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SIXTH DIVISION
September 27, 2013

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 4909
)	
VERNON WHITE,)	The Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *HELD:* There was sufficient evidence for the jury to find defendant accountable for first degree murder beyond a reasonable doubt; and defendant's claim of ineffective assistance of trial counsel lacks merit.

¶ 2 Following a jury trial, defendant Vernon White was found guilty of first degree murder and aggravated criminal sexual assault, then sentenced to consecutive, respective terms of natural life and 30 years' imprisonment. On appeal, defendant challenges the sufficiency of the evidence

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to sustain his murder conviction and contends that he received ineffective assistance of trial counsel. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record shows, in relevant part, that on March 27, 1996, defendant and two other individuals stole about \$100,000 from the home of a drug dealer named Kenneth Williams, who had been kidnapped and was being held by a man named Dree Deton. Defendant also sexually assaulted Kenneth's wife, P.W. After dividing the money, Dree told defendant that he had "handled" Kenneth, and defendant assisted him in disposing of Kenneth's car and body. Years later, a DNA match linked defendant to the sexual assault of P.W., and he was placed under arrest and tried on charges of felony murder, predicated on kidnapping and unlawful restraint, and aggravated criminal sexual assault.

¶ 5 At trial, Dr. Mitra Kalelkar, the assistant chief medical examiner of Cook County, testified that she performed an autopsy on Kenneth Williams on April 9, 1996. Her external examination revealed that Kenneth's body was wrapped in black plastic with duct tape wound around it about 35 times. Beneath that covering was another layer of duct tape around Kenneth's face, and his hands were duct-taped in a figure-eight configuration. She removed the duct tape on Kenneth's face and testified that a bandana, which was knotted in the back, was covering his eyes, that his nostrils were plugged with paper towels, that there appeared to be a gag in his mouth, and that he had an injury to the back of his head.

¶ 6 Dr. Kalelkar's internal examination revealed that Kenneth had hemorrhages in the strap muscles of his neck and a fracture on the left side of the thyroid cartilage, *i.e.*, the adam's apple.

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He also had multiple petechial hemorrhages, which are "tiny pinpoint hemorrhages in the eyes." Similar hemorrhages were found in the mucosa of his larynx and in the epiglottis, and his blood tested positive for alcohol at .02 percent. Dr. Kalelkar opined that the cause of Kenneth's death was strangulation, and that a factor that significantly contributed to his death was blunt trauma to his head. She opined that the manner of death was homicide.

¶ 7 Andre Williams testified that he is a "first cousin twice" of Kenneth Williams, aka K-9. In March 1996, Kenneth lived in a recently purchased home at 354 Oglesby Avenue, in Calumet City, where he lived with his wife, P.W., his three children, and his wife's niece, Jessica.

¶ 8 About 1 a.m. on March 27, 1996, Andre went to Kenneth's house, but Kenneth was not home. He stayed and watched movies in the basement and eventually P.W. went upstairs, leaving him, Jessica, and one of the children in the basement. At some point, Andre fell asleep and subsequently woke to the "hissing sound of a spray." He thought one of the kids might be pulling a prank on him, but when he opened his eyes, they started to burn. Looking in a mirror, Andre made out the reflection of someone kneeling on his right side and holding a spray can, and he jumped out of his chair and turned to the right with his "guards up." He then heard a voice to his left say, "We got a hard one here," at which point he was struck in the head with something and knocked unconscious. The next thing Andre remembers is waking up to the sound of everyone in the house crying. He could not open his eyes or move because he was bound with duct tape across his mouth and eyes, and his arms and legs were taped together. Jessica and P.W., who was not wearing any clothes, removed the duct tape and told him what happened. After Andre looked through the house and found that it had been ransacked, he drove everyone to

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the house of P.W.'s mother. P.W. was "nervous, shaking, and crying," and Andre took her to the hospital where he received treatment himself for being sprayed in the face with mace.

¶ 9 On cross-examination, Andre stated that Kenneth was a drug dealer and a member of the Maniac Latin Disciples. Andre further stated that he transported drugs for Kenneth in March 1996, and was, himself, a Black Gangster Disciple.

¶ 10 Jessica Woods testified she lived at Kenneth and P.W.'s home in spring 1996, and that P.W., her aunt, passed away from breast cancer in March 2006. On March 26, 1996, Jessica and P.W. spent the day together, then went to the house of Jessica's grandmother during the evening with the children. P.W. drove Kenneth's car, a Chevy Tahoe, because Kenneth had her car, a white Pontiac Bonneville. When they returned home around 10 p.m., P.W. prepared fish for Kenneth, and Jessica went into the basement.

