2019 IL App (4th) 160880-U

NO. 4-16-0880

FILED
May 31, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
BRANDON COLLIER,	)	No. 15CF1119
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to prove defendant guilty of first degree murder beyond a reasonable doubt.

(2) The trial court did not abuse its discretion by denying defendant's posttrial motion, wherein he alleged he was entitled to a new trial on the basis of newly discovered exculpatory evidence.

¶ 2 Following a jury trial, defendant, Brandon Collier, was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2014)), and the trial court sentenced him to 60 years in prison. Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt and (2) the court erred in denying his posttrial motion for a new trial based on newly discovered evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2015, the State charged defendant with three counts of first degree murder (*id.* § 9-1(a)(1), (a)(2)) in connection with the shooting death of the victim, Terron Jackson. The State theorized that defendant shot Jackson by mistake, believing instead that he was shooting in the direction of a different person who had been in a recent altercation with his sisters.

¶ 5 In June 2016, defendant's jury trial was conducted. The State presented evidence that shortly before midnight on July 13, 2015, police officers responded to a call about shots fired in the Garden Hills neighborhood of Champaign, Illinois. They discovered Jackson lying face down in the street on Garden Hills Drive between the intersecting streets of Williamsburg Drive and Holly Hill Drive. Evidence showed Jackson had been shot once in the right upper back and that the gunshot wound caused his death. The neighborhood where the shooting occurred had no streetlights.

¶ 6 The State's evidence further showed that shortly prior to the shooting, defendant's sisters, April and Jamona Collier, and a woman who went by the nickname "Shay-Shay" got into an altercation with a man named Malik Chappel, also known as "Little Mo." Laura Manning testified that Chappel was her cousin and came to her house at 1508 Williamsburg Drive on the evening of July 13, 2015, asking for a towel "to get some mace out of his face." While Chappel was at Manning's residence, April, Jamona, and Shay-Shay drove up and began arguing with Chappel. According to Manning, Chappel picked up a box fan from her yard and "acted like he was going to throw it at" Jamona. Ultimately, the women drove away in the direction of Holly Hill Drive, and Manning heard them yelling that they would be back and that they had "something for [Chappel]." Manning testified she also heard April say that she was going to get her brother. Chappel drove away from Manning's residence in a car owned by Destiny Nesbitt.

¶ 7 Manning stated Jackson and an individual named Charmeika Brown walked up to her residence to observe the altercation between Chappel and the women. After the altercation ended, Manning heard an argument coming from the "next street," Holly Hill Drive, and headed toward that street with a group that included Jackson. Manning testified she could hear voices, which she recognized as April and Jamona. She stated they were "yelling *** about the commotion with *** [Chappel]." Manning also observed several people standing in the driveway of 1526 Holly Hill Drive, the residence of Dashiona Fonville. She did not recognize anyone because it was dark. Manning then heard a gunshot, saw "a shadow fall," and observed Jackson lying in the street. She testified that "everybody scattered" after the shooting and she observed two cars leaving the area.

¶ 8 Brown testified that she lived at 1608 Williamsburg Drive and that Jackson was her cousin. On July 13, 2015, Brown heard about a fight at Manning's house and went outside. She did not witness the altercation at Manning's residence but was with Jackson when they "heard people down the street arguing" and "started running towards that way." Brown testified the commotion she heard was coming from Fonville's residence on the corner of Garden Hills Drive and Holly Hill Drive. She stated Jackson "got all the way up in front of the house" on Holly Hill Drive and was with an individual named Charnise Caraway. Brown stopped further back. She observed three people standing in front of 1526 Holly Hill Drive but did not recognize anyone. Brown testified the porch light to that residence was on and stated she also heard an "altercation." She heard a male and a female voice but did not recognize the voices. Brown testified she next heard approximately three gunshots and "[t]ook off running." She stopped running when the shooting stopped and observed Jackson lying on the ground.

¶ 9 Destiny Nesbitt testified that in July 2015, she was dating Chappel and was friends with Jackson. On July 13, 2015, she observed an altercation during which Shay-Shay, who was pregnant, "maced" Chappel, the father of Shay-Shay's unborn child. Nesbitt testified she also observed an argument at Manning's residence between April and Chappel. She observed Chappel pick up a fan from Manning's trash and hit the car April had been driving. During the argument, Nesbitt heard April state that "[s]he was going to get her brother." Nesbitt also heard Chappel say "[']Go get your bitch-ass brother.[']" According to Nesbitt, she and Chappel then drove away.

¶ 10 Caraway testified she was friends with Jackson. She also knew defendant's sisters and had known defendant for about 10 years. She described defendant as short and "a little chubby" with a light-skinned complexion. Caraway was with Jackson as he ran toward Holly Hill Drive following the altercation at Manning's residence. She stated Fonville lived at 1526 Holly Hill Drive and that she saw "a light from the porch" as she approached Fonville's residence. Caraway also observed people outside the residence that she did not recognize and heard what "sounded like women" arguing.

¶ 11 Caraway testified she stopped in the front yard of the house across the street from Fonville's residence and that Jackson stood next to her. They were there for a few seconds. Caraway saw "[p]eople coming out [of] the house" and then heard four or five gunshots and began running. The State questioned Caraway as follows:

> "Q. What had you been focused on while you were the [*sic*] standing in the yard?
>
> A. I was focused on the first shot. The first shot I seen a glare, a light.

Whoever shot had on a white shirt. I turned around and started running.

* * *

Q. Who did you see holding the gun? Did you see who was holding the gun?

A. Brandon.

Q. Now, other than the light on the porch, what was the lighting like in that area?

A. Like how bright it was?

Q. Uh-huh.

A. It was bright enough to show the front yard.

Q. You said he was wearing a white T-shirt?

A. Yes."

Caraway also identified defendant as the person named "Brandon" that she saw shooting.

