

2011 IL App (1st) 091530-U

No. 1-09-1530

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FIFTH DIVISION  
September 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 5908
	)	
STEVEN BRYANT,	)	Honorable
	)	Bertina E. Lampkin,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Joseph Gordon concurred in the judgment.

O R D E R

¶ 1 HELD: Defendant's contentions that defense counsel elicited

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harmful testimony that one of the witnesses whom identified defendant as the offender was afraid of him, and counsel's failure to object to a witness' testimony regarding prior consistent pretrial statements she made implicating defendant, did not amount to valid claims of ineffective assistance of counsel.

¶ 2 Following a bench trial, defendant Steven Bryant was convicted of first degree murder and sentenced to an 85-year prison term. On appeal, he contends he received ineffective assistance of trial counsel based on counsel's conduct in eliciting harmful testimony from two of the State's key eyewitnesses. Defendant also contends counsel was ineffective based on his failure to object to a witness' testimony regarding prior consistent statements she made identifying defendant as the offender. For the reasons that follow, we affirm defendant's conviction and sentence.

### ¶ 3 BACKGROUND

¶ 4 The evidence adduced at trial established that on April 24, 2006, the victim, Ricardo Martinez, was driving his car west on Addison Street with Angel Roman, Louis Pippion and a man known as Chach as his passengers. When Roman and Chach began fighting in the car, Martinez pulled over near the intersection of Addison and Cicero. Roman, Pippion and Chach then got out of the car. While outside the car, Roman heard gun fire from across the street. When he and the other passengers ran back to the car, Roman saw Martinez sitting unresponsive in the driver's seat.

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Roman testified he did not see who fired the shots. Martinez was taken to the hospital and died a few days. The medical examiner's stipulated testimony establish Martinez died of multiple gunshot wounds.

¶ 5 Yaniri Serges testified that in April 2006, she was 17 years old and living with defendant, her boyfriend. At around 9:50 p.m. on April 24, 2006, Serges was driving east on Addison with defendant, her sister Graciela Gonzalez, and two other men. Defendant was in the front passenger seat and Gonzalez sat behind Serges in the backseat. When they approached the intersection of Addison and Cicero, one of the men in the backseat yelled "[t]here goes Irwin," whom Serges said was a Four Corner Hustler gang member. Serges testified defendant, who was a member of the Insane Duce street gang, disliked the Four Corner Hustlers because Serges had a previous relationship with one of the members.

¶ 6 Serges said that as the car passed through the intersection of Addison and Cicero, defendant leaned outside the front passenger window and tilted himself left over the roof. Serges then heard defendant fire three or four gunshots. When defendant and Serges returned home at around 10:30 p.m., defendant told her the shooting was her fault.

¶ 7 On October 4, 2006, Serges was arrested on an unrelated

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parole violation and held at the police station for two days. During her first two conversations with police, she denied either she or defendant were involved in the shooting. After the police told her that her sister, Gonzalez, had told them Serges was present during the shooting, Serges made a written statement to police identifying defendant as the shooter.

¶ 8 On cross examination, Serges said the police told her she could not leave and would spend the rest of her life in prison if she did not say defendant committed the offense. She also admitted that in December 2006, she talked to a private investigator hired by defense counsel. Serges admitted she told the investigator that her statement implicating defendant as the shooter was untrue. On redirect examination by the State, Serges said that her statement to the investigator was a lie, and that she said it because she did not want defendant to know she signed a written statement. In response to a State question, Serges noted she had identified defendant as the shooter in her written statement to the police and in her testimony before the grand jury. Defense counsel did not object to the testimony regarding Serges' prior statements.

¶ 9 Susan Carlson, a private investigator hired by defense counsel, testified she talked with Serges on November 4, 2006, and again on December 12, 2006.

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¶ 10 Graciela Gonzalez testified that on April 24, 2006, she was in the backseat of her sister Serges' car with two men named Alex and Eddie. Defendant was the passenger in the front of the car. When they approached the intersection of Addison and Cicero, Alex and Eddie yelled out "Irwin." Gonzalez then saw defendant reach under the front passenger seat and pull out a gun. After defendant leaned out of the window and across the roof, Gonzalez heard three gunshots. Defendant then got back in the car and yelled at Serges to keep driving.

¶ 11 The State admitted a picture of "Irwin Morero," whom the State argued bore a close resemblance to the victim of the shooting.

¶ 12 The State was also allowed to admit portions of several recorded conversations between defendant and others. In a recorded conversation on October 6, 2006, Serges told defendant she and her sister had made a statement to police implicating defendant. When defendant asked Serges "Why didn't you stay truthful," Serges responded "I did, babe, I did." Defendant then told her "You did me wrong." During a recorded conversation on December 23, 2006, defendant told Rafael Pacheco that "I haven't seen many people get smoked," and that he had "never seen as many police." When Pacheco asked why so many police were there, defendant responded "[f]ucking Marine." Earlier trial testimony

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established the victim was a Marine. Bryant also told Pacheco "we had to go all the way to Diversey off Addison." In another conversation with Pacheco later that day, defendant said "I'm already pooped off for killing a Marine." Defendant also discussed a plan with Pacheco to harm Gonzalez and Serges so they would be unable to testify at trial.

¶ 13 The trial court found defendant guilty, noting it found Serges and Gonzalez to be "credible witnesses" with "no motive for them to lie." Following a sentencing hearing, the trial court sentenced defendant to an 85-year prison term. Defendant appeals.

