APPENDIX

A

(ORDER LIST: 594 U.S.)

MONDAY, JULY 19, 2021

ORDER

IT IS ORDERED that the Court's orders of March 19, 2020 and April 15, 2020 relating to COVID-19 are rescinded, subject to the clarifications set forth below.

IT IS FURTHER ORDERED that, in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19, 2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order. In any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued on or after July 19, 2021, the deadline to file a petition for a writ of certiorari is as provided by Rule 13.

IT IS FURTHER ORDERED that the requirement of Rule 33.1 that 40 copies of documents be submitted in booklet format will go back into effect as to covered documents filed on or after September 1, 2021. For submissions pursuant to Rule 33.2, the requirement of Rule 39 that an original and 10 copies be submitted, where applicable, will also go back into effect as to covered documents filed on or after September 1, 2021. The authorization to file a single copy of certain documents on 8½ x 11 inch paper, as set forth in the Court's April 15, 2020 order, will remain in effect only as to documents filed before September 1, 2021.

IT IS FURTHER ORDERED that the following types of documents should not be filed in paper form if they are submitted through the Court's electronic filing system: (1) motions for an extension of time under Rule 30.4; (2) waivers of the right to respond to a

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B

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
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May 26, 2021

In re: People State of Illinois, respondent, v. Dion Brown, petitioner.
Leave to appeal, Appellate Court, First District.
127006

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 06/30/2021.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

APPENDIX

C

No. 1-16-2429

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. DION BROWN, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County, Illinois No. 11 CR 20228 Honorable Thomas M. Davy, Judge Presiding.

ORDER

This cause coming to be heard upon the petition for rehearing of defendant-appellant, DION BROWN, all parties having been notified, and this court being fully advised in the premises[1];

IT IS HEREBY ORDERED that the petition for rehearing is Denied.

ORDER ENTERED

JAN 28 2021

APPELLATE COURT FIRST DISTRICT

PRESIDING JUSTICE

JUSTICE

JUSTICE

[1] Justice Martin, sitting in the place of Justice Hall, has reviewed the briefs filed.

APPENDIX

D

2020 IL App (1st)162429-U

No. 1-16-2429

Order filed December 3, 2020

Fourth 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. 11 CR 20228
	)	
DION BROWN,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Reyes concurred in the judgment.
Presiding Justice Gordon specially concurred, with opinion.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions and sentences where his trial counsel was not ineffective for failing to introduce evidence of complainant's alleged prior inconsistent statements from an April 24, 2012, phone conversation between defendant's initial trial counsel and complainant.

¶ 2 Following a bench trial, defendant Dion Brown was convicted of aggravated unlawful use of a weapon (UUW) and home invasion and sentenced to prison terms of 3 years and 22 years,

¶ 7 Complainant invited defendant to her home on October 30, 2011, after they had both attended an earlier event. By the time defendant arrived, it was 1:00 a.m. on October 31, 2011. Present at the home were complainant, her daughter Lianna, and Lianna's father Jerry Edwards.

¶ 8 When defendant arrived, he was belligerent and caused a scene outside of the home. Defendant was armed with a gun. Because of that, complainant refused to allow him into the home. However, defendant broke the center window of the door, reached inside, and unlocked the door. While this was happening, complainant handed Edwards a knife from the kitchen. Once defendant entered the home, he threatened both complainant and Edwards with the gun, and a confrontation ensued. Eventually, the confrontation ended up in the bathroom, where defendant forced complainant into the bathtub before firing his gun. Complainant, however, was not shot.

¶ 9 Lianna testified that she lived at complainant's home on October 31, 2011. She also testified that defendant was complainant's boyfriend and also lived at complainant's home. Lianna further testified that defendant was banging on the door on the night of the incident, and she went to look through the center window of the front door to find out who it was. Lianna told complainant that defendant was at the front door, but complainant did not tell her to open the door for defendant. Lianna testified while defendant was outside; she showed her father where the knives were in the kitchen. While Lianna did not see defendant break the window on the front door, she did see him enter the home and threaten complainant with a gun. Lianna did not see defendant point the gun at Edwards. At some point, Lianna called the police to come to complainant's home.