¶ 11 About 1 a.m., Andre Williams came over and sat in the basement with Jessica, P.W., and the children, who were watching a movie. At some point, P.W. and one of the children went upstairs. Jessica then fell asleep on the couch and subsequently woke up coughing because her throat and nose were burning. At that time, an individual wearing a "black half face mask" was standing in front of her with a gun pointed to her head, telling her, "Bitch, close your eyes. Bitch, don't move. Put your hands behind your back." Another person, who was pressing a gun to the back of her head, asked her, "where is the money, where is the safe." Jessica responded, "There is no money. There is no safe." The men then taped her eyes, mouth, arms, and ankles, and she heard someone say, "Do I have a fat pussy like my aunt." That person began fondling her breasts underneath her shirt and touching her between her legs.

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¶ 12 About five minutes later, Jessica heard someone say, "yeah, naw, yeah, naw." She also heard someone in the basement pulling things out of a closet underneath the staircase and people walking upstairs. The rummaging in the basement closet stopped after about 15 minutes, and the house was completely quiet after about 45 minutes. At that point, P.W. began calling her name, then came down and untaped her. Jessica testified that P.W. was "[s]cared, crying, shaky." She further testified that Andre was lying on the floor and not moving. He eventually regained consciousness after she and P.W. began shaking him and saying his name, and they untaped him. P.W. then put on pants, and they went to Jessica's grandmother's house.

¶ 13 Elisha Khan-Miller testified that on March 27, 1996, she was working as a registered nurse in the emergency department at Norwegian American Hospital, in Chicago. That day, P.W. reported to her that she had been sexually assaulted by a black male. She told her that the attack took place about 4 a.m. at her house, that there had been vaginal penetration and ejaculation, and that the attacker did not wear a condom. A doctor subsequently performed a sexual assault kit on her.

¶ 14 The State presented evidence that Calumet City police found a white Pontiac Bonneville connected to Kenneth Williams at 4712 West Deming Place, on the northwest side of Chicago. The steering column of the vehicle was damaged and the trunk contained a dead body wrapped in a black garbage bag wound with duct tape.

¶ 15 The State further presented evidence establishing that a male DNA profile was generated from semen found on a vaginal swab of P.W., and that a buccal swab was taken of defendant on November 17, 2007. The DNA profile generated from defendant's buccal swab matched the

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profile obtained from the vaginal swabs of P.W. and would be expected to occur in about 1 in 42 quintillion black, 1 in 35 quintillion white, or 1 in 4.3 quintillion Hispanic unrelated individuals.

¶ 16 Retired Chicago police detective Dan Engel testified that he and his partner, Lieutenant Wojcik,¹ investigated Kenneth Williams' murder. He spoke with detectives at the Calumet City Police Department and interviewed P.W., Jessica Woods, and Andre Williams, among others. At some point, the investigation focused on an individual named Dree Deton, but Detective Engel never had the opportunity to interview him because he could not be found. He later learned that Dree Deton had been the victim of a homicide. About 2004, Detective Engel transferred to the cold case unit. Then, in late 2005, he learned of a match between the DNA in the sexual assault kit and defendant. On November 16, 2007, Detective Engel placed defendant under arrest. He drove defendant to Homan Square police station, advised him of his *Miranda* rights, and interviewed him with Lieutenant Wojcik. The next day, Detective Engel requested an evidence technician to perform a buccal swab of defendant.

¶ 17 Chicago police lieutenant Anthony Wojcik testified that on November 16, 2007, he was a sergeant assigned to the cold case homicide unit. While Lieutenant Wojcik was interviewing defendant that evening, defendant asked that the camera be turned off and provided a summary of the incident in question.

¶ 18 Defendant told Lieutenant Wojcik that on the date of the incident, he received a call from Dree telling him that "he had a sting going on, that he had kidnapped the drug dealer and that he

¹ Lieutenant Wojcik has held various ranks over the years and will be referred to by his current rank of Lieutenant.