¶ 12 After Jackson was taken from the scene by ambulance, Caraway attempted to make her way to the hospital to see him. However, she was involved in a motor vehicle accident and was injured. While receiving treatment in the hospital for her injuries, Caraway spoke with police officers; however, she acknowledged that she did not report that she saw who had been shooting. On July 22, 2015, Caraway was formally interviewed by the police at the Champaign Police Department. She acknowledged telling the police during that interview that she had not seen the shooter's face. Caraway explained that she "didn't want to talk" because the interviewing officer "was making it seem like [she] was hiding it."

¶ 13 On cross-examination, Caraway confirmed that she saw defendant shooting and

that she knew he was the shooter at the moment the shooting occurred. Again, however, she acknowledged that she did not tell that to the police when they visited her in the hospital. Caraway also acknowledged that during her July 22 interview, she reported that she had not seen the shooter's face and that it took her a considerable length of time to report that the shooter had been wearing a white shirt. She testified that she lied during the July 22 interview about seeing the shooter because she was "scared to tell." Caraway asserted she was "just scared to talk to [the police] because [Jackson] had just got shot."

¶ 14 On further cross-examination, Caraway testified that she had conversations with Chappel about the shooting between July 13 and 22, and that Chappel told her "that he and [defendant] had a beef." However, she did not recall telling the police that she only realized defendant was the shooter when Chappel "mentioned that the bullets [defendant] shot were meant for him." Caraway further testified that when the gun was fired, it created a flash of light. However, she denied telling the police during her interview that "the sky lit up." Instead, she recalled reporting that "it was light from the gun."

¶ 15 On redirect examination, Caraway testified she was "scared" to provide information to the police "[b]ecause we just ran from the shooter" and she did not "want to get shot." Further, she stated that other than the light created by the firing of the gun, there was light from Fonville's porch light, which provided enough illumination to see defendant's face. Caraway asserted that when the shooting occurred, defendant was standing "[p]robably a little closer" to her than was the prosecutor. The prosecutor asked that the record reflect she was standing one foot from the end of the jury box, which the trial court estimated as being "about 20 feet."

¶ 16 The State further presented evidence that the police searched both Fonville's resi-

dence at 1526 Holly Hill Drive and the surrounding area. They discovered evidence, including a loaded AR-15 style rifle beneath a vehicle parked behind Fonville's residence; a .45-caliber shell casing on the floor in the living room/kitchen area of Fonville's residence; and three .45-caliber shell casings in the yard of 1519 Holly Hill Drive, located directly across the street from Fonville's residence. Evidence showed a .45-caliber bullet was removed from Jackson's body during his autopsy. Forensic testing showed that the four .45-caliber shell casings found in Fonville's residence and in the yard across the street from her residence were all fired from the same weapon. However, due to the condition of the bullet recovered from Jackson's body, it was not possible to determine whether it was also fired from the same gun.

¶ 17 The State next called Fonville as a witness. Fonville testified she was 22 years old and lived at 1526 Holly Hill Drive with her brother and sister. She stated she knew defendant and that the two had gone to school together since approximately the seventh grade. Fonville did not know Jackson.

¶ 18 According to Fonville, she visited the Town & Country swimming pool on the evening of July 13, 2015, returning home at approximately 9 p.m. She testified she went to bed around 10 or 11 p.m. Around midnight, she was awakened by gunshots. Fonville testified her sister and her cousin were also at her home between 9 p.m. and midnight but at some point they were picked up by her cousin's mother. Fonville asserted that she was "not sure" whether anyone else was at her house on the night of the shooting. When asked whether there had been a party at her house that night, she responded that she "wasn't aware of the party if there was one." Fonville also testified that there had "[p]ossibly" been a party or gathering.

¶ 19 Fonville stated that after being awakened by the gunshots, she got out of bed and

noticed "a bunch of people in [her] house and told them to leave." Initially, she asserted that she did not know who was in her house. She then testified that she recognized two of the individuals present—Brandon Cole Baker and Isis Fortner. Fonville asserted that she did not know anyone else and denied that she saw defendant. After telling everyone to leave her home, Fonville also left and went to her boyfriend's mother's house. When asked why she left her house, Fonville responded: "Because what was the reason for me to be there?" Fonville asserted that she left her house before police arrived on the scene. She thought the police might be coming to the area after the shooting but wanted to leave before they arrived because she did not like police officers.

¶ 20 Fonville acknowledged that the police attempted to interview her more than once about the shooting. She further agreed that on July 21, 2015, she was interviewed by the police at the Champaign Police Department and that the interview was recorded. Fonville acknowledged telling the police that several people had been in her home on the night of the shooting and that two of the people who had been in her home were Baker and Fortner. However, when questioned by the State at length (consisting of 38 pages of the trial transcript) regarding the specific questions posed to her during the interview and her responses, Fonville responded to the vast majority of the State's questions with different versions of "I can't recall" or "I don't remember." In particular, Fonville could not remember making several incriminating statements against defendant, including identifying him as the shooter. When asked whether she could recall the conversation that she had with police detectives on July 21, Fonville responded, "No."

¶ 21 On cross-examination, defendant's counsel also questioned Fonville extensively regarding her July 21 interview with the police. Counsel inquired into whether the interviewing officers made various specific statements and representations to Fonville prior to her identifica-

tion of defendant as the shooter, and Fonville indicated that those statements and representations had been made, responding "[y]es" to most of counsel's questions. Specifically, Fonville testified that the officers indicated she could be charged with murder even if she did not "pull the trigger," brought up gun charges that were pending against her, discussed a woman she knew who "was charged with a dope case" and ended up in federal prison because she tried to protect someone, and indicated her brother could be in trouble if she did not "clear things up."

