 30 to 40 minutes, Mr. Carter left.

¶ 13 At trial, Mr. Carter specifically denied seeing defendant with a gun on January 21, 2007, and denied seeing him shoot the victim. He acknowledged that he had previously provided a different version of events in a written statement to an ASA and in testimony before a grand jury.

² Other evidence introduced at trial indicates that this person was Sam Gillespie.

Mr. Carter testified that the information contained in his prior statement and testimony was false. With respect thereto, Mr. Carter testified that on February 21, 2007, he was picked up from the Maywood courthouse by Detective Porter and taken to the Maywood police station. It was only after he was subjected to 9 or 10 hours of physical abuse—including being punched in the face and struck in the neck and chest with a phone book by Detective Porter—and subjected to threats of incarceration that Mr. Carter finally agreed to provide a written statement implicating defendant in the victim's murder.

¶ 14 Detective Porter asked Mr. Carter to memorize pertinent information to provide to an ASA, and Detective Porter tape-recorded only Mr. Carter's version of the fabricated story and not the detective's own prodding and instructions. Mr. Carter testified that he ultimately signed a pre-written statement that was presented to him by Detective Porter and an ASA. The next day, Mr. Carter testified before a grand jury. Mr. Carter testified at trial that, while he told both the ASA and the grand jury that his statements and testimony were voluntarily given and truthful, he only provided this version of events because he feared that he would be charged with the victim's murder if he refused.

¶ 15 Mr. Carter's written statement was introduced into evidence at trial as a prior inconsistent statement. Therein, Mr. Carter indicated that defendant called him around 6:30 p.m. on January 21, 2007. Defendant then picked Mr. Carter up in a white Taurus, and the two purchased some liquor and drove around Maywood drinking and smoking marijuana. Mr. Carter then left to sell some marijuana. When defendant later picked Mr. Carter up again, the victim was also in the car. After purchasing more liquor, all three men drove to Ms. Haynes' home so that Mr. Carter could sell some marijuana to Ms. Haynes' brother.

¶ 16 Ms. Haynes joined the men in the car, taking the front passenger seat, even though Mr. Carter and the victim weren't "cool with" that as the two of them just wanted to "party" and Mr. Carter wanted to conduct his "business." The group then proceeded to purchase more liquor, smoke marijuana, listen to music, and drive around as Mr. Carter sold more marijuana. Ultimately, Mr. Carter and the victim grew tired of the fact that "all Mark wanted to do was talk to his girl," with the victim complaining that defendant "was always doing s***t like this." Defendant complained that Mr. Carter and the victim were being "bi***s," and the verbal argument between defendant and the victim escalated.

¶ 17 Shortly thereafter, defendant stopped the car on the south side of Maywood and he and the victim exited the vehicle. The two engaged in a physical altercation, wrestling each other to the ground. Mr. Carter then observed defendant place his arm over the victim as they walked into a driveway, just as Mr. Carter and Ms. Haynes were complaining about "how stupid Mark acts when he gets drunk." Mr. Carter then heard a gunshot coming from the direction of the driveway, and turned in time to see defendant firing another shot toward someone on the ground. When defendant returned to the car, Mr. Carter saw him place a gun in his coat pocket as defendant drove away. Mr. Carter told defendant that he was not "in on this," and defendant soon let Mr. Carter out of the car and drove away with Ms. Haynes. Mr. Carter's written statement contains no indication that Mr. Gillespie was present at the time of the shooting.

¶ 18 The State also introduced Mr. Carter's February 22, 2007, grand jury testimony into evidence. In that testimony, Mr. Carter described a version of events surrounding the victim's murder that was consistent with the one contained in his written statement, adding that he did not want Ms. Haynes in the car because she was "nosey." Mr. Carter also explicitly testified before

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the grand jury that both his written statement and his testimony were truthful, voluntary, and given without any threat or promise.

¶ 19 Vonsheaa Haynes testified that, at the time of trial, she was on probation for a prior conviction for identity theft. Ms. Haynes testified that while she had previously dated defendant "off and on," they were just friends at the time of the shooting. With respect to January 21, 2007, the version of events that Ms. Haynes provided at trial essentially matched the version provided at trial by Mr. Carter. In addition, at trial she also denied ever seeing defendant with a gun or seeing him shoot the victim on the night of the shooting. While she acknowledged that she had previously provided a different version of events in a written statement to an ASA and in testimony before a grand jury, Ms. Haynes testified at trial that the information contained in both her prior statement and testimony was false. She explained that she only made such a false statement and provided that false testimony because of threats she received from the police.

