

2019 IL App (1st) 161700-U

No. 1-16-1700

Order filed June 28, 2019

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Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 20875
)	
GREGORY WILLIAMS,)	Honorable
)	Kevin Sheehan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *HELD:* The trial court did not abuse its discretion by admitting proof of other crimes evidence.
The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Defendant was not deprived of effective assistance of counsel by trial counsel's stipulation to evidence that impeached a witness despite the lack of a proper foundation for that evidence in defendant's case.

¶ 2 Defendant Gregory Williams was convicted of first degree murder following a simultaneous but severed jury trial with his codefendant Melvin Hoskins. The trial court sentenced defendant to 65 years' imprisonment, which included a 15-year firearm enhancement.

¶ 3 On appeal, defendant argues that (1) he was denied a fair trial due to the erroneous admission of other crimes evidence; (2) the State failed to prove him guilty beyond a reasonable doubt; and (3) he was denied effective assistance of counsel because his trial counsel stipulated to the impeachment of a witness despite the State's failure to lay a proper foundation for that impeachment in defendant's case. Codefendant Hoskins is not a party to this appeal.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.¹

¶ 5 I. BACKGROUND

¶ 6 Defendant and codefendant Hoskins were charged under separate indictments with the first degree murder of Edward Jackson, who was fatally shot while he was walking away from a party near the corner of Potomac and Parkside Avenues in Chicago.

¶ 7 A. The Other Crimes Evidence

¶ 8 Before the trial, the State moved *in limine* to introduce as other crimes evidence a confrontation that occurred before the fatal shooting at issue in this case. The State argued that the other crimes evidence was admissible against both defendant and Hoskins to establish, *inter alia*, their motive, a common scheme or design, the absence of an innocent frame of mind on their part, a continuing narrative of the circumstances attending the entire transaction, the presence of criminal intent, and to show they had access to a similar gun where ballistics evidence indicated that the victim was shot with a .40-caliber handgun.

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 9 The State averred the evidence concerning the fatal shooting of the victim would show that he was shot on June 19, 2011, near the corner of West Potomac and North Waller Avenues. Just prior to the shooting, the victim had been one street east, near the corner of Potomac and Parkside Avenues, talking with friends when defendant and Hoskins approached him. Defendant said that they had a problem with the victim's cousin, Ivan Miller. The victim indicated he did not want any trouble, said goodbye, and walked west on Potomac Avenue, away from the group and toward Waller Avenue. Defendant then handed a .40-caliber handgun to Hoskins, who followed the victim and shot him several times.

¶ 10 The State also averred that the other crimes evidence it sought to introduce would show that two days prior to the fatal shooting, Ivan and Charte Christian² drove near the corner of Parkside Avenue and Thomas Street and parked. Charte exited the car and went over to a group of men who waived at her from a porch. Ivan would identify those men as defendant, Hoskins, and defendant's brother, Dejarius Gardner. Charte spoke with the men and then told Ivan that he should leave because the men did not want him in the area. Ivan left and went to a restaurant where he met up with his girlfriend. Defendant, Hoskins, and Gardner also entered the restaurant. Hoskins and Gardner approached Ivan and tried to start a fight. When Ivan talked back to them, defendant approached and told Ivan not to threaten Gardner. Ivan and his girlfriend left the restaurant. As they were walking, Ivan saw defendant, Hoskins and Gardner approaching them. Defendant was holding a .40-caliber semi-automatic weapon and pointed it at Ivan. Defendant said that he would shoot Ivan but for the fact that Ivan did not have a gun.

² Because the spelling of Charte's first name varied throughout the transcript, we use this version to be consistent.