¶ 22 Fonville further testified that it was her understanding that she needed to provide information to the interviewing officers or that she would be in trouble. She agreed that the officers indicated that the more information she gave, the more likely it would be that the responsible party would plead guilty and she would not have to testify. Fonville stated an officer also told her that he could not protect her unless she " 'let [him] know any and everything.' " Fonville asserted that she had the impression that if she did not say that she saw defendant "doing the shooting," then she was not "going to be walking out of there" or that "nothing good was going to happen." She testified that she gave the officers information in an effort "to save [herself] from being in trouble." Fonville further testified that after the recorded interview, Detective Andre Davis told her that if she did not talk, she would be charged with murder; her brother would go to prison; and her 13-year-old sister, for whom she was a guardian, would be taken away and placed in a group home or foster care.

¶ 23 The record reflects that pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2016)) and with defendant's acquiescence, the State played the recording of Fonville's July 21 police interview in its entirety. A transcript of the interview was prepared and provided to jurors. The record shows Fonville was interviewed

by Detectives Andre Davis and Bradley Krauel. As suggested during the State's presentation of Fonville as a witness, Fonville made incriminating statements against defendant and identified him as the shooter.

¶ 24 The recording shows that Fonville initially provided statements similar to her trial testimony, asserting she was asleep prior to the shooting and awakened by the gunshots. However, after being confronted with cell phone records that showed outgoing calls were made from her cell phone during the time she was reportedly asleep, Fonville acknowledged that she had been awake and using her phone. Fonville also reported there were people at her home playing cards and drinking. She identified defendant as one of the people at her home but asserted she did not see him with a gun.

¶ 25 After Fonville denied seeing defendant with a gun, Davis expressed that he did not want her to get "caught up" in the murder, stating there were circumstances where a person could be held "just as responsible" for a murder even if he or she was not the one to "pull the trigger or *** stab somebody or choke somebody to death." Davis also expressed that Fonville was in "jeopardy" of that because she had provided conflicting statements. The officers next brought up pending charges against Fonville related to the gun found in the backyard of her residence. The following colloquy then occurred between Davis and Fonville:

> "I86 [(Davis)]: All right. You think that [(the gun case)] didn't fall back on you already?
>
> DF [(Fonville)]: So it did?
>
> I86: Yes, it did.
>
> DF: So what I gotta do to get if off of me?

I86 You need to be, you need to be [100%], and again, look at who it is that you're, you're trying to protect here."

Davis then discussed with Fonville a woman she knew who was in federal prison because the woman was "caught up" in a drug case and "took the weight" for another person.

¶ 26 Fonville next reported that at the time of the shooting, she had been awake and in a bedroom of her home with her boyfriend Montrez Vonner, also known as "Piggy." Thereafter, she expressed concern over whether she would have to testify, stating "you ever heard snitches get stitches?" Davis responded that "[t]here's no way that I can help protect you if you don't talk to me ***." Fonville then reported that she heard several individuals, including defendant, discussing that defendant was the shooter and that "if he goes down for it[,] it's gonna be on April." After Davis asked Fonville if she had heard anything else, she responded "ain't that enough to take [defendant] to jail?"

¶ 27 On further questioning, Fonville stated she saw defendant in her house after the shooting and that he "probably" had on a white T-shirt. Davis questioned Fonville regarding whether her brother had been present at the time of the shooting, stating he needed "some things cleared up." He asserted that helping him "clear this thing up" would "help eliminate [Fonville's brother] as being involved." Fonville expressed that she was worried about her safety and the safety of her sister and brother, stating "[a]in't no telling who might try [to] come get us if they heard that I talked." She then reported that she was aware her brother had been present after the shots were fired and that he drove away from the scene with another individual. She denied that he took defendant away from the scene, stating "cause I seen [defendant] after the shooting still."

¶ 28 After approximately three hours had passed, Fonville asked "am I arrested?" Da-

vis responded that she was under arrest "for the gun and *** for the obstructing." Fonville indicated she was not concerned about the obstructing arrest but asked how she was "supposed to get [the gun charge] off of [her]." Davis responded that he did not want her to worry about that at the moment. He further stated that he knew she was concerned about having to testify and explained that "the best way to avoid going to trial is having a case that is so solid that whoever is arrested *** will not deny it." Davis stated he could not help or protect Fonville unless she "let [him] know any and everything."

¶ 29 Upon additional questioning, Fonville reported that she heard defendant say he was the shooter. She also stated that when she saw him after the shooting he looked "paranoid, like this was his first shooting or something." Fonville asserted defendant ran back in her house to get his phone. Davis then asked about the shell casing found in her residence, and Fonville responded, "I think that, he went out there shootin', came back in, and [the gun] probably jammed or something***." However, she continued to deny seeing defendant with the gun and asserted that someone else told her that the gun had jammed.

¶ 30 Fonville eventually reported that she heard April talking loudly in her house before the shooting and that she heard April say " ['']some n**** just threw something['] and ['']my car['] and something, *** and then like right after that that's when we heard the shots." She stated she also "probably" heard Jamona. Fonville clarified that she heard two female voices stating that "[s]omebody had just threw something at the car and [the person] was coming around the corner." She further reported that she saw defendant with a gun on his hip at her house prior to the shooting. According to Fonville, defendant was also holding and rapping with a gun approximately 30 minutes before the shooting. After the shooting, she saw defendant run into her house

with "panic" on his face. He was holding a black T-shirt, and she believed the gun was wrapped up in the shirt.