¶ 20 Specifically, Ms. Haynes testified that a few days after the shooting, she was interviewed by the police and told them that she had no relevant information to share. Then, on March 30, 2007, she was arrested at gunpoint by Maywood police Sergeant Theodore Yancy, handcuffed, and taken to the Maywood police station. There, she was interviewed by Detectives Porter and Willis about the shooting. Ms. Haynes testified that she repeatedly told them that she had no relevant information, and that she was not present when the victim was shot.

¶ 21 Nevertheless, the police kept her at the station overnight and continued to question her throughout the next day. They also threatened to charge her with the murder of the victim, going so far as to fingerprint her and fill out a form charging her with first degree murder. Ms. Haynes testified that she had a daughter who lived with an aunt, and the detectives told her to cooperate "if you plan on seeing your daughter again." The detectives also told her that she was going to

"bond court" if she did not cooperate. Ultimately, Ms. Haynes provided the detectives with a false story—one matching the story provided in Mr. Carter's written statement—simply so she could "go home." She, thereafter, provided a false written statement to an ASA. Ms. Haynes testified that she was not released until she provided similarly false testimony to a grand jury, having been detained at the Maywood police station in the interim.

¶ 22 While Ms. Haynes denied being aware at the time that a portion of her conversations with the detectives was videotaped, such a video was introduced at trial and Ms. Haynes testified that she recalled that portion of the video "a little bit." The video was played at trial and entered into evidence without objection, and consisted of two DVD discs. A timestamp visible on the first disc indicates that the recording began at 4:10 p.m. on March 31, 2007. Ms. Haynes was not handcuffed or physically restrained in the video, which shows her sitting at a table and facing Detective Porter, Detective Willis and the camera.

¶ 23 For the first 35 minutes of the recording, Ms. Haynes repeatedly denies being a witness to the shooting, reiterating a version of events consistent with her testimony at trial. She also repeatedly indicates that she does not want her name connected with the shooting in any way. The detectives indicate that they sympathized with that feeling in light of what may or may not happen on the "street." However, they also tell her she has to tell the truth if she is going to avoid going to jail or "bond court," and that providing defendant with a false alibi is against the law. Ms. Haynes continued to deny having any information, while also stating that while she never lied, she has "never told the whole story." She then describes hearing defendant tell Mr. Carter on the phone that defendant "cleaned up his mess" and tells the detectives her understanding that Mr. Carter was then in possession of the "dirty gun."

¶ 24 Detective Porter then informs Ms. Haynes that her story is inconsistent with other information that they have received. He then shows Ms. Haynes the written statement provided by Mr. Carter, and the two read substantial portions of that statement before Detective Porter puts the statement away. Ms. Haynes initially continues to deny any knowledge of the shooting, and states that Mr. Carter's written statement was a "lie." The detectives then tell her that she is going to jail and that she is "digging her own grave." Detective Porter specifically tells Ms. Haynes to "stop" and "tell the truth" before—at 5:06 p.m. in the video—Ms. Haynes admits that Mr. Carter's "story is the truth." From 5:06 to 5:08 p.m. in the video, Ms. Haynes proceeds to provide a brief rendition of events consistent with Mr. Carter's statement. The detectives then ask her to tell them the whole story from the beginning, and offer Ms. Haynes a cigarette before the recording on the first disc ends at 5:10 p.m.

¶ 25 The second disc begins with a timestamp of 5:11 p.m., and shows Ms. Haynes smoking a cigarette. Detective Willis asks Ms. Haynes to "walk us through that whole day" and instructs her "don't leave out nothing." She then provided a version of events largely consistent with Mr. Carter's statement and grand jury testimony, excluding any information regarding the basis for defendant's argument with the victim but adding details about what she said to Mr. Carter before and after the shooting. This included an extended description of how afraid and upset she was after the shooting, and how Mr. Carter implored Ms. Haynes to be "quiet" and not say anything to defendant. She did, however, deviate from Mr. Carter's version in one important respect. According to Ms. Haynes' statements in the video, Mr. Gillespie was in the front passenger seat of the car at the time of the shooting. Ms. Haynes believed that he was high on some type of "pill" at the time, because he never said anything. At 5:20 p.m. in the video, Ms. Haynes

reiterates that it was defendant that returned to the car after the second gunshot. The video then abruptly jumps ahead to 5:31 p.m.

¶ 26 At that point in time, Ms. Haynes is no longer discussing the shooting. Instead, she is describing seeing defendant's coat hanging in a closet. She then reiterates that Mr. Gillespie was in the car at the time of the shooting. The detectives tell Ms. Haynes that she will have to talk to an ASA, and ask her to tell the truth. Ms. Haynes agrees to do so, and Detective Willis leaves the room. Ms. Haynes continues to converse with Detective Porter, indicating that she is involved in a custody case with respect to her daughter and fears that "this right here" is going to "kill her case."