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was holding that drug dealer." Dree told him to meet two other individuals at Sacramento Drive and Roosevelt Road, then go to the drug dealer's house and steal money that was hidden there. Defendant met with the two individuals, who had guns, mace, duct tape, and masks, and they proceeded to the house as planned. When they arrived, they opened the door with a key that they had received from Dree. There were two kids, two adult females, and one adult male present, and they restrained them with duct tape. The older female was held on the second floor with a pillowcase over her head and her hands restrained behind her back. She was nude from the waist down, and when defendant saw her, he became "aroused" and had "forced sex" with her. He told Lieutenant Wojcik that they were in the house for about 30 minutes and found about \$100,000 in various boots and shoes. They then returned to a safe house, met up with Dree, and divided the money. Dree took \$50,000, and defendant and the others split the remaining \$50,000. Dree also told defendant that he had killed the victim, whose body was in the trunk of the victim's car, and asked defendant to go with him while he disposed of the car and body. Defendant followed Dree in his own car to a side street on the north side where Dree parked the car and peeled the steering column to give the appearance that the car was stolen. Dree then got into defendant's car, and they drove a few blocks away where Dree threw the victim's car keys into a sewer.

¶ 19 After speaking with defendant, Lieutenant Wojcik contacted the State's Attorney's office, and assistant State's Attorney (ASA) Beth Pfeiffer arrived a few hours later and spoke with defendant. Defendant again requested that the camera be turned off before giving a summary of the incident. He later opted to have the camera turned back on, and ASA Pfeiffer recapped their previous conversation and spoke with defendant in more detail.

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¶ 20 The parties stipulated to a certificate of death showing that Dree Deton died from a gunshot wound to the chest on July 11, 2001. ASA Pfeiffer then testified that she arrived at Homan Square police station on the morning of November 17, 2007, and was apprised by Lieutenant Wojcik of the investigation. She interviewed defendant for about 45 minutes with the camera off, and he told her substantially the same story that he told Lieutenant Wojcik. She then discussed the ways that defendant could memorialize his statement, and he initially chose to make a handwritten statement. After further discussion, however, defendant requested that the camera be turned back on and had a videotaped conversation with ASA Pfeiffer, which was published to the jury. The following colloquies occurred during that conversation:

"Q. [ASA Pfeiffer]: Okay. And so now we just—I just want to kind of go through it from—with a little more detail so you can tell me how and why things are happening and why you did some things that you did. So going through—you had said that Drey let you know that he was getting—I think the word you used was sting. That he was—that he had—

A. [defendant]: A, a stang.

Q. A stang. What does that mean?

A. That mean he got somebody we can just go to they house. He—and get some money.

Q. Okay. So when, when you mean he got somebody, he's, he's kidnapped that person and that person is giving him

information—

A. Particularly a drug dealer.

Q. Okay, was this guy a drug dealer?

A. I heard. I, I never knew him.

Q. Okay. So how many—how much prior to when this actually happens did Drey tell you that he had this deal, that he wanted you to be in on this stang?

A. He just, he just called me and told me to get these two guys on Roosevelt and Sacramento, he got a lick for us, a stang. And I was like, all right. I'm in. So I, I already knew what, what he meant by that. Because when you say stang or lick that mean it was a drug dealer that he—if he got he got a lot of money somewhere in his house. And I went and got the guys over on Roosevelt and Sacramento.

Q. And so by, by when you say he got him that, that means that Drey has the guy physically?

A. Yes.

* * *

Q. Any I think we—you said—you told me earlier that at some point Drey comes to the [safe] house?

A. Yeah, Dree comes to the house.

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Q. I'm calling him Drey is it Dree?

A. It's Dree.

Q. Sorry.

A. He—Dree comes to the house and we all strip search,
count the money.

Q. And he strip searched you guys to make sure you
weren't holding back?

A. Yeah. Strip searched us, counted the money. Then he
left.

(DETECTIVE LEAVES ROOM)

Q. And so when the money's counted it's how much?

A. It's 100,000.

Q. And so when he leaves he doesn't take the money with
him?

A. He just leaves it there so everybody just chill.

Q. And so what does he tell you on that day that he did?

A. He didn't really say nothing. He just chilled.

(DETECTIVE ENTERS ROOM)

A. The next day, the next day he—

Q. Do you know this guy? [Showing defendant a photo.]

A. Yeah.

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Q. Who is this guy?

A. That's Dree.

Q. All right, D-R-I-E?

A. D-R-E.

Q. Okay. So the next day he comes again?

A. Yes.

Q. And what does he tell you then when he comes again?

A. When he comes in he say he handled that.

Q. Uh-huh.

A. Street terms we are—that mean he killed him. Cause if he would have let him go he just would have say he let him go. He'll grab him again. But he say he handled that so, you know, he was dead.

