

FIRST DIVISION  
June 29, 2012

No. 1-10-2618

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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
Respondent-Appellee,	)	Cook County.
	)	
v.	)	07 CR 9487 (03)
	)	
BRUCE BOOKER,	)	Honorable
	)	Timothy Joseph Joyce,
Petitioner-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

*HELD:* Trial court did not err in allowing admission of prior consistent statements and therefore defendant's claim of ineffective assistance of trial counsel premised on the same alleged error also fails. Mittimus ordered amended to correctly state the offenses for which defendant was convicted, as well as the proper statutory citation and class of that offense.

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¶ 1 Following a bench trial, defendant Bruce Booker was found guilty of aggravated kidnaping, home invasion, and two counts of armed robbery. He was sentenced to 25 years' imprisonment for each of the armed robberies, 15 years for aggravated kidnaping, and 25 years for home invasion, with all sentences to be served concurrently.

¶ 2 On appeal, defendant contends that the prosecutor improperly elicited prior consistent statements from the victim and the victim's girlfriend which denied him a fair trial. Defendant further contends he received ineffective assistance because his trial counsel failed to object to the improper prior consistent statements. Defendant finally claims that we should order the clerk of the court to correct the mittimus to reflect the proper statutory citations and class for each offense. For the reasons that follow, we affirm defendant's convictions and order the mittimus corrected and amended.

¶ 3 The evidence presented at trial revealed that on the evening of April 18, 2007, Shalamarr Rowan was at the home he shared with his girlfriend, Traysha Hayden. Sometime that evening after 10:00 p.m., Hayden left the house to go to a nearby store. Shortly thereafter, Rowan exited the house and was walking to his parked minivan when he was kidnaped at gun-point by defendant and codefendant James Lewis.<sup>1</sup> Also involved in the kidnaping was Ricky Williams<sup>2</sup> and a number of other offenders who are not parties to this appeal.

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<sup>1</sup> Defendant and codefendant James Lewis were tried jointly. However, Lewis is not a party to this appeal.

<sup>2</sup> Williams, a three-time convicted felon, pled guilty to kidnaping and testified for the State in exchange for an eight-year sentence.

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¶ 4 Rowan was forced into a van and ordered to lay face down in the back of the van. Lewis told Rowan he was with the FBI and that they were taking him downtown. Williams testified that defendant took Rowan's minivan and followed behind their van.

¶ 5 Rowan was transported to a garage attached to a house owned by Williams' aunt. Rowan's mouth was duct-taped and he was ordered to lay face-down on the garage floor with his arms and legs spread out like he was "making an angel in the snow." Rowan testified that he thought there were about six people in the garage, including defendant and Lewis.

¶ 6 Lewis made a series of phone calls to Rowan's family members demanding money and drugs for his safe return. Meanwhile, defendant, Williams, and two other men left the garage and traveled back to Rowan's house to search for money and drugs. Williams testified that Rowan was a drug dealer and that his house was a drug house. Williams claimed that on prior occasions he had picked up drugs from the house.

¶ 7 Williams testified that when they arrived back at Rowan's house, he stayed in the van and acted as a lookout while the others went to the home. Hayden testified that when she returned home from the store, no one was at home. Hayden was watching television when she heard what she believed to be Rowan entering the house.

¶ 8 Several men entered the home and put a gun to Hayden's head. The men dragged Hayden into the kitchen, put a plastic bag over her head, tied her hands and legs, and forced her to lay face-down on the floor. Hayden heard multiple voices but could not see anyone. She testified that someone kept asking her, "where's the money." Hayden heard someone run upstairs after another voice said they thought money was upstairs.

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¶ 9 As the men left the house, they warned Hayden not to call the police or they would kill her. The men told Hayden to call Rowan's brother. Williams testified that defendant and the two other men were inside the house for about six minutes.

¶ 10 Hayden eventually freed herself. She called Rowan and one of his brothers, but received no answers. Hayden then called her mother and Grayland Smith, the father of her baby. Hayden received a call on her cell phone from a private number. The caller demanded money for Rowan's safe return or they were going to take him to the lake. She subsequently received about four similar phone calls. Hayden ultimately went to the police station where she made a report.

¶ 11 Williams testified that after he, defendant, and the two other men returned to the garage, they sifted through the items taken from Rowan's house, which included several thousand dollars, half a "key" of cocaine, and about five or six firearms. Williams testified that the group split the proceeds evenly, "so it wouldn't be no problem."