¶ 31 Following the above statements, Davis asked Fonville if she had any other information, and she responded, "[S]hit I thought I gave you enough to book a n*****." The officers told her the information she provided might be enough "to book" but that they were talking about "[s]ealing the deal." After more questioning, Fonville testified that she looked out of her bedroom window and saw "sparks of the gun" when it was being shot. The sparks were across the street. She stated she "assumed" defendant was holding the gun because she saw a white shirt. Again, Fonville expressed that she was "worried about [her family's] safety" and stated she had been having "dreams [about] getting shot." Following more questioning, she stated as follows:

> "Everybody was playing cards. I ended up going to the back cuz I got mad Piggy [was] talking to somebody, and I heard, umm, April and them come up in there yelling and shit about Lil Moe doing something at the car and he's coming around the corner, and get these n***** and some shit. And they had, shit the shots went off. And I did see that. Shit, he had, he ran back in the house and I'm coming out, I'm telling everybody to get the fuck up out my house."

Fonville asserted that she was "coached" by Baker and told not to place defendant at the scene.

¶ 32 Finally, Fonville asserted that she knew defendant was the shooter because she saw him running back to her house from across the street. She stated she saw his face and knew definitely that it was him. Fonville also observed defendant in her house "panicking." She stated as follows: "But he looked nervous, like he had just did some shit. Like I can tell that this was his first time doing some shit like that cuz he looked like a baby, very scared."

¶ 33 At the conclusion of the interview, Fonville clarified that the "Brandon" she saw firing a gun was defendant, Brandon Collier. She also asked about her gun case. Davis responded that they would "work through that" and that they would talk about that "in a couple [of] minutes."

¶ 34 At trial, Krauel testified for the State that Fonville's interview was over four hours in length. He also acknowledged that at the time the interview occurred, Fonville was in custody in connection with charges stemming from the rifle that was found on her property. He stated Fonville was not in custody in connection with Jackson's murder.

¶ 35 Davis testified he conducted several interviews as part of the investigation into Jackson's murder. On July 28, 2015, he interviewed defendant, who reported that Jackson "was a cousin to his cousin" but that he "really didn't know [Jackson] personally." Defendant also stated that he visited Fonville's residence "about every other day" but that he did not go there after hearing about the shooting on the news.

¶ 36 According to Davis, defendant asserted that on July 13, 2015, he was swimming with friends at the Town & Country pool and then went home. At home, defendant "grabbed a bite to eat" and then went to a friend's house and "smoked some weed." According to defendant, he returned home at approximately 10:45 p.m. and fell asleep. He denied being at 1526 Holly Hill Drive on the night of the shooting.

¶ 37 On questioning by defendant's counsel, Davis testified he also interviewed Caraway and agreed that she never told him that she could see defendant's face at the time of the shooting, although she did report that Fonville's porch light was on. Further, he agreed that it was only toward the end of a lengthy interview that Caraway reported that she saw the "figure or

the body type of the shooter." Davis also agreed that Caraway did not initially report seeing a "flash of light or a flash of gunfire" at the time of the shooting. He recalled telling her "that since it was night and there was gunfire there must have been some type of flash or light." Davis acknowledged that Caraway recalled seeing a "muzzle flash" after he had mentioned it several times. He also testified that Caraway told him she did not realize that defendant was the shooter "until Little Mo had mentioned that the bullets [defendant] had shot were meant for him."

¶ 38 Davis testified that Caraway reported seeing "a flash" that "was quick" when the gun was fired. He acknowledged that in his written report of the interview he documented that Caraway stated: " 'Although it was dark outside, the sky lit up briefly when the gun was being fired,' " which allowed her to observe that the shooter was short with a light-skinned complexion and that the shooter wore a white T-shirt. However, he testified that he had summarized the information provided by Caraway and that she had not said the words in his report verbatim. Specifically, he denied that Caraway used the word "sky."

¶ 39 Following Davis's testimony, the State rested, and defense counsel moved for a directed verdict, arguing that the case boiled down to identification and that neither of the two witness identifications of defendant were credible. The trial court denied defendant's motion.

¶ 40 Prior to the presentation of defendant's case, two stipulations were read to the jury. The first stipulation was as follows:

> "[O]n Thursday June 16[, 2016], Assistant State's Attorney Sharples Brooks and victim advocate Susan Chapin met with Charnise Caraway in preparation for trial. During this meeting, Ms. Caraway stated that she had been standing in the front yard of 1519 Holly Hill Drive, Champaign just prior to the shooting that occurred

on July 13th of 2015.

Ms. Caraway confirmed her statement to the Champaign Police Department on July 22nd of 2015 that, one, there was a porch light on at 1526 Holly Hill Drive which lit up the front yard enabling her to see people and cars in front of 1526 Holly Hill Drive. She stated that the shooter was to her right at a 45-degree angle in front of her.

Number two, the shooter was wearing a white T-shirt, had a light complexion and had the same body type as [defendant] in that the shooter was short and chubby.

Number three, that she has known [defendant] since she was a child and is familiar with his physical appearance. She told us that she did not see the shooter's face."

The parties' second stipulation was that "on July 13th of 2015 the moon was in a waning crescent and [8%] of its area was visible."

¶ 41 Defendant then called his sister April to testify on his behalf. April stated that on the night of the shooting, she was with Antoinette Johnson, who was also known as "Shay-Shay," and observed Shay-Shay spray Chappel with mace. April testified that Shay-Shay and Chappel also argued at Manning's house. She asserted "there was a whole bunch of people in [Manning's] yard" and that "there was a lot of commotion." April denied saying that she was going to get her brother or that she ever went to 1526 Holly Hill to tell her brother to "get" Chappel. Instead, she dropped Shay-Shay off at home and went to her own residence.

¶ 42 After April's testimony, defendant rested his case, and his counsel renewed his

motion for a directed verdict. He argued that no rational trier of fact could believe Caraway's testimony because she gave inconsistent statements both when she first spoke to the police and a week prior to the trial. Defense counsel also argued that "the problems with *** Fonville's testimony [were] legion." The trial court denied the motion, stating as follows:

> "[A]s to Ms. Caraway, your assessment of her testimony is accurate. However, we do have [Fonville's prior] statement, and given the circumstances surrounding the statement, circumstantial evidence, I believe that statement would be sufficient should the jury make a determination the State has proven the defendant guilty beyond a reasonable doubt."