#### ¶ 14 ANALYSIS

¶ 15 Defendant contends he received ineffective assistance of trial counsel. Specifically, defendant contends his trial counsel was ineffective because he improperly elicited testimony from one of the eyewitnesses that she was "afraid" of defendant. Defendant also contends his trial counsel was ineffective for allowing Serges to testify regarding two pretrial statements she made implicating defendant, even though her prior statements were clearly consistent with her trial testimony. Each contention will be addressed in turn.

¶ 16 To establish a claim of ineffective assistance, a defendant must prove: (1) counsel's performance was deficient or fell below

an objective standard of reasonableness; and (2) the defendant suffered prejudice as a result of the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Ford*, 368 Ill. App. 3d 562, 571 (2006). A defendant's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats an ineffective assistance claim. *People v. Palmer*, 162 Ill. 2d 465, 475 (1994); *People v. Hobson*, 386 Ill. App. 3d 222, 237 (2008).

¶ 17 As to the first prong of *Strickland*, a defendant must overcome a strong presumption that, under the circumstances, the challenged action or inaction of counsel was a valid trial strategy. *Hobson*, 386 Ill. App. 3d at 237. With regard to the second prong, a defendant is prejudiced if there is a reasonable probability that the outcome of the trial would have been different, or the result of the proceeding was unreliable or fundamentally unfair. *Strickland* 466 U.S. at 687.

¶ 18 I. Eliciting Harmful Testimony

¶ 19 This court has recognized a defense attorney who elicits damaging testimony that proves an element of the State's case may be found to have provided ineffective assistance. *People v. Bailey*, 374 Ill. App. 3d 608, 614 (2007); *People v. Orta*, 361 Ill. App. 3d 342 (2005); *People v. Jackson*, 318 Ill. App. 3d 321, 328 (2000) ("For defense counsel to elicit testimony which proves

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a critical element of the State's case where the State has not done so upsets the balance between defense and prosecution so that defendant's trial is rendered unfair.")

¶ 20 Initially, defendant contended in his opening brief that counsel improperly elicited harmful testimony from both Serges and Gonzalez. In his reply brief, however, defendant concedes testimony from Serges that she was afraid of defendant was actually elicited by the State during redirect examination, not by defense counsel. However, defendant's contention that defense counsel improperly elicited harmful testimony from Gonzalez still remains to be addressed.

¶ 21 During defense counsel's cross examination of Gonzalez in this case, the following colloquy occurred:

"Q. [Defense counsel] Between the night of the shooting and October when you went down to Grand and Central, had you and your sister talked about the events that had taken place on the night of the shooting?

A. [Gonzalez] We talked about it but I end up moving out and went to Bolingbrook because I couldn't take it and I was afraid.

Q. Were you were [sic] afraid that you'd get in trouble for the shooting?

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A. No. I was afraid that something would happen to me because of [defendant's] family.

Q. Were you afraid for Yanari?

A. Yes, I was afraid for my sister.

Q. Were you afraid that she'd get in trouble with police?

A. No. I was afraid because she was still living with his parents at the moment and I was afraid something was going to happen to her in that house."

¶ 22 We find the totality of defense counsel's line of questioning strongly suggests he was pursuing a valid trial strategy by trying to call into question Gonzalez's and Serges' decision not to come forward to police sooner. Counsel did not directly question Gonzalez regarding whether she or her sister were afraid of defendant; instead, counsel questioned Gonzalez regarding whether she was afraid either her or her sister would get in trouble with the police over the shooting. Gonzalez's answer that she was afraid of defendant and his family was clearly volunteered in response to counsel's actual question. Nor did counsel ever question Gonzalez in a manner that was likely to elicit testimony that would have proven an element of

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the State's case. Based on the record before us, we simply cannot say defense counsel's actual questioning of Gonzalez amounted to deficient performance sufficient to satisfy the first prong of the *Strickland* test.

¶ 23 II. Prior Consistent Statements

¶ 24 Defendant also contends he received ineffective assistance based on his counsel's failure to object to Serges' trial testimony regarding her prior written statement to police and her grand jury testimony implicating defendant as the shooter.

¶ 25 Generally, statements made prior to trial are inadmissible for the purpose of corroborating trial testimony or rehabilitating a witness. *People v. Rivera*, 409 Ill. App. 3d 122, 145 (2011). However, such statements are admissible in two circumstances: (1) where there is a charge that the witness has recently fabricated the testimony; or (2) where the witness has a motive to testify falsely. *Rivera*, 409 Ill. App. 3d at 145.

¶ 26 Defendant suggests testimony regarding Serges' prior written statement and testimony before the grand jury was inadmissible because it solely served as repetition for her trial testimony implicating defendant as the shooter, in effect improperly bolstering her credibility.

¶ 27 Even if we were to find defense counsel's decision not to object to the prior consistent statements amounted to deficient

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conduct, we cannot say defendant suffered any prejudice here. The alleged error was not so prejudicial as to create a reasonable probability that the outcome of the trial would have been different had an objection been made; nor was the alleged error serious enough to render the result of the proceeding unreliable or fundamentally unfair. See *Strickland* 466 U.S. at 687.

¶ 28 The evidence presented against defendant in this case was overwhelming. Even assuming the State improperly elicited Serges' testimony regarding her prior consistent statements in an attempt to bolster her credibility, we note her testimony was already corroborated by Gonzalez's near-identical account of the shooting. Gonzalez's independent testimony identifying defendant as the shooter, mixed with defendant's own statements in the recorded conversations indicating he played an active role in the victim's shooting, strongly suggest the result of the proceedings would not have been different even if counsel had properly objected to testimony regarding the prior consistent statements.

¶ 29 Accordingly, we find defendant's ineffective assistance of counsel claims are without merit.

¶ 30 CONCLUSION

¶ 31 We affirm defendant's conviction and sentence.

¶ 32 Affirmed.

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