¶ 11 After hearing extensive argument on this motion, the trial court took the matter under advisement. On the next court date, the court ruled that the other crimes evidence would be allowed and the court would give the jury a limiting instruction before the other crimes evidence was introduced. The court found that the other crimes evidence was factually similar to the fatal shooting because the incidents occurred two days apart; defendant and Hoskins were present in both instances; a .40-caliber gun was present in both instances; both incidents occurred very near each other; and in the other crimes incident defendant, Hoskins and Gardner followed Ivan twice, first into the restaurant and later on the street. The trial court found that the factual similarity of the incidents was “compelling” and the evidence was relevant to the jury’s consideration of the issues involved. The trial court also found as a matter of law that the prejudicial effect of the other crimes evidence did not substantially outweigh its probative value and relevance.

¶ 12 **B. Trial Evidence**

¶ 13 At trial, the State presented evidence establishing that, at the time of the fatal shooting, a party was being held at a home near the corner of Potomac and Parkside Avenues and alcohol was available at the party. A group of about 10 to 15 people were outside in front of the house at about 5:15 a.m. This group included defendant; Hoskins; Gardner; the State’s witnesses Charte Christian, her cousin Princess Christian, their friend Chante Williams, and Damien Williams; and defense witness Paris Christian, who was Charte’s sister and the mother of Gardner’s child.

¶ 14 Defendant, Hoskins, Gardner, Princess, Chante and Damien were standing near the street corner. Charte testified that she was sitting on Chante’s parked car, a little south of the street corner, and Paris was with the others at the corner. Paris, however, testified that she was standing by Chante’s car. According to defendant, Paris was sitting on a car. All the witnesses knew

defendant, Hoskins and Gardner to varying degrees; Chante, for example, testified that she had just met defendant and Hoskins that day. Furthermore, all the witnesses except Chante knew the victim.

¶ 15 Charte testified that the victim, who was her friend, approached the group. First he spoke to her and then walked to the group on the corner and talked to some people. Charte heard defendant tell the victim that defendant was going to kill the victim's cousin. Defendant and the victim exchanged unfriendly words and then the victim walked away, going west on Potomac Avenue. Charte did not see anyone in the crowd follow the victim and never saw defendant with a gun. A short time later, Charte heard four to five gunshots. Then Charte drove away from the scene with Princess and Chante. Later that day, at about 2 to 3 p.m., Charte saw Hoskins near Central and Parkside Avenues and asked him why he did "it," to which Hoskins replied because they "couldn't get Ivan."

¶ 16 Chante Williams testified that she was in court under subpoena and did not want to testify at this trial. Her testimony was generally consistent with Charte's testimony about the scene at the time of the shooting. Chante added that after the victim joined the group on the corner, the atmosphere became tense when defendant spoke to him in a loud and angry manner, saying that he did not care about the victim's cousin and "had killed him." When the victim walked away on Potomac Avenue, Chante observed defendant and Hoskins talk and then defendant handed Hoskins a black gun. Chante lost sight of Hoskins when he walked between some houses, but she saw him emerge near the corner of Potomac and Waller Avenues, walk up behind the victim and shoot him. Hoskins was within one car length of the victim when Hoskins shot him, and Chante was half a block away from Hoskins. Chante saw the victim fall and Hoskins stand over him and

continue to shoot him. Defendant was still standing near Chante. Chante left the scene and went home. She did not call the police because she was scared.

¶ 17 When Chante spoke with the police by telephone on June 21, 2011, she told them that she saw the shooting but did not admit that she also saw defendant with a gun that he handed to Hoskins. When the police were questioning her about the shooting she said the name “Bubble,” even though she knew defendant at the time by his nickname Bubba and knew that he was Gardner’s brother. She explained at the trial that the nickname Bubba “was not coming out,” she “just couldn’t bring out the right words,” and the police were more concerned with asking her questions about the shooter. When Chante met with detectives at the police station on June 27, 2011, she answered the questions they posed to her. However, she did not tell them that defendant was the person in the crowd who handed the shooter a gun. She also recognized a photo of Hoskins but refused to sign it because she did not want “anything to do with it.”