¶ 43 Ultimately, the jury found defendant guilty of murder. In July 2016, defendant filed a motion for a judgment notwithstanding the verdict or a new trial, arguing the State failed to prove his guilt beyond a reasonable doubt. In August 2016, the trial court conducted a hearing on defendant's posttrial motion. At the outset of the hearing, defense counsel asserted that he was prepared to go forward with the arguments set forth in defendant's July 2016 posttrial motion; however, he also requested additional time to file an amended motion for a new trial. Counsel asserted that he had recently received a written statement from defendant's sister, Jamona, that might constitute newly discovered exculpatory evidence. The court denied defendant's posttrial motion but granted his counsel's request to file a supplemental motion.

¶ 44 In September 2016, defendant filed a supplemental motion for a new trial based on newly discovered evidence of his innocence. He argued that his sister Jamona provided an affidavit, asserting that she witnessed Montrez Vonner shoot and kill Jackson. Defendant argued that Jamona's statement was so conclusive as to raise a reasonable doubt of his guilt and that it

could not have been discovered before trial by the exercise of due diligence. Defendant attached Jamona's affidavit to his filing.

¶ 45 At a hearing on defendant's supplemental motion, Jamona testified that she was 17 years old and defendant's sister. At the time of the shooting, she was standing on Fonville's porch with Vonner and Fonville. She observed Vonner shooting a gun and then saw "[a] body drop." After the body dropped, everyone went inside Fonville's house. Also present were Brandon Cole Baker and Isis Fortner. Jamona testified she heard Fonville say " '[g]et the stuff' " and that she heard the police coming. She stated she went home where she saw defendant. Jamona also denied that defendant had been at Fonville's residence when the shooting occurred. The following colloquy then occurred between Jamona and defendant's counsel:

> "Q. Now, before [defendant] was convicted, had you told anyone else about what you had seen?
>
> A. No. Not besides you.
>
> Q. Okay. I'm sorry. At the time, did you tell any—did you tell—did you have a reason for not telling anybody about what you had seen?
>
> A. Yes.
>
> Q. What was the reason?
>
> A. I was scared."

¶ 46 On cross-examination, Jamona acknowledged that she spoke with Detective James Bednarz on July 14, 2015, and told him that she was not present at Fonville's residence when the shooting occurred and that she did not know anything about the shooting. Jamona agreed that she was present for defendant's trial and that she had been served with a subpoena to

testify. She also stated that she knew defendant had been arrested for murder but that she did not tell him what she observed until "after the fact." Jamona testified that the first person she told was her now-deceased grandmother. She asserted she told her grandmother what she observed "right after it happened." The following colloquy then occurred between Jamona and the State:

"Q. And so up to the time of your brother's trial, who else had you told about this?

A. The lawyer.

Q. So before [defendant's] trial, you had told his lawyer about this?

A. Yeah. A little bit, but not everything.

Q. Well, when you say 'a little bit,' which parts do you remember telling him?

A. That I was there.

Q. That you were there at the time of the shooting?

A. Mm.

Q. And did you tell him about *** Vonner committing the shooting?

A. Yeah.

Q. Okay. So you did tell him that; is that right?

A. Yeah."

¶ 47 The State called Bednarz as a witness, who testified that he interviewed Jamona on July 14, 2015. Also present were April and defendant's mother. During the interview, Jamona denied being present on Holly Hill Drive at the time of the shooting.

¶ 48 The trial court denied defendant's supplemental motion, finding that Jamona was

not credible. It then proceeded with defendant's sentencing and imposed a 60-year term of imprisonment. In October 2016, defendant filed a motion to reconsider his sentence, which the court denied.

¶ 49 This appeal followed.

¶ 50 II. ANALYSIS

¶ 51 A. Sufficiency of the Evidence

¶ 52 On appeal, defendant first argues that the State failed to prove him guilty of first degree murder beyond a reasonable doubt. He contends that the State "relied solely on eyewitness testimony" from Fonville and Caraway to prove his guilt but that such testimony "was riddled with problems and wholly inadequate" to sustain the State's burden of proof. Defendant points out that Fonville denied seeing him on the night of the shooting and, although the State presented evidence of a prior statement she made identifying him as the shooter, her prior statement was induced by threats and promises made by the police. Defendant further argues that Caraway's identification of defendant as the shooter was significantly impeached by her prior inconsistent statements.

¶ 53 When a defendant challenges the sufficiency of the evidence against him on appeal, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the charged offense beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. "It is not the role of the reviewing court to retry the defendant." *Id.* Rather, it is the trier of fact's responsibility "to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* On review, "[a] criminal conviction will not be reversed for insuffi-

cient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *Id.*

¶ 54 Additionally, "[t]he testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where it is contradicted by the defendant." *Id.* ¶ 36. "Where the finding of the defendant's guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt." *Id.* "Under this standard, the eyewitness testimony may be found insufficient only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." (Internal quotation marks omitted.) *Id.*

¶ 55 Here, defendant was charged with and found guilty of first degree murder. As charged in this case, a person commits that offense when, in performing the acts that cause another person's death:

> "(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another[.]" 720 ILCS 5/9-1(a)(1), (a)(2) (West 2014).

¶ 56 At trial, the State presented evidence showing Jackson was shot shortly before midnight on July 13, 2015, in the Garden Hills neighborhood of Champaign and that he died as a result of his injuries. Under section 115-10.1 of the Code, the State presented Fonville's prior inconsistent statements as substantive evidence. In her statements to the police, Fonville reported that she observed the shooting and identified defendant as the shooter. The State also presented eyewitness testimony from Caraway, who also identified defendant as the person who shot Jack-

son. For the reasons that follow, we find the State's evidence was sufficient to establish defendant's guilt of Jackson's murder beyond a reasonable doubt.