* * *

Q. So Dree, Dree tells you essentially two days later—

A. The next day.

Q. Okay, the next day, that, that he handled that?

A. Right."

¶ 21 The State rested, and defendant's motion for a directed verdict was denied. Defendant rested without presenting any evidence. Following deliberations, the jury returned verdicts finding defendant guilty of first degree murder and aggravated criminal sexual assault. The court

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then sentenced defendant to natural life on his murder conviction, and a consecutive term of 30 years' imprisonment for aggravated criminal sexual assault. Defendant appeals his convictions pursuant to Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009).

¶ 22

ANALYSIS

¶ 23 In this appeal from that judgment, defendant first contends that the State failed to prove him guilty of first degree murder beyond a reasonable doubt. Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing 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. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 24 In this case, defendant was convicted of felony murder, predicated on kidnapping and unlawful restraint, under a theory of accountability. A person commits first degree murder when he kills an individual without lawful justification and, in performing the acts which cause the death, he is attempting or committing a forcible felony. 720 ILCS 5/9-1(a)(3) (West 1996). A kidnapping occurs when a person knowingly and secretly confines another against his will.

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720 ILCS 5/10-1(a)(1) (West 1996). An unlawful restraint occurs when a person knowingly and without legal authority detains another. 720 ILCS 5/10-3(a) (West 1996).

¶ 25 "Accountability for felony murder exists only if the defendant may be deemed legally responsible for the felony *** that accompanies the murder." *People v. Burnom*, 338 Ill. App. 3d 495, 504 (2003) (citing *People v. Pollock*, 202 Ill. 2d 189, 211 (2002)). "A person is legally accountable for the conduct of another when *** [e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense."

720 ILCS 5/5-2(c) (West 1996). To prove defendant possessed the intent to promote or facilitate the crime, the State must establish beyond a reasonable doubt that either: (1) defendant shared the criminal intent of the principal; or (2) there was a common criminal design. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). "Intent may be inferred from the character of defendant's acts as well as the circumstances surrounding the commission of the offense." *Perez*, 189 Ill. 2d at 266.

¶ 26 "The common design rule provides that where two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *Perez*, 189 Ill. 2d at 267. "Accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no evidence that he directly participated in the criminal act itself." *Perez*, 189 Ill. 2d at 267. "Evidence that the defendant voluntarily attached himself to a group bent on illegal acts, with knowledge of its design, *** supports an inference that he shared the common

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purpose and will sustain his conviction for an offense committed by another." *Perez*, 189 Ill. 2d at 267.

¶ 27 Viewed in the light most favorable to the prosecution, the record shows that on March 27, 1996, defendant received a phone call from Dree Deton telling him that he had set up a "stang," meaning that he had kidnapped a drug dealer and was holding him so that defendant could go steal money from his house. Defendant "was like, all right. I'm in," and he met up with two other individuals at Sacramento Drive and Roosevelt Road, who had guns, mace, duct tape, and masks. The three of them drove to Kenneth Williams' house, opened the door with a key that they had received from Dree, and searched the house for money. During the search, defendant also sexually assaulted P.W. After finding about \$100,000 in the house, the three men left and returned to a safe house where they divided the money amongst themselves and Dree. Dree then told defendant that he had "handled that," meaning he killed Kenneth Williams. He asked defendant to accompany him while he disposed of the victim's car and body, which was in the trunk, and defendant agreed to do so. He followed Dree in his own car to 4712 West Deming Place where Dree parked Kenneth's car and stripped the steering column to make the car look as if it had been stolen. Dree then got into defendant's car, and they drove a few blocks away where Dree threw the victim's car keys into a sewer. Given defendant's voluntary participation in the scheme to steal money from Kenneth Williams' house and his knowledge that Kenneth had been kidnapped and was being held by Dree, we find that there was sufficient evidence for the jury to find defendant accountable for the first degree murder of Kenneth Williams beyond a reasonable doubt. *Perez*, 189 Ill. 2d at 267.

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¶ 28 Defendant nonetheless disagrees with this conclusion. Citing *People v. Hammond*, 214 Ill. App. 3d 125 (1991) and *People v. Ramirez*, 93 Ill. App. 2d 404 (1968), he claims that the State failed to present any evidence showing that Kenneth Williams' murder was not completed prior to his involvement in the scheme.