¶ 18 In May of 2013, Chante told police detectives and testified before the grand jury that defendant handed Hoskins the gun. Also, she was never shown a photo of defendant until her grand jury testimony, at which time she initialed his photo. However, in December of 2014, when Hoskins’ representatives came to Chante’s home, she told them something different from her grand jury testimony because she thought she would not have to testify at a trial if she said that she did not “see anything.” When Hoskins’ representatives came to Chante’s home again with a typewritten statement, she signed it “as a way out” even though it was false.

¶ 19 Princess Christian’s testimony was generally consistent with the testimony of Charte and Chante about the scene of the shooting. She added that while the victim was still talking to Charte, defendant became hostile and tried to talk to him. Then defendant walked across

Parkside Avenue to a van. Princess walked in the same direction, “[j]ust being nosey,” and saw Hoskins behind the van talking with defendant. Princess was standing at the side of the van, 10 to 15 steps away from them, and saw defendant retrieve a gun from his pants and give the gun to Hoskins, who put it underneath his jacket. Then Hoskins followed the victim on Potomac Avenue while defendant remained on Parkside Avenue, standing in the street. Someone Princess did not know followed Hoskins and said something to him, but Hoskins did not respond. Princess stayed on Parkside Avenue and looked in the direction taken by the victim and Hoskins. Princess viewed Hoskins from behind and saw his arms move in the area where he had put the gun. Then Hoskins stopped walking, and Princess heard gunshots and saw the victim on his knees, going down. Hoskins ran south, towards Division Street, with a gun in his hand. Princess did not go to the police because she did not “want to be involved.”

¶ 20 Princess testified that the police came to her home on December 20, 2011, and she told them that she saw defendant hand Hoskins a gun. However, she was impeached by the stipulated testimony of Detective Jack Gonzalez, who would have testified that, during the December 20, 2011 interview, she did not tell him that defendant handed a gun to Hoskins.

¶ 21 Damien Williams testified that he was currently in prison for aggravated unlawful use of a weapon and had one other conviction for possession of a controlled substance. He was a friend of both defendant and Hoskins. Damien was at the street corner at the time of the shooting. He saw the victim walk up, talk to “no one in particular,” and eventually start talking about his cousin. Damien did not notice to whom the victim spoke. When Damien decided to leave, defendant, Hoskins, and the victim were still on the street corner. Damien walked about two to

three minutes to his home and then heard gunshots. Damien asserted that he did not know anything more about the case.

¶ 22 At a sidebar, defendant's counsel informed the court that he would not cross-examine Damien. Then, out of the presence of defendant's jury, Hoskins' counsel briefly cross-examined Damien and the State laid a foundation to impeach Damien with his February 16, 2012 statement to two detectives who had questioned him at the prison.

¶ 23 After defendant's jury was brought back into the courtroom, both defendant's counsel and Hoskin's counsel stipulated to the State's impeaching evidence that (1) on February 16, 2012, Detective Jack Gonzalez questioned Damien in prison regarding what he saw and heard at the time of the shooting in question; and (2) Detective Gonzalez would testify that Damien related that the victim began having words with defendant regarding the victim's cousin, things were getting a little tense between the victim and defendant, and Damien felt like something was going to go down and he did not want to get involved so he started to leave.

¶ 24 The State's evidence also established that when police officers patrolling the area arrived at the scene of the shooting, the victim was still alive. He lay on the grass area of the northwest corner of Potomac and Waller Avenues. No one else was in the area. The officers stayed with the victim until medical personnel took him away. The autopsy of the victim established that he died as a result of one gunshot wound to his chest, where the recovered bullet had penetrated his lower left lung and caused a laceration of the aorta, and one gunshot wound to his left leg, where the recovered bullet had penetrated his left thigh and fractured his femur. The medical examiner characterized the manner of death as a homicide.

¶ 25 The police recovered cartridge cases at 5700 West Potomac Avenue and on the 1300 block of North Waller Avenue. The casings were .40 caliber. The parties stipulated that the fired bullet fragment and fired jacket fragment recovered from the victim's chest and leg were both .40 caliber, and all of the eight recovered casings were .40 caliber Smith and Wesson fired cartridge cases and were fired from the same gun.