¶ 57 1. *Fonville's Prior Inconsistent Statements*

¶ 58 As stated, defendant challenges Fonville's statements identifying him as the shooter and essentially contends they cannot be accepted as true beyond a reasonable doubt. Although defendant acknowledges in his brief that a prior inconsistent statement admitted under section 115-10.1 may be sufficient to support a conviction, he also appears to initially argue that such evidence should automatically be deemed less credible than other evidence. In his appellant's brief, defendant cites the Fifth District's decision in *People v. Parker*, 234 Ill. App. 3d 273, 280, 600 N.E.2d 529, 534 (1992), for the proposition that "where the only evidence that inculpated [the] defendant was prior inconsistent statements which were directly contradicted by the alleged declarants at trial, the credibility of [the prior inconsistent statements is] greatly reduced." See also *People v. Reyes*, 265 Ill. App. 3d 985, 989, 638 N.E.2d 650, 653 (1993) (citing *Parker* and finding that the credibility of the grand jury testimony of two eyewitnesses was "greatly reduced by the fact that both witnesses later disavowed their grand jury statements"). To the extent defendant argues that section 115-10.1 statements are necessarily suspect or that they must be viewed with additional scrutiny, we disagree.

¶ 59 Pursuant to section 115-10.1 of the Code, a witness's prior inconsistent statements may be admitted as substantive evidence. 725 ILCS 5/115-10.1 (West 2014). In *People v. Curtis*, 296 Ill. App. 3d 991, 996, 696 N.E.2d 372, 376 (1998), this court held that a statement properly admitted under section 115-10.1 may, alone, be sufficient evidence to sustain a defendant's conviction. In doing so, we declined to follow *Parker* and *Reyes*, the cases cited by defendant, to the

extent they suggested or held otherwise. *Id.* at 997. Moreover, we concluded that there were "no 'suspect categories' of properly admitted evidence." *Id.* at 999. Instead, one standard of appellate review applies to all evidence, including substantive evidence of prior inconsistent statements. *Id.* We continue to abide by our holding in *Curtis*.

¶ 60 Additionally, we note defendant also cites the First District's decision in *People v. Arcos*, 282 282 Ill. App. 3d 870, 668 N.E.2d 1177 (1996), for the proposition that on appeal, a reviewing court should "look skeptically" on a trier of fact's decision to rely on section 115-10.1 evidence. After reviewing that case, we find that it does not stand for the proposition set forth by defendant. In *Arcos*, the First District ultimately reversed the defendant's conviction; however, it also noted that it had previously "rejected the argument that a [section] 115-10.1 statement standing alone is insufficient to convict when later disavowed at trial." *Id.* at 875. Additionally, the court held that "it is for the trier of fact to weigh the statement, weigh the disavowal, and determine which is to be believed." *Id.* Accordingly, we find *Arcos* is consistent with our decision in *Curtis* and does not hold that a reviewing court should look upon a conviction involving section 115-10.1 evidence with skepticism.

¶ 61 Defendant next argues that the circumstances under which Fonville's prior inculpatory statements were made render them unworthy of belief. He points out that at trial, Fonville testified she did not see him on the evening of the shooting. Further, defendant maintains that Fonville's prior inconsistent statements were coerced by threats and promises made by the police. To support his contention, defendant initially points to Fonville's testimony at trial that Davis told her that if she did not "talk" she "would be charged with murder, and [her] brother would go to prison[,] and [her] sister would be taken from [her]." However, Fonville acknowl-

edged that this alleged specific statement by Davis was not recorded and that it was made *after* her recorded interview, during which she identified defendant as the shooter. Thus, assuming that the jury found Fonville's testimony was credible on this point, there was still no reasonable basis for it to conclude that the statement influenced or coerced Fonville into making her previously recorded inculpatory statements.

¶ 62 Next, defendant argues that the contents of Fonville's recorded interview establishes that her inculpatory statements were false because it demonstrates that her statements were coerced through promises and veiled threats made by the interviewing officers. We acknowledge that Fonville's recorded interview shows that the interviewing officers used various tactics in an attempt to persuade Fonville to provide information and that she provided an evolving account of what occurred on the night of the shooting. However, such circumstances do not necessarily require a finding that Fonville's ultimate identification of defendant was false or that her trial testimony was true. Rather, a review of the record reflects several bases upon which a reasonable trier of fact could have found that it was Fonville's ultimate account of the shooting in her recorded statement that was credible and not her trial testimony.

¶ 63 First, we agree with the State's assertion that Fonville exhibited evasive behavior and a selective memory when testifying at trial. In particular, the record shows the State questioned Fonville at length regarding the specific statements made to her and by her during her recorded July 21 interview and she repeatedly and consistently asserted that she could not remember what had been said. However, on cross-examination, Fonville's memory improved and she recalled virtually every statement from her interview about which she was questioned by defense counsel. Fonville's testimony was simply implausible and a reasonable inference from her con-

flicting testimony was that she was being untruthful. A rational trier of fact could have found that Fonville did not testify credibly at trial on this basis.

¶ 64 Second, during her recorded interview but prior to the alleged coercive and threatening statements by the interviewing officers, Fonville provided information that significantly contradicted her trial testimony. Specifically, at trial Fonville testified that she went to sleep at 10 or 11 p.m. on the night of the shooting and was awakened by gunshots around midnight. She asserted that she was not aware of a party going on at her house but that there might "possibly" have been one. She further stated she was "not sure" whether anyone else was in her house prior to the shooting and denied seeing defendant at her residence after hearing gunshots. At the outset of her recorded interview, Fonville initially maintained (similar to her trial testimony) that she was sleeping immediately prior to and at the time of the shooting; however, after the interviewing officers confronted her with phone records but prior to any of the alleged coercive police statements, Fonville acknowledged that she had been awake and using her cell phone. She also admitted that people in her house were drinking and playing cards and that defendant was one of the people present in her home. A reasonable trier of fact could have found Fonville's recorded statements (made prior to any of alleged coercion by the police) credible, particularly when compared with her more evasive and ambiguous trial testimony.