¶ 10 Edwards testified that October 30, 2011, was his first time meeting defendant. He was at complainant's home with complainant and Lianna when defendant arrived. Edwards testified that defendant continuously rang the doorbell and banged on the front door. Defendant yelled obscenities outside complainant's home, and Edwards assumed he would be in a "situation," so he

complainant's home either. The trial court concluded that complainant's home was not defendant's residence on October 31, 2011. We note that defendant's conviction under section 12-11 of the home invasion statute (720 ILCS 5/12-11(a)(3) (West 2010)), has since been recodified as 720 ILCS 5/19-6(a)(3) (West 2014).

¶ 15 B. Posttrial Proceedings

¶ 16 On January 5, 2016, defendant filed his initial motion for new trial, contending that he was not proven guilty beyond a reasonable doubt.

¶ 17 Defendant sent a letter to the trial court, file-stamped February 18, 2016, in which he stated that his initial trial counsel, APD Szpajer, and another of his cousins were essential to proving that complainant's home was his dwelling. His letter did not specifically allege ineffective assistance of counsel.

¶ 18 Additionally, on February 18, 2016, Attorney Bonds filed an amended motion for reconsideration or a new trial on defendant's behalf. The amended motion raised claims of reasonable doubt, insufficiency of the evidence regarding the firearm, and that Attorney Bonds should have introduced evidence of an April 24, 2012, conversation between APD Szpajer and complainant. The amended motion included an affidavit from APD Szpajer, in which she averred to the contents of the conversation with a person who identified themselves as complainant. According to the affidavit, the person stated that defendant lived with her at the time of his arrest on October 31, 2011; that defendant had keys to her home and did not commit a home invasion; she never heard a gunshot, and that she had a recording of the incident. The person also indicated a willingness to be interviewed.

¶ 19 Attorney Bonds also moved to withdraw as counsel in open court based on defendant's letter, which she construed as the filing of a *Krankel* motion. The trial court denied her motion to

leaving only his claims of reasonable doubt and insufficiency of the evidence regarding whether he had a gun. The matter was continued to July 21, 2016, for an evidentiary hearing.

¶ 24 On that date, the trial court held an evidentiary hearing on defendant's ineffective assistance claims against Attorney Bonds. Simultaneously, the court also allowed Attorney Bonds to argue the remaining issues raised in defendant's pending motion for reconsideration or a new trial.

¶ 25 Retired APD Szpajer testified that on April 24, 2012, she received a phone call at her office from a person who identified themself as complainant. Prior to this conversation, APD Szpajer had never spoken with complainant. During that call, the person stated that defendant lived with her on October 31, 2011, that defendant had keys to her home; he just did not have them with him that night. The person also stated that she never heard a gun go off and she had an audio recording of the incident as well. APD Szpajer's case file included notes from this conversation. When APD Szpajer retired, she gave the notes to her supervisor.

¶ 26 On cross-examination, retired APD Szpajer testified that she met with Attorney Bonds in February 2016 to discuss defendant's case but did not remember the exact day of their meeting.

¶ 27 Attorney Bonds testified that defendant insisted that she speak with retired APD Szpajer prior to the commencement of his trial on October 5, 2015, because she knew of an April 24, 2012, conversation with complainant. Attorney Bonds testified that she unsuccessfully attempted to locate retired APD Szpajer several times prior to defendant's trial. After defendant's conviction, he again insisted that Attorney Bonds try to locate APD Szpajer, and she successfully located her in January 2016. Attorney Bonds also testified she found retired APD Szpajer's notes concerning the April 24, 2012, conversation with complainant when she and retired APD Szpajer met in February 2016.

examination regarding the April 24, 2012, conversation, was to determine how reliable the information was, how reliable the source was, and how did APD Szpajer know it was complainant who called.

¶ 31 At the hearing's conclusion, the trial court denied defendant's motion for ineffective assistance of counsel against Attorney Bonds. The court found that the issue was whether at any time before the beginning of defendant's trial, Attorney Bonds should have done more to follow up on the April 24, 2012, conversation retired APD Szpajer had with "complainant." The trial court found that Attorney Bonds vigorously cross-examined complainant and Lianna, and also introduced evidence that defendant lived at complainant's home through Harris' testimony and the vehicle registration. The trial court stated, "[t]here was the opportunity during the course of the commenced and continued trial to attempt to do further, but [Attorney] Bonds felt that the questions that she had asked during cross-examination, the evidence that she presented was sufficient." The trial court concluded that Attorney Bonds' performance did not fall below an objective standard of reasonableness, and thus defendant did not meet the first prong of the *Strickland* test. The court then denied defendant's ineffective assistance of counsel claim.