¶ 29 In *Hammond*, 214 Ill. App. 3d at 127, defendant's son and his son's roommates staged a burglary at their house and submitted a false insurance claim for property allegedly stolen during the burglary, for which his son received a check of \$5,381.65. Defendant was tried for insurance fraud on a theory of accountability, alleging that he had assisted in planning and executing the scheme to defraud the insurance company. *Hammond*, 214 Ill. App. 3d at 127. The State's case was based, in part, on the fact that defendant drove his son to the bank to cash the insurance check. *Hammond*, 214 Ill. App. 3d at 134. On appeal, the reviewing court noted that the offense of fraud on an insurance company was completed when defendant's son obtained the check from his insurance company. *Hammond*, 214 Ill. App. 3d at 135. The court then held that "[t]he fact that his father thereafter provided him with transportation which enabled him to cash that check does not render the defendant accountable for the offense where, by that point in time, the offense was already completed." *Hammond*, 214 Ill. App. 3d at 135.

¶ 30 In *Ramirez*, 93 Ill. App. 2d at 407-09, defendant was tried and convicted of murder on a theory of accountability after he gave an oral statement to police that he had been in an apartment where the victim was tied up, and that he also rode in a car with the apartment's owner as he was on his way to dispose of the victim's body. On appeal, the court found that there was nothing in the record that affirmatively established the victim was alive when defendant was present.

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Ramirez, 93 Ill. App. 2d at 410. The court thus held that the State "failed to show that the conduct on the part of defendant *** took place either before or during the commission of the murder." *Ramirez*, 93 Ill. App. 2d at 410.

¶ 31 Here, unlike *Hammond* and *Ramirez*, there is overwhelming evidence that defendant was an active participant in the criminal scheme hatched by Dree Deton to kidnap and hold Kenneth Williams, steal money from his house, then kill him. Also, contrary to defendant's claim, there is sufficient evidence from which the jury could reasonably infer that Kenneth was alive at the time defendant participated in the burglarizing of his house. Defendant told Lieutenant Wojcik that prior to the burglary of Kenneth's home, Dree had called him and said that "he had kidnapped the drug dealer and that he was holding that drug dealer." Defendant then told ASA Pfeiffer that Dree made two visits to the safe house after the burglary was complete, and only on the second visit said that he had "handled that," meaning that he had killed Kenneth. From this evidence, the jury could have reasonably inferred that Dree was holding Kenneth alive at the time of the burglary/home invasion, then killed him once he confirmed that the money had been successfully stolen. *Sutherland*, 223 Ill. 2d at 242. We therefore affirm defendant's first degree murder conviction. See *People v. Sample*, 326 Ill. App. 3d 914, 926-28 (2001) (holding that a shooting occurred "during the commission" of home invasion and armed robbery where the crimes occurred "essentially simultaneously"); *People v. Thompson*, 331 Ill. App. 3d 948, 956-57 (2002) (reaching a similar conclusion).

¶ 32 Defendant next contends that he received ineffective assistance of trial counsel. To establish a claim of ineffective assistance of counsel, defendant must first show that counsel's

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performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel; thus, where the ineffectiveness claim can be disposed of on the ground that defendant did not suffer prejudice, the court need not address counsel's performance. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992).

¶ 33 Defendant maintains that trial counsel was ineffective where he stipulated that Dree Deton died of a gunshot wound in 2001. He claims that this fact was "irrelevant to the issues at trial" and "risked encouraging the jurors to convict [him] for murder simply because they wanted to punish someone for Kenneth Williams' death." He further argues that his claim of prejudice is supported by a jury note indicating that the jury took longer to reach a verdict for murder than sexual assault.

¶ 34 The State responds that counsel's stipulation could not have harmed defendant because the fact of Deton's death was already in evidence through the testimony of Detective Engel. The State also responds that defendant's claim of prejudice is "entirely speculative and devoid of support of any kind."

¶ 35 We agree with the State that defendant cannot establish that he suffered prejudice as a result of counsel's stipulation to Dree Deton's death. The evidence against defendant in this case was overwhelming and included a videotaped statement in which he admitted that he voluntarily

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participated in the scheme to steal money from Kenneth Williams' home with the knowledge that Kenneth had been kidnaped and was being held by Dree Deton. His claim that the jury may have sought to convict him for the subsequent murder because "they knew that Deton could never be brought to justice" is pure speculation and finds no support in the mere fact that the jury took longer to reach a verdict for murder than sexual assault. We note that *People v. Hope*, 116 Ill. 2d 265, 277-78 (1986), cited by defendant, is distinguishable because that case concerned prejudicial testimony regarding the surviving members of the victim's family, not the death of the victim's actual killer. In sum, we conclude that defendant's claim of ineffective assistance of trial counsel cannot stand. *Strickland*, 466 U.S. at 687, 694; *Flores*, 153 Ill. 2d at 283-84.

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.