¶ 27 Ms. Haynes' March 31, 2007, written statement was also entered into evidence at trial. The statement indicates it was taken at 7:55 p.m. on that date, and the version of events contained therein was largely consistent with Mr. Carter's statement and grand jury testimony. While Ms. Haynes' statement did not contain any information regarding the basis of the argument between defendant and the victim—other than describing them as "tweaking" which she defined as having a "petty argument" and engaging in "foolish behavior"—Ms. Haynes confirmed that the two men were calling each other "bi***s" before they began fighting. She also confirmed that she and Mr. Carter were commenting on how "stupid Mark gets when he is drinking and tweaking" just prior to hearing the first gunshot. Just as in the case of Mr. Carter's statement and grand jury testimony, Ms. Haynes' written statement did not indicate that Mr. Gillespie was present at the time of the shooting. Ms. Haynes signed every page of the written statement.

¶ 28 The State also introduced Ms. Haynes' April 2, 2007, grand jury testimony into evidence. In that testimony, she described a version of events surrounding the victim's murder that was

consistent with the one contained in her written statement. She also testified before the grand jury that both her written statement and her testimony were truthful, voluntary, and given without any threat or promise. Finally, Ms. Haynes testified at trial that after she provided her written statement to the ASA, she never saw that statement or Mr. Carter's statement again. She testified before the grand jury "from memory."

¶ 29 ASA Jamie Santini testified that he arrived at the Maywood police station around 9 p.m. on February 21, 2007, to speak with Mr. Carter, who was a witness to the victim's murder. ASA Santini first met with Detective Porter and Sergeant Theodore Yancy, who told the ASA what he could "expect to hear from Mr. Carter." ASA Santini never asked and was never told whether or not Mr. Carter was under arrest. Because ASA Santini did not believe Mr. Carter to be a suspect, he did not provide Mr. Carter with any *Miranda* warnings.

¶ 30 ASA Santini described Mr. Carter as being cooperative and eager to be helpful during the course of their conversation, which took place in an office at the police station. Mr. Carter did not appear to be under duress, was not physically constrained, did not appear to have any swelling or marks on his head or neck, and made no complaint of mistreatment. At one point, the detectives left the room, and Mr. Carter privately confirmed to ASA Santini that he was telling the truth and "nobody had promised him anything or threatened him in any way."

¶ 31 Mr. Carter agreed to memorialize his statement in writing, the detectives reentered the room, and—in a question-and-answer format—Mr. Carter again provided his statement while ASA Santini wrote it down. All present then signed the statement. ASA Santini denied that he presented Mr. Carter with a pre-drafted statement to sign, seeing any other documents that summarized the events on the night of the murder, seeing a tape recorder, making or observing any threats to Mr. Carter, or observing anyone strike Mr. Carter. Finally, ASA Santini confirmed

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that the handwritten statement described above was the same one he took from Mr. Carter on February 21, 2007.

¶ 32 Sergeant Theodore Yancy testified that he worked for the Maywood police department, and was present when both Mr. Carter and Ms. Haynes provided their written statements.

¶ 33 With respect to Mr. Carter, Sergeant Yancy testified he did not participate in every police interview on February 21, 2007. Rather, he spoke with Mr. Carter two times on that date at the Maywood police station, once with Detective Porter and once again with Detective Porter and ASA Santini. While he was present, Sergeant Yancy never made any threats to Mr. Carter and never observed anyone else—including Detective Porter—threaten or strike Mr. Carter. Mr. Carter did not exhibit any bruises, marks or swelling around his head or neck. There was no tape recorder present, as the department did not even have one available. Mr. Carter, Sergeant Yancy, Detective Porter, and ASA Santini were all present as Mr. Carter's statement was being written, and Sergeant Yancy specifically denied that the statement was written in a separate room and presented to Mr. Carter for his signature. Sergeant Yancy never heard Mr. Carter provide a separate version of events that differed from the one contained in his written statement, and Mr. Carter actually provided the police new information on that date. Specifically, he informed the police who was present when the victim was shot.

¶ 34 With respect to Ms. Haynes, Sergeant Yancy was present when she provided her written statement to ASA Nick Tziavaras around 8 p.m. on March 31, 2007. The statement was written in his presence, and Sergeant Yancy had no knowledge that Ms. Haynes was ever provided with a summary of relevant facts by the police or a "cheat sheet to memorize." Sergeant Yancy acknowledged that others had previously spoken with Ms. Haynes on that date, specifically noting Detective Porter and "now Chief Willis." Sergeant Yancy was not present for those

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conversations. For his part, Sergeant Yancy never threatened Ms. Haynes with jail if she did not provide a statement and did not observe her threatened in anyway by anyone else.