¶ 26 Before Ivan Miller, the victim's cousin, testified, the trial court instructed the jury that it could consider Ivan's testimony regarding defendant's and Hoskin's involvement in another offense for the limited purposes of their identification, presence, intent, motive, design and knowledge. The court also instructed the jury that it must determine whether defendant and Hoskins were involved in the other offense and, if so, what weight to give this evidence on the issues of identification, presence, intent, motive, design and knowledge.

¶ 27 Ivan testified that he had a prior conviction for possession of a controlled substance. On or about June 17, 2011, at about 11 p.m., he was at a restaurant near Division Street and Waller Avenue with his girlfriend. At the restaurant, some guys were "having words." Defendant, his brother Gardner, and Hoskins were there. According to Ivan, Gardner "got to talking crazy" with Ivan, and then defendant approached Ivan and told him to "watch [his] mouth" talking to defendant's little brother like that. Defendant was "talking crazy," so Ivan just waited for his food and then left with his girlfriend. As they were walking home on Massasoit Street, defendant confronted Ivan again. According to Ivan, defendant was "talking sh*t" and "talking crazy" and pulled out a gun. Specifically, Ivan said that defendant "upped his gun. Like if you like – I will shoot you if you had your gun on you." Defendant's handgun was black and looked like a .40 caliber semi-automatic. Ivan's girlfriend grabbed Ivan, saying "Let's go." Ivan admitted that he

did not report the incident until June of 2013, when he told the police and the state's attorney that defendant had pulled a gun on him back in June of 2011.

¶ 28 At the close of the State's case, the court denied defendant's and Hoskins' motions for a directed verdict of not guilty.

¶ 29 Defendant's counsel called Paris Christian, who was the mother of Gardner's son. Paris testified that she was at the party on Parkside Avenue and no arguments occurred during the hours she was there. She saw defendant and Hoskins speak to each other about one hour before the shooting occurred. When the victim approached the crowd on the street corner, Paris was standing by Chante's car and defendant was near the street corner, five to eight feet away from Paris. The victim then walked up to where Charte was standing and spoke to her. When the victim and defendant talked, Paris characterized their conversation as friendly. Eventually, the victim walked away on Potomac Avenue, but defendant remained about five to eight feet from Paris. Paris did not know where Hoskins was at that time. When she heard gunshots, she and defendant ran away from the gunshots. She got into a car that was also occupied by Gardner, Princess, and the car's owner. When they drove away, Paris saw the victim on the ground at the corner of Potomac and Waller Avenues. Paris did not see defendant give anyone a gun; did not see Hoskins or anyone with a gun move in the direction taken by the victim; and did not see the shooting.

¶ 30 On cross-examination, Paris said that she knew the owner of the car who drove her away from the scene of the shooting, but she did not know where he lived or his last name. She also admitted that she was angry and stood with her arms crossed when she spoke with Investigator John Duffy when he gave her a subpoena in September of 2015. She denied, however, telling

him that she was not at the scene of the shooting and could not be called as a witness because she did not know anything. However, she was later impeached by Investigator Duffy, who testified that during their conversation, she told him that she was not at the scene and also said, “How can they call me as a witness when I wasn’t there and don’t know nothing?”

¶ 31 Defendant testified that he was 28 years old and had worked as a dishwasher at a restaurant and an overnight stocker at a grocery store. On the date in question, he was living with his stepmother about one block away from the scene of the shooting. He did not own a gun. He had known Damien Williams for 10-12 years and also knew “of” Ivan Miller. He met Charte Christian, Chante Williams, and Princess Christian a few days before the shooting.