¶ 12 Later that evening, Torianto Riley, one of Rowan's brothers, received a phone call from another brother, Rashad Rowan, informing him that Rowan's house had been robbed and that Rowan had been abducted. A short time later, Riley received a phone call from Rowan's cell phone. According to Riley, a male African-American voice said, "Bitch, we got your brother." The caller made a ransom demand of \$100,000. Riley testified that he subsequently received several more phone calls from the same man and that during one of the calls, there was a discussion about raising \$3,000.

¶ 13 Riley eventually went to a police station where he made a report and spoke with Chicago Police detectives as well as agents from the Federal Bureau of Investigation (FBI). Riley agreed to

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have his cell phone tapped so that the authorities could listen in on incoming calls.

¶ 14 Williams testified that after all of the ransom phone calls had been made, the group decided to call it a day and "do this thing tomorrow." Lewis removed Rowan's shoes, tied his feet together, bound his hands behind his back, and placed a towel over his head secured by duct-tape. Williams testified that Rowan was duct taped around his legs, arms, and over his face, and a small hole was cut in the tape to allow him to breath. Rowan was then placed in a passenger seat in his own minivan, which had been parked inside the garage. Rowan testified that he could not tell if any of the men remained in the garage because he could not see.

¶ 15 Rowan testified that when he heard birds chirping, he figured it was around 5 or 6 a.m. He was able to free his hands. He peeled the tape from his eyes and saw that no one else was in the garage. Rowan escaped the garage through a side door.

¶ 16 Rowan ran southbound down an alley and realized where he was once he saw the street signs. Rowan ran through the alley to Hayden's mother's house. Rowan called his brother Riley and told him he was safe. FBI agent Wallschlaeger and his partner met with Rowan at Hayden's mother's house.

¶ 17 Later that morning, defendant and Lewis drove over to Williams' house to pick him up. Defendant was driving his green Cadillac and Lewis was in the front passenger seat making more ransom phone calls. At the same time, Riley was driving around with the FBI and taking the ransom phone calls even though he knew Rowan had escaped from the garage. They set up a time and place to drop the money in exchange for Rowan.

¶ 18 When defendant, Lewis, and Williams arrived at the garage that morning they discovered that

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Rowan had escaped from the garage. They gave a "random guy" ten or twenty dollars to drive Rowan's minivan out of the garage and they followed behind in defendant's green Cadillac. Williams testified that they wanted to take Rowan's minivan "somewhere far off that we can go on about our business."

¶ 19 As Rowan was driving around with the FBI agents to show them the location of the garage he had been held in, he noticed a green Cadillac driving southbound in an alley followed by his own minivan. Agent Wallschlaeger drove southbound down the street, paralleling the two vehicles which continued southbound down the alley. Agent Wallschlaeger radioed other FBI and Chicago Police units and alerted them that they were in the area following Rowan's minivan.

¶ 20 While Agent Wallschlaeger paralleled the two vehicles, a marked Chicago Police squad car stopped the minivan. Lewis, realizing they still had Rowan's cell phone, threw it out the window of the Cadillac. The Cadillac proceeded down various streets before it was cut off by Agent Wallschlaeger's vehicle. Lewis and Williams fled from the Cadillac. Defendant put the Cadillac in reverse and sped off down the street.

¶ 21 Defendant was eventually apprehended after he crashed his Cadillac. Williams and Lewis were both apprehended in the area. Rowan's cell phone was recovered in the street. In show-up identifications, Rowan identified defendant, Lewis, and Williams as being involved in his kidnaping. The parties stipulated that DNA (deoxyribonucleic acid) found on a brown glove recovered from the floor of the garage matched defendant's profile.

¶ 22 Detective William Davis, who had interviewed Rowan the day of the offense, was called as a defense witness to impeach the credibility of Rowan's testimony regarding his account of the

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kidnaping, such as the number of offenders he saw in the garage, the manner in which he was duct-taped, the point at which his personal items were taken from his person, and whether the abductors ever identified themselves as FBI agents. The defense also elicited testimony from the detective in an attempt to impeach the credibility of Hayden's testimony regarding who she called and where she went immediately after the home invasion.

¶ 23 The State cross-examined Detective Davis and elicited testimony from him regarding some of the statements Rowan and Hayden made to him during the course of his investigation. Defense counsel for defendant objected as beyond the scope of direct examination. The trial court overruled that objection. Defense counsel for Lewis later objected to the testimony on the ground of improper prior consistent statements. That objection was sustained.

¶ 24 The trial court found defendant guilty of aggravated kidnaping, home invasion, and two counts of armed robbery. He was sentenced to 25 years' imprisonment for each of the armed robberies, 15 years for aggravated kidnaping, and 25 years for home invasion, to be served concurrently. Defendant now brings this direct appeal.