¶ 35 There was a video camera set up on a tripod in the room where Ms. Haynes provided her statement. Sergeant Yancy was unaware who had set it up and whether or not a video of the interview was taken. He had not seen the video previously introduced into evidence and, therefore, could not explain any time gap. Sergeant Yancy did say that if he had been asked to view the video, he could possibly have explained such a time gap.

¶ 36 Finally, Sergeant Yancy testified that he drove Ms. Haynes to testify before the grand jury two days later, picking her up from and dropping her back off at a home in Aurora. He denied reviewing the statement with Ms. Haynes prior to her grand jury testimony.

¶ 37 Detective Charles Porter testified that he was the lead investigator for the Maywood police department with respect to the death of the victim. He received his assignment around 9:30 p.m. on January 21, 2007, when he immediately responded to a report of a shooting in the 2000 block of South 11th Avenue in Maywood. The man who was shot was the victim, who was subsequently pronounced dead at the hospital. Detective Porter began treating this as a homicide investigation.

¶ 38 On January 29, 2007, he was made aware that Mr. Webb was at the Cook County Sheriff's office in Maywood and had information about the victim's murder. Detective Porter interviewed Mr. Webb there, and was present when Mr. Webb provided a written statement to ASA Sparano. Detective Porter denied having any knowledge as to why Mr. Webb was at the sheriff's office, or whether or not any charges were then pending against him.

¶ 39 On February 21, 2007, Detective Porter had the opportunity to interview Mr. Carter at the Maywood police station. Detective Porter testified that he did not know how Mr. Carter came to

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be at the police station, but he did acknowledge placing "wanted posters" up for Mr. Carter because he was a "person of interest" with respect to the victim's murder. While he might have been "detained" and was not free to leave, Detective Porter maintained that Mr. Carter was not under arrest at the time of the interview. Detective Porter testified that he was present, along with Sergeant Yancy, when Mr. Carter's statement to ASA Santini was written. After Mr. Carter provided that statement, Detective Porter was interested in talking with defendant and Ms. Haynes.

¶ 40 Detective Porter had the opportunity to speak with Ms. Haynes at the Maywood police station in March of 2007. At trial, Detective Porter was repeatedly inconsistent with respect to whether Ms. Haynes was brought in on March 29 or March 30, 2007, and whether the videotaped statement occurred on March 30 or 31, 2007. Detective Porter did consistently indicate that it was he and Detective Willis that brought Ms. Haynes to the police station originally, and that it was he and Detective Willis that interviewed Ms. Haynes in the video. He denied that Ms. Haynes ever spent a night at the police station at that time, indicating that Ms. Haynes was returned home and brought back to the police station between the videotaped and written statements by Sergeant Yancy.

¶ 41 With respect to the video, Detective Porter testified that the video camera was set up inside the room. Detective Porter could not explain the time gap in the videotaped statement other than to explain "I'm dealing with mainly old equipment at the Maywood Police Department." Detective Porter denied ever threatening Ms. Haynes with murder charges or telling her she was going to have to appear in bond court, although he acknowledged that he may have mentioned the prospect of jail time to her.

¶ 42 Lastly, Detective Porter acknowledged that his written reports in the matter included no entries after February 9, 2007.

¶ 43 Finally, the State introduced forensic evidence that the victim died of multiple gunshot wounds, and that the manner of death was homicide. An autopsy report specifically noted two "through and through" gunshot wounds in the victim's neck. In addition, two shell casings fired from an automatic handgun were recovered from the scene of the murder, near a significant amount of blood and footprints leading away from that location.

¶ 44 At the conclusion of the State's case, defendant's motion for a directed verdict of not guilty was denied. Defendant elected not to testify, and defendant's evidence consisted entirely of a number of stipulations. These included a stipulation that, if called at trial, another Maywood police detective would testify that Mr. Carter was arrested by Maywood police at 10:45 a.m. on February 21, 2007, and was released at 4:10 p.m. on February 22, 2007.

¶ 45 At the conclusion of the bench trial, the trial court continued the matter to allow it an opportunity to review the evidence again, particularly the video of Ms. Haynes' statement. On the next court date, the trial court began by noting that the video of Ms. Haynes' statement, as well as the prior written statements and grand jury testimony of Ms. Haynes and Mr. Carter, were to be considered as substantive evidence. The trial court went on to find that:

"[A]most all of the witnesses in this case, maybe with the exception of the State's Attorney who actually did testify[,] were unreliable on a regular[,] consistent basis. And were I forced to make a decision on this case based on simply the testimony of the witnesses[,] inclusive of the police officers, whose testimony was fraught with inconsistencies, perhaps being the best way I can put that, my ruling would have—my ruling might have been different. But I did have the opportunity to observe Voshea[a]

Haynes in her natural habitat, for lack of a better phrase, in police custody, where she was coerced. There is no question that she's coerced. There's no question that the police are forcing her to make a statement that they believe to be true. And that video becomes the lynchpin for everything that takes place. For at some point in almost an hour and some minutes Miss Haynes indicates that it is the Tyrone Carter statement that is true."