¶ 32 Defendant testified that he arrived at the party about 11:30 p.m. with a couple of friends. People were barbequing in the backyard, but the party migrated to the front yard. A lot of people were there, but the crowd died down to about 15 to 20 people around 2 to 3 a.m. Hoskins, whom defendant had known for 10 or 11 years, was there. Around 5 a.m., defendant was on the corner when the victim walked up from Central Avenue. Paris was sitting on a car about five to seven feet away from defendant. Eventually, the victim approached defendant and they had a “friendly” conversation. Hoskins was across the street at that time. Defendant denied getting angry with the victim during their conversation or saying that he was going to kill the victim’s cousin. When the victim left the party, defendant thought that he was going home. Defendant denied crossing the street to go behind a van, talking to Hoskins, or handing Hoskins a gun. Defendant said that he remained on the street corner and Paris remained sitting on the car.

¶ 33 Defendant testified that someone told him that Hoskins was following the victim. When defendant saw Hoskins following the victim, defendant asked Hoskins to come back. Defendant

claimed, however, that it did not make him nervous that Hoskins was following the victim. Defendant observed Hoskins shoot the victim five or six times. Defendant then left because it was “just nothing [he] want[ed] to be around” and went home. Defendant said that the police did not approach him after the shooting or ask him to come to the police station. In October of 2011, he moved to Rosedale, Mississippi, where he lived with the mother of his one-month-old son.

¶ 34 Regarding the encounter with Ivan at the restaurant, defendant initially agreed that he had “argued” with Ivan. According to defendant, Ivan and defendant’s little brother were “arguing” and defendant told Ivan to “leave it alone and both of them did. Nothing happened.” Defendant asserted that the “argument” occurred a couple of weeks before the victim was killed. Defendant, however, denied having a weapon on him, having a conversation with Ivan later on the street, or pointing a .40 caliber gun at Ivan and threatening to kill him.

¶ 35 Later, however, defendant recharacterized the encounter in the restaurant as a “conversation” between Ivan and his brother, even though defendant admitted that he had to “come up and kind of get between them.” When defendant saw that the conversation was escalating, he stepped in and stopped it, being “very polite” to Ivan, and nothing happened.

¶ 36 The jury found defendant guilty of first degree murder with a firearm. The trial court denied defendant’s posttrial motion for an acquittal or a new trial and sentenced him to a prison term of 65 years, which included a 15 year firearm enhancement. Defendant appealed.

¶ 37

II. ANALYSIS

¶ 38 On appeal, defendant contends that (1) he was denied a fair trial due to the erroneous admission of the earlier confrontation with Ivan as other crimes evidence; (2) the State failed to prove him guilty beyond a reasonable doubt; and (3) he was denied his right to effective

assistance of counsel because his trial counsel stipulated to the impeachment of Damien Williams even though the State had not laid a proper foundation for that impeachment in defendant's case.

¶ 39

A. Other Crimes Evidence

¶ 40 Defendant argues that the trial court committed reversible error when it allowed Ivan Miller to testify as other crimes evidence that, a few days before the victim's murder, defendant and Hoskins confronted Ivan initially in a restaurant and then on the street. Defendant contends that this other crimes evidence did not help the jury understand defendant's or Hoskins' motive and its prejudicial effect substantially outweighed its probative value because the idea that defendant and Hoskins agreed to shoot the victim based on an argument a few days earlier between the victim's cousin Ivan and defendant's younger brother was gross speculation and an unwarranted inference.

¶ 41 Defendant also challenges the admission of the other crimes evidence to show that he and Hoskins had access to the same type of handgun that was later used to murder the victim. Defendant asserts that a connection between a handgun defendant allegedly pointed at Ivan and the handgun subsequently used to kill the victim was "patently incredible" because the State did not show how Ivan could have recognized that the gun allegedly pointed at him was a .40 caliber weapon, Ivan did not report the confrontation with defendant and Hoskins until two years after the murder, and the police never even recovered a gun. Defendant insists that this other crimes evidence allowed the State to portray him "as a gun toting 'crazy' " without establishing a valid nexus based on real evidence between the confrontation with Ivan and the fatal shooting of the victim.