¶ 65 Third, Fonville indicated several times during her recorded interview that she was scared to provide the police with information and was concerned about having to testify. At different points during the interview, Fonville questioned whether anyone would find out that she provided information to the police; asked if Davis had heard the saying "snitches get stitches"; expressed that she was worried about her safety and her family's safety, stating "[a]in't no telling

who might try [to] come get us if they heard that I talked"; and expressed that she was "worried about [her family's] safety" and had "dreams [about] getting shot." Fonville also became visibly emotional when she ultimately provided the information most damaging to defendant. As a result, the jury could have found that Fonville was a reluctant witness and not forthcoming with all of the information she knew about the shooting either when she was initially interviewed by the police or when she testified in front of defendant at trial.

¶ 66 Fourth, the inculpatory statements Fonville made against defendant during her recorded interview were corroborated by other evidence presented at defendant's trial. The record shows Fonville ultimately reported to the police that prior to the shooting, she heard April "yelling *** about Lil Moe doing something at the car" and that she stated that he was "coming around the corner." Fonville also identified defendant as the shooter, stated that the shooting occurred across the street from her residence, described defendant as wearing a white shirt, and reported that he ran inside her house after the shooting. At trial, the State presented evidence from other sources that shortly before the shooting, April was arguing with Chappel, who went by the nickname "Little Mo." During the argument, Chappel picked up a fan from Manning's yard and either hit the car April was driving or acted like he was going to throw the fan at Jamona. Manning testified that after the altercation at her residence, she heard the voices of April and Jamona coming from the direction of Holly Hill Drive and that they were "yelling *** about the commotion with *** [Chappel]." Like Fonville, Caraway, who was standing next to Jackson at the time of the shooting, also identified the shooter as wearing a white shirt (both prior to and at the time of trial).

¶ 67 The State's evidence also supported Fonville's representations that the shooting

occurred across the street from her residence and that defendant ran inside her residence after the shooting. Specifically, evidence showed that a .45-caliber bullet was recovered from Jackson's body, three .45-caliber shell casings were found in the yard across the street from Fonville's residence, and that one .45-caliber shell casing was found inside Fonville's home. All of the .45-caliber shell casings were fired from the same gun (damage to the bullet made it unsuitable for comparison). A reasonable inference from this other evidence was that the shooting occurred just as Fonville ultimately reported that it did. Accordingly, the corroboration of portions of Fonville's recorded statements with other evidence presented at trial lends credibility to her recorded statements.

¶ 68 Fifth, and finally, although defendant argues Fonville's inculpatory statements were made under "duress," the recording of Fonville's July 21 interview shows that the interview had a conversational tone. The officers did not yell, act in a physically intimidating manner, or make any overt threats. Although the interview was lengthy, they also allowed Fonville to take breaks so that she could eat, drink, and smoke cigarettes. Further, the officers clearly stated that they only wanted Fonville to provide truthful and accurate information. After viewing the recorded interview, a rational trier of fact could have determined that Fonville was not coerced into making false inculpatory statements; rather, she was persuaded through the officer's interviewing tactics to reveal all the information she knew about the shooting but had been reluctant to divulge.

¶ 69 Here, the jury heard Fonville's trial testimony and had the opportunity to view her recorded statements. During defendant's closing argument, it was also presented with substantially the same arguments challenging the credibility of Fonville's prior recorded statements that

are now raised on appeal. The jury's guilty verdict indicates it rejected defendant's contentions and found Fonville's statements were credible. As discussed, a rational trier of fact could have made such a finding beyond a reasonable doubt based on the record presented.

¶ 70 2. *Caraway's Eyewitness Testimony*

¶ 71 On appeal, defendant also challenges Caraway's identification testimony, arguing no rational trier of fact could have accepted it as true beyond a reasonable doubt and, as a result, her testimony must be "discounted altogether." He notes that Caraway's testimony was impeached with inconsistent statements she made prior to trial.

¶ 72 Here, it is clear that Caraway's trial testimony was significantly different from prior statements she made to law enforcement before trial. Specifically, at trial she identified defendant as the shooter when, on more than one occasion, she previously asserted she did not see the shooter's face. However, Caraway explained the inconsistencies at trial by stating that she had been "scared to tell" and that she did not "want to get shot." Like with Fonville, the jury could have reasonably concluded that Caraway was reluctant to identify the shooter out of fear for her safety.

¶ 73 The record also reflects that defendant was familiar to Caraway, who testified she had known both defendant and his sisters for approximately 10 years. Further, Caraway's testimony indicated she was standing less than 20 feet away from the shooter at the time of the shooting. Caraway's assertion that she was standing near the shooter was supported by other evidence in the record. In particular, Brown testified that immediately prior to the shooting, Caraway and Jackson were standing "all the way up in front of the house" on Holly Hill Drive. Caraway asserted she was standing in the front yard of the house across the street from Fonville's residence

from where both Fonville's recorded statement and the shell-casing evidence indicated that the shots were fired. Brown's testimony also supported Caraway's assertion that Fonville's porch light had been on, leading to a reasonable inference that there was illumination in the area. Accordingly, we find that a rational trier of fact could have accepted Caraway's testimony as true beyond a reasonable doubt.

¶ 74 Finally, even if we were to find that a jury could not have reasonably accepted Caraway's testimony that she observed defendant's face, that does not warrant a finding the State failed to prove defendant's guilt. For all the reasons discussed, a rational trier of fact could have accepted Fonville's prior inconsistent statement as true beyond a reasonable doubt and Fonville's identification of defendant alone was sufficient to establish his guilt.