¶ 46 However, after further noting that the video does show one of the detectives reading a portion of Mr. Carter's statement to Ms. Haynes, the trial court noted that "he doesn't read it all to her verbatim." Ultimately, in light of Ms. Haynes' conduct during the course of the video and the overall "lack of feeding information to her," the trial court concluded that it did not observe "the continual preparation she would need in order to give relatively an uncontradicted statement to the State's Attorney and testify in front of the Grand Jury under oath."

¶ 47 The trial court, thus, concluded that the defendant did in fact shoot and kill the victim, although "he did so acting under an unreasonable belief that he was acting in self-defense." In support of the latter conclusion, the trial court noted that "[t]here is evidence of argument, evidence of physical altercation, no evidence of where the gun comes from in the first particular case, whether or not Mr. Hoggro brought the gun to the party or Mr. Murrell did." Defendant was, therefore, found guilty of second degree murder.

¶ 48 Defendant's motion for a new trial was denied, but only after the trial court took yet another opportunity to consider the evidence and view the video before it ruled. In denying the motion, the trial court stated:

"I find that the [videotaped] statement is not the product of being told what to say, as [Ms. Haynes] would like us to believe, and the defense would like us to believe, and Mr.

Carter would like to have us believe, but the product of what she actually viewed and observed.

It, therefore, becomes the product or the basis for her statement to the State's attorney, which I don't believe was in any way prepared for her by anyone nor was it the product of someone who had her read it as she gave it to the State's attorney. And, further, her testimony to the grand jury, which was an opportunity for Ms. Haynes to say the things that she said in court here, but she did not, and said and continued to stay with the story that I believe beyond a reasonable doubt is the story basically of what took place on that date."

¶ 49 Defendant was ultimately sentenced to a term of 17 years' imprisonment, and defendant's motion to reconsider his sentence was denied. During the course of those proceedings, the trial court reiterated his belief that defendant's guilt was proven beyond a reasonable doubt. The trial court specifically stated "I believe that basically because of that video. And I looked at the video over and over and over again. And I really can't come to too many other conclusions." Defendant has now appealed.

¶ 50

II. ANALYSIS

¶ 51 On appeal, defendant solely challenges the sufficiency of the evidence supporting his conviction.

¶ 52 When presented with such a challenge, it is not the function of this court to retry defendant; rather, we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact's findings are entitled to great weight, given that it is in the

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best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, a reviewing court will not substitute its judgment for that of a trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so unreasonable, improbable, or unsatisfactory that it leaves a reasonable doubt regarding the defendant's guilt. *Wheeler*, 226 Ill. 2d at 115.

¶ 53 Despite these well recognized standards, on appeal defendant contends that the trial court found Ms. Haynes' videotaped statement to be the "lynchpin" of the State's case and, therefore, we should "review that aspect of the State's case *de novo*, not in a light most favorable to the prosecution." (Emphasis in original.) In support of this argument defendant cites to *People v. Hughes*, 2013 IL App (1st) 110237, *aff'd in part, rev'd in part* 2015 IL 117242; *People v. Shaw*, 2015 IL App (1st) 123157; and *People v. Dixon*, 2015 IL App (1st) 133303.

¶ 54 However, while the court in *Hughes* applied a *de novo* standard to its review of video evidence, it did so in the context of determining whether a videotaped *confession* recorded therein was involuntary and should, therefore, be suppressed, a question which is ordinarily reviewed *de novo*. *Hughes*, 2013 IL App (1st) 110237, ¶¶ 51, 66. And, while the court in *Shaw* recognized that a trial court does not occupy a position superior to an appellate court in evaluating evidence that is not live testimony, it did not apply a *de novo* standard to the video evidence at issue in that case. *Shaw*, 2015 IL App (1st) 123157, ¶ 29. Rather, the court simply chose to give "less deference" to the trial court's determinations of fact in the context of applying the standard reasonable doubt analysis outlined above. *Id.*

¶ 55 Finally, while court in *Dixon* espoused a general rule that a trial court's "findings based on nontestimonial evidence (exhibits, like surveillance videos, admitted into evidence) are not

entitled to any deference" (*Dixon*, 2015 IL App (1st) 133303, ¶ 20), it only applied that rule after it specifically concluded that the trial court's factual finding was based *solely* on the nontestimonial evidence presented at trial (*id.*, ¶ 34). That is not the situation presented here. While the trial court obviously placed great emphasis on the videotaped statement, its overall credibility determinations and its ultimate finding of guilt was clearly based upon *all* of the evidence presented at trial, including his observations of the witnesses.