¶ 25 ANALYSIS

¶ 26 Defendant first contends that during the State's cross-examination of Detective Davis, the prosecutor elicited prior consistent statements that Rowan and Hayden made to the detective during the course of his investigation that improperly bolstered the credibility of the couples' trial testimony which was otherwise impeached and unreliable. Defendant maintains that the trial court erred in allowing admission of these prior consistent statements.

¶ 27 Defendant requests that we consider the merits of his contentions under the plain error rule,

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on the ground that the evidence of his guilt was closely balanced. We must deny defendant's request.

¶ 28 The plain error exception to the waiver rule is applied in criminal cases under two limited circumstances: (1) where the evidence is closely balanced and the error might have significantly affected the outcome of the case; or (2) where the error is so fundamental and of such magnitude that the accused was denied a fair trial and remedying the error is necessary to preserve the integrity of the judicial process. *People v. Young*, 128 Ill. 2d 1, 47 (1989); *People v. Sanders*, 99 Ill. 2d 262, 273 (1983); See 134 Ill. 2d R. 615(a)<sup>3</sup>.

¶ 29 In this case, even if we were to find that the trial court erred in allowing the admission of the prior consistent statements, we do not find that the error amounted to plain error since the evidence of defendant's guilt was not closely balanced and the error was not of such magnitude as to preclude defendant from receiving a fair trial. Contrary to defendant's claims, the evidence of his guilt was not closely balanced.

¶ 30 Much of Rowan's testimony identifying defendant as one of his abductors was corroborated by Williams' testimony and the physical evidence recovered from the garage. Williams' testimony identifying defendant as one of the abductors was corroborated by physical evidence which included DNA found on a brown glove recovered from the floor of the garage matching defendant's DNA profile.

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<sup>3</sup> Supreme Court Rule 615(a) provides:

"Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." 134 Ill. 2d R. 615(a).

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¶ 31 In addition, the State presented evidence establishing that defendant was the driver of the green Cadillac seen following behind Rowan's minivan in the area of the garage. After FBI agents stopped the Cadillac, Lewis and Williams fled from the vehicle and defendant put the vehicle in reverse and sped off down the street before crashing. The evidence of defendant's guilt was not closely balanced.

¶ 32 Moreover, the complained of error was not of such magnitude as to preclude defendant from receiving a fair trial. The error involved an evidentiary matter that did not implicate a substantial right or affect the fairness of the judicial proceeding. See *People v. Keene*, 169 Ill. 2d 1, 18 (1995) (finding that even if the prior consistent statement was used to improperly bolster the witness' testimony, this error did not implicate a substantial right).

¶ 33 Finally, this was a bench trial and there is a presumption in a bench trial that the court considered only competent evidence. *People v. Martin*, 112 Ill. App. 3d 486, 496 (1983). This presumption is not overcome unless the record affirmatively shows that the court actually relied on the objectionable evidence. *Id.* No such showing has been made here.

¶ 34 Defendant's alternative claim of ineffective assistance of trial counsel is based on counsel's failure to object to the admission of the prior consistent statements and for the failure to raise the issue in his motion for a new trial. However, because we have concluded that defendant failed to meet his burden of proving prejudice resulting from the admission of these prior consistent statements, we reach the same result with regard to his ineffective assistance claim. Without a showing of prejudice, we cannot conclude that trial counsel was ineffective. See *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010) (because a defendant must satisfy both the deficiency and

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the prejudice prongs of the *Strickland* test for ineffective assistance of counsel, the failure to satisfy either element precludes a finding of ineffective assistance of counsel).

¶ 35 Defendant finally claims that the mittimus should be corrected to reflect the proper statutory citations and class for each offense. Defendant was convicted of the following offenses: aggravated kidnaping while armed with a firearm, a Class X felony (720 ILCS 5/10-2(a)(6), (b) (West 2006)); home invasion while armed with a firearm, a Class X felony (720 ILCS 5/12-11(a)(3), (c) (West 2006)), and two counts of armed robbery while armed with a firearm, also a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2006)).

¶ 36 Pursuant to Supreme Court Rule 615(b)(1) (134 Ill. 2d R. 615), we order that the mittimus be corrected and amended to properly state the offenses for which defendant was convicted, as well as the proper statutory citation and class of that offense. See *People v. Harris*, 2012 IL App (1st) 092251, ¶ 39 (April 20, 2012).

¶ 37 For the foregoing reasons, we affirm the judgment of the circuit court and order the clerk of the circuit court to correct and amend the mittimus to properly state the offenses for which defendant was convicted and the proper statutory citation and class of that offense.

¶ 38 Affirm; mittimus corrected and amended.