¶ 42 Illinois Rule of Evidence 404(b) (eff. Jan 1, 2011) provides that while “[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith,” it also provides that “[s]uch evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.” See also *People v. Pikes*, 2013 IL 115171, ¶ 11. “Other-crimes evidence is relevant when it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. [Citation.]” *People v. Lewis*, 2015 IL App (1st) 130171, ¶ 46. “In deciding whether to allow other-crimes evidence, the trial court must also weigh the probative value of the evidence sought to be introduced against its prejudicial effect. [Citation.] If the prejudicial nature of the evidence outweighs its probative effect, the evidence should be excluded.” *Id.* ¶ 47.

¶ 43 “The admissibility of other-crimes evidence is committed to the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of discretion. [Citation.] An abuse of discretion occurs when the trial court’s ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. [Citation.]” *People v. Gregory*, 2016 IL App (2nd) 140294, ¶ 24.

¶ 44 We find that the trial court did not abuse its discretion by allowing the other crimes evidence of the prior confrontation Ivan had with defendant and Hoskins. This evidence was not used to show defendant’s bad character or propensity to commit crime, but rather to show, *inter alia*, his motive for shooting Ivan’s cousin. The trial court found that the factual similarities between the prior confrontation with Ivan and the fatal shooting of the victim were “compelling”; the prior confrontation was relevant to the jury’s consideration of defendant’s and

Hoskins' identification, presence, intent, motive, design and knowledge in the instant case; and the prejudicial effect of the prior confrontation did not outweigh its probative value. Furthermore, the trial court gave the jury a limiting instruction before Ivan testified, informing the jury how it must limit its consideration of the other crimes evidence.

¶ 45 The trial court's determination that Ivan's other crimes testimony was relevant to establish defendant's motive was not an abuse of discretion. Ivan's testimony enabled the jury to understand the events that led up to the victim's fatal shooting by showing that defendant, his brother, and Hoskins had an unresolved dispute with the victim's cousin Ivan, which was so heated that defendant did not deem it satisfied by verbally confronting Ivan at the restaurant. Contrary to defendant's testimony about a very polite conversation with Ivan at the restaurant where defendant intervened before the matter escalated into any kind of action, Ivan's testimony showed that defendant was still angry enough to pursue Ivan after he left the restaurant, point a gun at him, and threaten that the only thing preventing defendant from shooting Ivan right there in front of his girlfriend was the fact that Ivan did not have a gun.

¶ 46 Furthermore, Ivan's testimony was very probative of witness testimony about defendant's open hostility toward the victim, despite the large group of people standing with them at the street corner, shortly before the victim was fatally shot. Specifically, Charte and Chante heard defendant angrily tell the victim that defendant would kill Ivan. Even Damien testified on direct that the victim was talking with somebody about Ivan. Moreover, Charte testified that several hours after the shooting Hoskins told her that he shot the victim because they could not "get Ivan."

¶ 47 We also find no abuse of discretion where the trial court allowed Ivan's testimony regarding the caliber of the handgun defendant pointed at him during the prior confrontation. This evidence was not used to show defendant's bad character or propensity to commit crime, but rather to show that defendant and Hoskins had access to the same type of weapon that was used to murder the victim. See *People v. Adams*, 109 Ill. 2d 102, 122 (1985) (the defendant's offer to sell a gun in his possession to a witness was admissible to show that the defendant had access to guns, including ones similar to the .22-caliber weapons used in the robbery and murder at issue); *People v. Taylor*, 101 Ill. 2d 508, 521 (1984) (other crimes evidence of attempted armed robbery and armed robbery was admissible because it was similar to the current murder offense where the locations and times of the offenses were close, the defendant was carrying what appeared to the witnesses to be the same gun, and the similarities tended to establish the defendant's possession of the murder weapon).

¶ 48 Accordingly, we conclude that the admission of Ivan's testimony as other crimes evidence was not error.