¶ 56 In sum, we do not find defendant's authority to support his contention that we should conduct a *de novo* review of the videotape separately from our review of all the evidence presented below.³

¶ 57 Defendant was found guilty under count 1 of the indictment, While that count alleged that defendant had committed first degree murder in violation of section 9-1(a)(1) of the Criminal Code of 1961 (Code) (720 ILCS 5/9-1(a)(1) (West 2008)), defendant was ultimately convicted of second degree murder.

¶ 58 First degree murder is defined, in relevant part, as follows:

"(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another."

720 ILCS 5/9-1 (West 2008).

¶ 59 In turn, section 9-2 of the Criminal Code provides:

³ We do note that all of the members of the panel have carefully reviewed the videotaped statement in the course of deciding this appeal.

"(a) A person commits the offense of second degree murder when he commits the offense of first degree murder as defined in paragraphs (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:

(1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or

(2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his belief is unreasonable.

(b) Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

(c) When a defendant is on trial for first degree murder and evidence of either of the mitigating factors defined in subsection (a) of this Section has been presented, the burden of proof is on the defendant to prove either mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of first degree murder and, when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principles stated in Article 7 of this Code." 720 ILCS 5/9-2 (West 2008).

¶ 60 The circumstances "that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code" referred to in section 9-2(a)(2) include the notion that:

"(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2008).

¶ 61 Finally, much of the State's evidence consisted of the prior inconsistent statements of witnesses who recanted those statements at trial. These statements were entered into evidence, without objection, pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963, which provides in relevant part:

"In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

- (a) the statement is inconsistent with his testimony at the hearing or trial, and
- (b) the witness is subject to cross-examination concerning the statement, and
- (c) the statement--

- (1) was made under oath at a trial, hearing, or other proceeding, or

- (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

- (A) the statement is proved to have been written or signed by the witness, or

- (B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the

admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, or

(C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." 725 ILCS 5/115-10.1 (West 2012).

"Under this provision, prior inconsistent statements are admissible as substantive evidence as long as the statutory requirements have been met." *People v. Bannister*, 378 Ill. App. 3d 19, 38 (2007).

¶ 62 At trial, the State presented evidence—*via* the prior statements and grand jury testimony of both Ms. Haynes and Mr. Carter, and the video of Ms. Haynes' statement—that defendant and the victim engaged in a verbal argument in the car before the two men exited the car and engaged in a physical confrontation. Both Ms. Haynes and Mr. Carter also indicated that they then heard a gunshot coming from the direction of defendant and the victim, and they both then looked in that direction and observed defendant fire a second shot toward a body lying on the ground. Defendant then returned to the car with a gun in his hand, before defendant placed the gun in his pocket. These prior statements were properly admitted, without objection, pursuant to section 115-10.1 and were, therefore, to be considered as substantive evidence at trial. *Id.*

¶ 63 It is generally understood that "a positive identification by a *single* eyewitness who had ample opportunity to observe is sufficient to support a conviction." (Emphasis added.) *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). Here, the State presented evidence that two eyewitnesses saw defendant and the victim engaged in an argument and physical altercation before defendant twice shot the victim. In finding defendant guilty of second degree murder, the trial court concluded that this evidence was reliable and that it established that defendant shot

and killed the victim while "acting under an unreasonable belief that he was acting in self-defense." This evidence was *alone* sufficient to support defendant's conviction, as—viewing the evidence in the light most favorable to the State—a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *Evans*, 209 Ill. 2d at 209.

¶ 64 Nor would a contrary determination be mandated by defendant's contention that his conviction cannot stand because it is based, in whole or in significant part, upon the prior inconsistent statements of witnesses who recanted those prior statements at trial. "Generally, a witness's recantation of his or her prior testimony is viewed as inherently unreliable." *People v. Jones*, 2012 IL App (1st) 093180, ¶ 63. Furthermore, defendant does not dispute that these prior inconsistent statements were properly admitted as substantive evidence at trial (725 ILCS 5/115-10.1 (West 2012)), or that this evidence was to be treated the same as direct testimony (*People v. McCarter*, 2011 IL App (1st) 092864, ¶ 23).

¶ 65 Moreover, "this court has held that there are no 'suspect categories' of properly admitted evidence." *People v. Craig*, 334 Ill. App. 3d 426, 439 (2002) (quoting *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998)). As such, "[a] conviction, supported by a substantively admitted prior inconsistent statement, may be upheld even though a witness recants on the stand the prior inconsistent statement." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 23. As many cases have previously recognized, substantively admitted previous inconsistent statements are alone sufficient to prove a defendant's guilt beyond a reasonable doubt. *People v. Armstrong*, 2013 IL App (3d) 110388, ¶¶ 23-25; *Craig*, 334 Ill. App. 3d at 438; *People v. Morrow*, 303 Ill. App. 3d 671, 677 (1999).