¶ 75 3. *Reliability of Identification Factors*

¶ 76 On appeal, defendant further argues that Fonville's and Caraway's identifications of defendant were too unreliable to sustain his conviction.

¶ 77 Factors to consider when evaluating the reliability of an eyewitness's identification include (1) the witness's opportunity to view the offender at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's descriptions, (4) the witness's level of certainty, and (5) the length of time between the offense and the identification. *People v. Slim*, 127 Ill. 2d 302, 307-08, 537 N.E.2d 317, 319 (1989); *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). Defendant maintains that none of the relevant factors support a finding that either Fonville's identification or Caraway's identification was reliable. We disagree.

¶ 78 Here, the record contains sufficient evidence to support a finding that the witnesses had ample opportunity to view the shooter. Fonville reported seeing defendant in her house

both prior to and after the shooting. She also stated that she knew defendant was the shooter because she saw him running back to her house from across the street where she saw the shots being fired. Evidence indicated Caraway was standing in close proximity to the shooter when the shooting occurred. Although the shooting occurred at night, evidence also indicated that there was a source of light in the area from at least Fonville's porch light. Further, the record supports a finding that both witnesses were attentive to what was occurring outside of Fonville's residence. Fonville testified she was looking out the window as the shooting occurred and Caraway was standing in the same area as the shooter. Both reported seeing "sparks" or "light" when the gun was fired.

¶ 79 The accuracy of the witnesses' descriptions and level of certainty at the time of identification also weigh in favor of finding the identifications were reliable. Both Fonville and Caraway were familiar with defendant, each having known him for a significant amount of time. They both identified defendant by name and consistently described him as wearing a white shirt at the time of the shooting. Although both witnesses also provided statements that were inconsistent with their respective identification statements and did not immediately identify defendant as the shooter, the record contains a reasonable explanation for such behavior. Specifically, both Fonville and Caraway reported that they were "scared" to identify the shooter or provide information to the police. Accordingly, we find no merit to defendant's assertion that either witness identification was unreliable.

¶ 80 B. Newly Discovered Exculpatory Evidence

¶ 81 Finally, on appeal defendant presents the alternative argument that his case should be remanded for a new trial based on newly discovered evidence. He points to Jamona's posttrial

identification of another individual as the shooter and argues that such evidence would likely change the result on retrial.

¶ 82 "Newly discovered evidence warrants a new trial when it is (1) of such conclusive character that it will probably change the result on retrial, (2) material to the issue and not merely cumulative, (3) discovered after trial, and (4) of such character that the defendant in the exercise of due diligence could not have discovered it earlier." *People v. Randall*, 363 Ill. App. 3d 1124, 1133, 845 N.E.2d 120, 128 (2006) (citing *People v. Orange*, 195 Ill. 2d 437, 450-51, 749 N.E.2d 932, 940 (2001)). On review, the trial court's grant or denial of a motion for a new trial alleging newly discovered evidence will not be reversed absent an abuse of discretion. *Id.* An abuse of discretion will be found "only if a trial court's evaluation is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court." *People v. Beard*, 356 Ill. App. 3d 236, 243, 825 N.E.2d 353, 360 (2005).

¶ 83 Here, evidence presented in connection with defendant's motion indicates that Jamona's identification of another person as the shooter was not newly discovered evidence. Specifically, Jamona testified on cross-examination that *before* defendant's trial, she told his lawyer that she was present at the scene of the shooting and that she observed "Vonner committing the shooting." Contrary to defendant's assertions on appeal, Jamona's testimony on this point was clear and supports the trial court's denial of his motion.

¶ 84 On appeal, defendant points out that at a hearing that occurred before the hearing on his posttrial motion alleging newly discovered evidence, his counsel discussed Jamona's identification of Vonner as the shooter and represented to the court that "he was not aware of Jamona['s] *** identification of *** Vonner as the shooter until she handed him a letter during

post[]trial proceedings[.]" Defendant maintains that these representations to the court demonstrate that Jamona's identification of the shooter was, in fact, not discovered until after his trial.

¶ 85 The record shows that during a posttrial hearing in August 2016, defendant's counsel made the following statement to the trial court:

> "I was handed—I—I was handed today, not an affidavit but a statement of Jamona Collier. The—I was told about this last night, and I expected to get an actual affidavit. I don't have an affidavit. I have a statement in her handwriting which is exculpatory, and I believe might constitute newly discovered evidence."

Defense counsel then requested additional time to file an amended posttrial motion addressing Jamona's statement.

¶ 86 Initially, we note that defense counsel's actual comments to the trial court (at a different hearing than the one at issue) were not evidence. They also fall short of a complete denial of knowledge about Jamona's identification statement as claimed by defendant on appeal. Counsel's statement could be read to refer only to the writing he was to be presented with and not its contents. As a result, his statement does not necessarily contradict Jamona's testimony.

¶ 87 Finally, even if we were to assume that Jamona's identification statement was newly discovered, we would nevertheless find that it was not of such a conclusive character that it would probably change the result on retrial. Evidence showed Jamona was defendant's sister and, therefore, had a motive to provide an exculpatory statement upon his conviction. Additionally, evidence showed she previously denied any knowledge of the shooting and maintained that she was not present at the scene when the shooting occurred. Further, her assertion that the shots were fired from Fonville's front porch was in direct conflict with the shell casing evidence and

Fonville's eyewitness statement. Ultimately, the trial court determined Jamona lacked credibility. The court was entitled to make such an assessment when evaluating the evidence presented, and we find no abuse of its discretion. See *People v. Carter*, 2013 IL App (2d) 110703, ¶ 77, 994 N.E.2d 224 (stating that to determine whether new evidence was of such conclusive character that it would change the result on retrial, a trial court is required to assess witness credibility).

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its statutory assessment of $75 against defendant as costs of this appeal.

¶ 90 Affirmed.