¶ 32 The trial court also denied defendant's separate third amended motion for new trial. Defendant was then sentenced to prison terms of 3 years for aggravated UUW and 22 years for home invasion, with all sentences to run concurrently.

¶ 33 Defendant's timely appeal followed.

¶ 34 ANALYSIS

¶ 35 On appeal, defendant contends that the trial court should have granted his motion for ineffective assistance of counsel because Attorney Bonds failed to: 1) find evidence related to the

¶ 41 The general rule is that hearsay is an out-of-court statement offered in court for the truth of the matter asserted and is inadmissible at trial. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011); *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 38. Section 5/111-10.1 of the Criminal Code (725 ILCS 5/111-10.1 (West 2014)) governs the requirements for the admissibility of a witness' prior inconsistent statements. First, the statement must be inconsistent with the witness' trial testimony and the witness must be available for cross-examination. 725 ILCS 5/111-10.1(a), (b) (West 2014). However, the court must then determine: 1) whether the offered statements were made under oath at a trial, hearing or other proceeding (725 ILCS 5/111-10.1(c)(1) (West 2014)) or 2) whether the statement is one that the witness wrote, signed or acknowledged under oath which narrates, describes or explains events or conditions of which the witness had personal knowledge (725 ILCS 5/111-10.1(c)(2) (West 2014)).

¶ 42 If the witness's testimony complies with section 115-10.1 it may be used as substantive evidence to prove or disprove an element of a crime. *People v. Morgason*, 311 Ill. App. 3d 1005, 1010 (2000). If the witness's testimony does not comply with section 115-10.1 it may not be used as substantive evidence to prove or disprove an element of a crime, but only to impeach another witness. *Morgason*, 311 Ill. App. 3d at 1010. However, the witness offering to testify about another witness's prior inconsistent statement must have personal knowledge of the statements made, or their testimony is inadmissible hearsay. *People v. Howell*, 358 Ill. App. 3d 512, 520 (2005).

¶ 43 Here, APD Szpajer's statements concerning the conversation with complainant fail to meet either requirement of section 111.10-1(c). First, complainant did not make the statements under oath, and APD Szpajer did not have personal knowledge of the contents of the statements. See *People v. Morales*, 281 Ill. App. 3d 695, 701 (1996). Additionally, as APD Szpajer had never spoken to complainant before that April 24, 2012, phone call, she was unable to conclusively

APPENDIX

E

So at this time as far as the motion for new trial based on ineffective assistance for counsel filed on January 23rd, that motion will be denied. I don't feel that the representation of Miss Bonds fell below an objective standard of reasonableness, and that the first prong of the *Strickland* test has not been met.

There are still other motions that Miss Bonds has filed. And those are for another day.

MS. NORTON: Okay. Judge, if you pull out counsel's third amended motion for discovery, on June 24th of this year, Miss Bonds struck --

THE COURT: The third amended motion to reconsider. Not for discovery.

MS. NORTON: Yes, I am sorry. She struck page -- she struck the contents of pages 7, 8, 9, and 10.

THE COURT: Unless the parties -- would that be the one you will be proceeding on? If the parties prepared to argue that today, we can do it.

MS. BONDS: I am prepared to argue today.

My position is the arguments have been laid out fully in the motion. I am also prepared on the motion today.

MS. NORTON: I am just trying to figure out what remains after she struck.

THE COURT: That would be the lack of proof beyond a

and screaming that he had to come over, "and I did not" -- "and I didn't answer." He was not invited by Miss Rowe to be at the house that evening.

I have reviewed the cases in terms of home invasions. Once again, I believe that the fact that Mr. Brown did not have the keys is consistent with the testimony that Miss Rowe had ended the relationship to the extent that Mr. Brown had any legal claim on the home.

And respectfully the motion -- amended motion number three is denied. Are both side prepared to proceed to sentencing?

MS. BONDS: Yes.

THE COURT: Either side have any changes or decisions they wish to make to the presentence investigation?

MS. BONDS: No.

MS. SULLIVAN: No.

THE COURT: All right. State, aggravation.

MS. SULLIVAN: Judge, we previously tendered to the court a victim impact statement. I believe the defense has that as well. I would like to read that into the record. May I proceed?

THE COURT: Yes.

MS. SULLIVAN: "To whom it may concern: It has taken me a long time to write this letter, because once again, I am

Additional material from this filing is available in the Clerk's Office.