¶ 66 We also reject defendant's argument that his conviction must be overturned because the prior inconsistent statements were not corroborated by physical or other evidence. "[W]here a

jury or trial court has convicted a defendant on the basis of a recanted prior inconsistent statement, the question for the reviewing court is not whether any evidence existed to corroborate that statement. [Citation.] Rather, the only inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *People v. Zizzo*, 301 Ill. App. 3d 481, 489 (1998) (citing *Curtis*, 296 Ill. App. 3d at 999); *Armstrong*, 2013 IL App (3d) 110388, ¶¶ 26 (same). Thus, it is well recognized that "recanted prior inconsistent statements can be sufficient to support a conviction, even without corroborating evidence." *People v. Thomas*, 354 Ill. App. 3d 868, 878 (2004) (collecting cases).

¶ 67 Even if corroborating evidence were required, we reject defendant's contention that no such evidence was presented at trial. Both Ms. Haynes and Mr. Carter indicated in their prior statements and grand jury testimony that they heard defendant fire one shot before seeing him fire a second shot. The State introduced evidence that the victim died as a result of multiple gunshot wounds, specifically two "through and through" wounds to the neck, and that two shell casings fired from an automatic handgun and foot prints leading away from a significant amount of blood were found near where the victim was found when police responded to the scene of the murder. In addition, the substantively admitted portions of Mr. Webb's written statement include evidence that defendant was seen with the victim on the night of the murder near a liquor store, defendant and the victim had a "problem between them," and defendant was seen two days later in possession of an automatic handgun.

¶ 68 Defendant also cites to the evidence supporting a conclusion that Ms. Haynes' initial statement to the police was false and only made under threat. It is true that, while Detective Porter explicitly denied telling Ms. Haynes she would have to go to bond court in order to obtain

a statement implicating defendant, he is clearly heard doing just that in the video. Detective Porter also acknowledged at trial that he may have mentioned that Ms. Haynes might go to jail, a threat that is also included in the video. Defendant contends that the trial court indicated Ms. Haynes was coerced and, therefore, contends that her statements were false, unreliable and should not have been used to support his conviction.

¶ 69 However, these statements were admitted without objection pursuant to section 115-10.1, and by virtue of their admissibility they are considered reliable and voluntary. *McCarter*, 2011 IL App (1st) 092864, ¶ 23. Moreover, to the extent that there were any issues regarding coercion or the reliability of Ms. Haynes' statement, those issues were for the trial court to resolve. See *People v. Johnson*, 255 Ill. App. 3d 547, 560 (1993). In this case, the trial court never concluded that Haynes had been "coerced" into making a false statement. Rather, the trial court explained that "[t]here's no question that the police are forcing her to make a statement that they believe to be true." In denying defendant's motion to reconsider, the trial court further concluded that Ms. Haynes' statement implicating defendant was "not the product of being told what to say, as she would like us to believe, and the defense would like us to believe, and Mr. Carter would like to have us believe, but the product of what she *actually viewed and observed*." (Emphasis added.) Thus, while the trial court appears to have acknowledged that Ms. Haynes was forced to make a statement, it never concluded that Ms. Haynes was forced into making a *false* statement. That credibility finding is entitled to great weight. *Wheeler*, 226 Ill. 2d at 114-15. We also note that it was for the trial court to weigh the prior statements and the trial testimony and determine which was to be believed. *People v. Brown*, 303 Ill. App. 3d 949, 964 (1999).

¶ 70 Nor did the trial court find Ms. Hayne's prior statements so unreliable that they could not be used to support defendant's conviction. Indeed, while there may have been some evidence of

coercion with respect to Ms. Haynes' initial statement to police, the trial court concluded that there was no evidence that her subsequent written statement or grand jury testimony were coerced in any way. This court has previously affirmed criminal convictions where any possible coercion with respect to a witness's initial statement to police did not preclude reliance upon the witnesses' subsequent testimony. See *People v. Bates*, 25 Ill. App. 3d 748, 751 (1975).

¶ 71 Nevertheless, and noting again that it is not our role to retry defendant on appeal (*Collins*, 106 Ill. 2d at 261), we acknowledge that the strength of the State's evidence was otherwise tested at trial and is again challenged on appeal. With respect to the credibility of the State's witnesses, the record reflects that Mr. Webb and Mr. Carter were convicted felons and that Ms. Haynes had been convicted of identity theft. Such prior convictions "are relevant to the issue of credibility because they establish a disposition on the part of the witness to place advancement of his interests ahead of the interests of society, and may suggest a willingness to do so again on the witness stand." *Holmes v. Anguiano*, 174 Ill. App. 3d 1081, 1084 (1988).