¶ 49 **B. Sufficiency of the Evidence**

¶ 50 Defendant argues that the State failed to prove beyond a reasonable doubt his guilt of first degree murder under a theory of accountability for essentially handing Hoskins the gun that Hoskins then used to fatally shoot the victim. Defendant contends that the evidence against him was too unreasonable, improbable and unsatisfactory to satisfy the burden of proof because the testimony of the witnesses at the scene of the shooting was inconsistent and incredible. Specifically, defendant argues that the testimony of Charle and Chante was not credible because they had been partying and drinking alcohol prior to the shooting that happened at 5:15 a.m.;

Charte never saw defendant with a gun; the State's witnesses delayed reporting their observations at the scene to the police for months or even years; Chante changed her version of the events multiple times; and defendant's testimony that he remained standing at the corner with the group and did not give Hoskins a gun was very credible and unimpeached.

¶ 51 When a defendant challenges the sufficiency of the evidence to sustain his conviction, it is not the function of this court to retry the defendant. *Adams*, 109 Ill. 2d at 115. Rather, the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact is responsible for determining the credibility of the witnesses and the weight to be given to their testimony as well as determining any reasonable inferences to be drawn from the evidence presented. *People v. Mullen*, 313 Ill. App. 3d 718, 724 (2000). Furthermore, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *Id.* at 724. A reviewing court will not overturn a conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 52 A person commits the offense of first degree murder when he intentionally or knowingly kills another without lawful justification. 720 ILCS 5/9-1(a)(1) (West 2010). A person is legally accountable for the conduct of another when either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he solicits, aids, abets,

agrees, or attempts to aid that other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2010).

¶ 53 “Minor inconsistencies in the testimonies do not, of themselves, create a reasonable doubt.” *Adams*, 109 Ill. 2d at 115. Charte and Chante testified that they were not intoxicated, and Chante added that she had stopped drinking several hours before the shooting occurred at about 5:15 a.m. because she was responsible for driving several people home. Furthermore, Charte was sitting on a car several feet away from the group standing on the street corner, whereas Chante and Princess were standing at the corner closer to defendant and the victim. Moreover, after defendant’s verbal altercation with the victim about his cousin Ivan, Princess followed defendant when he walked across the street to a van, spoke to Hoskins behind the van, and handed Hoskins the gun that Hoskins concealed in his clothing before he followed the victim. Allowing for some reasonable differences in the testimony of Charte, Chante, and Princess due to their different perspectives at the scene or ability to hear what people said as a result of where Charte, Chante, and Princess were standing or sitting in relation to defendant, Hoskins, and the victim, their testimony does not create a reasonable doubt of defendant’s guilt.

¶ 54 After the shooting, Charte left the scene and did not contact the police because she was afraid. Similarly, Chante and Princess had witnessed the cold-blooded manner in which defendant and Hoskins had murdered the victim simply because he was related to Ivan. Defendant and Hoskins committed this murder in full view of several potential witnesses at the scene, so a rational jury could understand that the witnesses would not want to come forward immediately or would attempt to minimize their involvement in the case given the callous and brutal actions of defendant and Hoskins.

¶ 55 Finally, defendant mischaracterizes his testimony as very credible and unimpeached. There was evidence contradicting defendant's version of a very polite conversation with Ivan at the restaurant and a friendly conversation with the victim at the street corner. Furthermore, defendant's assertion that he was not concerned when Hoskins followed the victim on Potomac Avenue was belied by defendant's own testimony that he asked Hoskins to come back.

¶ 56 We find no sufficient ground to disturb the jury's conclusion that defendant was guilty beyond a reasonable doubt.

¶ 57 C. Ineffective Assistance of Trial Counsel

¶ 58 Finally, defendant argues that he was deprived of a fair trial when his trial counsel stipulated to the testimony of Detective Gonzalez, which impeached Damien's testimony that he did not know either whom the victim was speaking to at the scene about Ivan or anything more about the case. Specifically, trial counsel stipulated that Detective Gonzalez would testify that Damien said the victim began having words with defendant at the scene about Ivan, things were getting a little tense between the victim and defendant, and Damien left the area because he thought something was going to go down and he did not want to get involved.