¶ 72 The value of the fact that Ms. Haynes' ultimate written statement and grand jury was consistent with Mr. Carter's written statement and grand jury testimony is further called into question by the fact that Ms. Haynes can be seen both being read and reading substantial portions of Mr. Carter's written statement in the video prior to providing her own statement implicating defendant. The video also contains an 11-minute gap in Ms. Haynes' interview, and that gap went without any explanation at trial other than Detective Porter's claim of "old equipment." Finally, we note that during her videotaped statement, Ms. Haynes stated that Mr. Gillespie was also in the car at the time the victim was shot. However, Mr. Gillespie is never mentioned as having been present in either the written statements or the grand jury testimony provided by Ms. Haynes and Mr. Carter.

¶ 73 However, while there was an 11-minute gap in the video of Ms. Haynes' statement to the police, no evidence was ever introduced indicating that this gap resulted from anything improper. The trial court specifically found that there was nothing "malevolent" with respect to this gap in the video.

¶ 74 In addition, Ms. Haynes' written statement and her grand jury testimony are remarkably consistent. Her trial testimony that the version of events contained therein was false and provided to her by the police is belied by the fact that two days separated her statement and her grand jury testimony, and her admission that she never saw either Mr. Carter's written statement or her own written statement during the interim.

¶ 75 Moreover, not all of the issues of credibility and inconsistency raised at trial favored defendant. Mr. Carter was a lifelong friend of defendant, and Ms. Haynes had been his girlfriend, giving them both a motive to recant their prior statements at trial. See *People v. Brazziel*, 406 Ill. App. 3d 412, 431 (2010), (quoting *People v. Jones*, 60 Ill. 2d 300, 306 (1975)) (noting that a witness's "relationship to a defendant is clearly a possible basis for bias"). In addition, a possible reason for Ms. Haynes' initial reluctance to implicate defendant to the police was also revealed in the videotape; she explained that she was reluctant to have her name associated in any way with a murder investigation in light of ongoing litigation involving custody over her daughter. See *People v. Coleman*, 206 Ill. 2d 261, 278 (2002) (noting that witness may be impeached by evidence giving rise to an inference that the witness has something to gain or lose by providing incorrect information).

¶ 76 Furthermore, while Mr. Carter testified that he was threatened and was provided with a pre-written statement by Detective Porter and ASA Santini to sign, ASA Santini—a witness the trial court specifically found to be completely reliable—testified that Mr. Carter did not show

any signs of physical abuse and denied being mistreated. ASA Santini also testified that he actually wrote out the statement in the room with Mr. Carter as he and Mr. Carter engaged in a question-and-answer format. ASA Santini specifically denied that he presented Mr. Carter with a pre-drafted statement to sign. The trial court specifically found that Mr. Carter's trial testimony was "unreliable at best," and that there was "not a lot of corroboration for what Mr. Carter says."

¶ 77 In the end, the evidence at trial presented a host of inconsistencies and issues of credibility and reliability with respect to the testimony of the State's witnesses. However, "[w]here inconsistencies and conflicts exist in the evidence, the trier of fact has the responsibility of weighing the credibility of the witnesses and resolving these conflicts and inconsistencies." *People v Coleman*, 301 Ill. App. 3d 37, 42 (1998). Furthermore, to the extent that, as the trial court found: "almost all of the witnesses in this case *** were unreliable on a regular[,] consistent basis," we note that "[t]he trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22. See also, *Sparling v. Peabody Coal Co.*, 59 Ill. 2d 491, 498-99 (1974) ("The rule in this State and generally is that the contradictory testimony of a witness does not *per se* destroy the credibility of the witness or the probative value of his testimony, and it remains for the trier of fact to decide when, if at all, he testified truthfully.").

¶ 78 Ultimately, the trial court carefully weighed all the evidence and the credibility of the State's witnesses, determining that the written statements provided to the police by Mr. Carter and Ms. Haynes and their subsequent grand jury testimony reliably described what actually happened on the night of January 21, 2007. The trial court, therefore, concluded that defendant had been proven guilty of second degree murder beyond a reasonable doubt. The trial court came to this conclusion only after repeatedly viewing the video of Ms. Haynes' statement and

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finding, in light of Ms. Haynes' conduct therein and the overall "lack of feeding information to her," there was no evidence of the type of "continual preparation she would need in order to give relatively an uncontradicted statement to the State's Attorney and testify in front of the Grand Jury under oath." We find, as has our supreme court in other similar circumstances, that "[t]he above conclusions and inferences are not the only conclusions and inferences that could be drawn. They are reasonable, however, and taken together they support a finding that defendant was guilty beyond a reasonable doubt." *Wheeler*, 226 Ill. 2d at 120.

¶ 79

III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 81 Affirmed.