¶ 59 Defendant argues that trial counsel erroneously stipulated to this impeachment testimony even though the State had failed to lay a proper foundation for it before the jury in defendant's case. Defendant argues that the State compounded this error during rebuttal closing argument by using the impeachment of Damien to denigrate defendant's testimony that he had a friendly conversation with the victim before the victim was killed. Defendant asserts that trial counsel's error was prejudicial because the evidence of defendant's guilt was not overwhelming due to the

inconsistent, contradictory and impeached testimony of the State's witnesses, coupled with their delay in reporting the crime to the police.

¶ 60 To support a claim of ineffective assistance of counsel, a defendant must allege facts demonstrating that (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that the result of the trial would have been different but for counsel's deficient performance. *People v. Patterson*, 192 Ill. 2d 93, 107 (2000) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. A defendant must satisfy both the deficient performance and prejudice prongs of the *Strickland* test; the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *Patterson*, 192 Ill. 2d at 107.

¶ 61 A court reviewing an ineffectiveness claim must consider the totality of the evidence before the factfinder. *Strickland*, 466 U.S. at 695. "Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors." *Id.* at 696.

¶ 62 We can dispose of defendant's ineffective assistance claim on the prejudice prong alone. As discussed above, we reject defendant's assertions that the State's witnesses were not credible because they delayed reporting the crime to the police or were reluctant to testify, and their testimony was inconsistent, contradictory and severely impeached. We conclude that even if trial counsel had objected to the lack of foundation for the stipulation about Detective Gonzalez's

impeachment of Damien's testimony, there was not a reasonable probability that the result of the trial would have been different.

¶ 63 Although trial counsel stipulated to an impeachment of Damien's testimony despite the State's failure to lay a proper foundation for that impeachment before the jury in defendant's case, counsel's error "was not so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* Damien's testimony merely claimed that he did not know whom the victim was speaking to at the scene about his cousin; Damien left the scene before the shooting occurred; and he knew nothing more about the case. However, the consistent testimony of Charte, Chante, and Princess had already established that defendant spoke to the victim at the scene in an angry or hostile manner about the victim's cousin. Even defendant's witness Paris testified that defendant and the victim spoke to each other, although Paris had characterized the conversation as friendly.

¶ 64 Both Chante and Princess saw defendant give a gun to Hoskins, who then followed the victim. Chante actually saw Hoskins shoot the victim, who fell, and then Hoskins stood over him and continued to shoot him. As Princess stood on Parkside Avenue, she was looking at Hoskins' back and saw him move his arms in the area where she had seen him put the gun. Princess saw Hoskins walk after the victim and then stop. She heard gunshots, saw the victim on his knees, and saw Hoskins run from the scene with a gun in his hand. Moreover, defendant's and Hoskins' motive for shooting the victim and access to the murder weapon were established by Ivan's testimony about the prior confrontation and Charte's testimony that Hoskins told her they shot the victim because they could not get to his cousin Ivan.

¶ 65 Considering the totality of the evidence before the jury, the effect of trial counsel's erroneous stipulation to Detective Gonzalez's impeaching testimony without requiring the State to lay a proper foundation for it before defendant's jury was not so serious that defendant has shown a reasonable likelihood that the result of the trial would have been different absent that error. The record demonstrates that the State laid a proper foundation for Detective Gonzalez's impeaching testimony before the jury in Hoskins' case, and there is no reason to presume that the State would not have been able to do the same for the jury in defendant's case. Accordingly, we reject defendant's claim of ineffective assistance of counsel.

¶ 66

III. CONCLUSION

¶ 67 For the foregoing reasons, we find that the trial court properly admitted the other crimes evidence, the evidence was sufficient to convict defendant beyond a reasonable doubt, and he was not deprived of his right to effective assistance of trial counsel. Accordingly, we affirm the judgment of the trial court.

¶ 68 Affirmed.