

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).

2013 IL App (4th) 120017-U

NO. 4-12-0017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 6, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
JAMES RAY MANUEL,)	No. 10CF1156
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence was sufficient to find defendant guilty beyond a reasonable doubt.

(2) A statement, admitted pursuant to the coconspirator exception to the hearsay rule, was properly admitted because it was an instruction or command and not hearsay.

¶ 2 After a consolidated bench trial with codefendant Clarence Thompkins, defendant, James Ray Manuel, was found guilty of home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2010)) and armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)).

Defendant was sentenced to concurrent prison terms of 45 years. Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt because the identification evidence was insufficient; and (2) the trial court improperly admitted, under the coconspirator exception to the hearsay rule, a statement made by Clarence's mother to defendant's girlfriend

that she "should look to see if [she has] any guns * * *." We note, during briefing, defendant withdrew his third contention of error regarding the firearm sentencing enhancement. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In December 2010, defendant and Clarence were indicted for the July 29, 2008, home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2010)) and armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)) of victims Barbara and Richard Hopper. A consolidated bench trial was held in September 2011.

¶ 5 At trial, Barbara testified she and her husband Richard, a paraplegic, had moved to a residence in Bloomington on February 29, 2008. To assist with the move, Barbara and Richard hired North American Van Line. Richard was a gun collector and needed to move to the new residence. Barbara asked the moving company if it would move the guns and was told they would not. Barbara moved the guns herself.

¶ 6 Barbara testified, on July 29, 2008, five months after the move, at approximately 8:50 p.m., the doorbell rang. Barbara opened the door and saw no one. Then, two men wearing masks and holding guns approached from the side. Barbara screamed and tried to close the door. One man grabbed Barbara's hand, causing her to fall. He pulled Barbara into the house. Barbara was told, "this is a robbery."

¶ 7 Barbara described the two men as "black" and in their mid-twenties. Both men wore black clothing, hooded sweatshirts, and surgical masks. The man holding Barbara's wrist had a pencilled mustache on his surgical mask. That man also wore gold wire-rimmed glasses and held a gun that "seemed awful big"—a "shotgun." One man "was a little taller than the other."

¶ 8 Barbara testified, while one man held her wrist, the other man stood in front of the gun room. Richard, confined to a wheelchair, approached. The man who held her wrist stated, "they needed money." Barbara told them she did not have any. The other man then asked, "where's the guns?" Before Barbara responded, he began walking toward the guns. He immediately began filling a duffle bag with guns. Barbara described the duffle bag or "knapsack" as resembling one her husband had from the military. The bag was "dark, maybe green," and was "real long with an opening at the top."

¶ 9 According to Barbara, the man in the front room who filled the bag with guns had the same stature as one of the men who moved them into the home. Some of the movers were black males. When the movers delivered items into the new home, the guns were already there. Barbara believed most of the guns were in the closets of the "gun room," which contained a gun case, gun safes, gun boxes, and desks.

¶ 10 After the men filled the duffle bag, they exited the front door. They were in her home approximately 10 to 15 minutes. Barbara called the police.

¶ 11 Barbara informed the police the only individuals who had been in her home since the move were the movers. The night of the robbery or during a later interview, Barbara told the police she believed the stature of one of the robbers seemed familiar. Barbara testified a cable installer had also been in her residence.

¶ 12 Richard, whose legal name is Lester James Hopper, testified he was 67 years old and had been confined to a wheelchair for approximately 19 years. In the same accident that put him in a wheelchair, Richard also sustained a traumatic head injury, which affected some of his memory.

¶ 13 Richard collected coins and guns. On July 29, 2008, he and Barbara resided at a home in Bloomington, where they had been living for several months. That evening, around 8:45 p.m., Richard was in the kitchen when the doorbell rang. Barbara went to the front door. Richard heard what he thought was laughing, but then realized Barbara was screaming. One man, holding Barbara's wrist and a gun to Barbara's head, entered the kitchen area. Richard called the gun a cheap-looking revolver. It looked like a .22 caliber. The man wore a hooded sweatshirt, glasses, and a surgical mask with a mustache drawn on it. The man also had a tattoo on his right forearm area. The tattoo was "strange looking." Richard testified "It wasn't a picture or anything. It looked like two worms crisscrossing."

¶ 14 At this point in Richard's testimony, the trial court directed defendant and Clarence to show Richard their right forearms. Richard did not recognize the tattoos on either man.

¶ 15 Richard testified the second man to enter his house went directly to the gun room. Richard identified this man as the taller one. The gun room was the first door to the left upon entering the house. At some point, the man in the gun room called to his partner. The partner and the Hoppers went to the gun room. When they arrived, Richard noticed the previously closed closet doors were open. "The tall man" used his elbow to smash glass to get to pistols. He placed the pistols in a duffel bag. There were guns in the bottom drawer of a filing cabinet. Those were the only ones shipped by the moving company. They were taped closed. Richard focused his attention on his Colt .45 with a "pearlized" grip (People's exhibit No. 45), then in the tall man's hand. Richard identified the gun at trial and testified the last time he saw it was the night the tall man pointed it at his head.

¶ 16 Richard also identified other guns taken from his home, including People's exhibit Nos. 31, 32, 33, and 36. People's exhibit No. 31 was a Taurus, a handgun with a scope. People's exhibit No 32 was an "Intratec" and a "street gun." People's exhibit No. 33 was a stage-prop pistol that only fired blanks. People's exhibit No. 36 was a Mossberg 12-gauge shotgun.

¶ 17 Richard testified the only individuals, other than the movers, who were in his home in the few months they lived there were family members and a cable installer. The cable installer was Caucasian. Some of the movers were "black" and others were "white." Richard acknowledged on cross-examination, carpet installers and a chair-lift installer had also been in his home.

¶ 18 Richard Beoletto, an officer with the Bloomington police department, testified on July 29, 2008, he responded to a call an armed robbery had occurred at the Hopper residence. Upon arrival, Officer Beoletto noticed the screen door was partially broken and bent. Officer Beoletto entered the home. On cross-examination, Officer Beoletto testified, once he entered the residence, he could see clearly into the gun room.

¶ 19 Jaelyn Hinrichsen, a former employee for Bloomington Transportation Service, an agent for North American Van Lines, testified the Bloomington police department contacted her regarding the Hopper move. According to Hinrichsen, Clarence assisted in the move involving the Hoppers. Hinrichsen determined this by examining payroll and dispatch records. He worked for the same company for "probably around a year."

¶ 20 Amy Keil, a City of Bloomington police officer, testified she was working the night shift on September 9, 2008. She responded to a call near Todd Drive. The first call was a 9-1-1 hang up, but then she learned an armed robbery occurred. Officer Keil understood a black

male with a black hooded sweatshirt, Clarence, had been detained. Officer Keil found a gun (People's exhibit No. 45) in Clarence's right front pants pocket. On cross-examination, Officer Keil testified the September 9, 2008, arrest was unrelated to the July 2008 events at the Hopper home. Clarence told Officer Keil he had just gotten the gun.

¶ 21 Evan Patrick Easter, a detective with the Normal police department, testified he was involved in a drug-conspiracy investigation in March 2010 involving an individual named Daniel Diciaula. In this investigation, Detective Easter executed a search warrant at Diciaula's residence and found several weapons, including one identified as People's exhibit No. 32.

¶ 22 Daniel Diciaula, 25 years old, testified he had three federal charges pending against him, including drug trafficking with a firearm, possession of a firearm by a felon, and possession of cannabis. Diciaula entered a guilty plea on those charges and was awaiting sentencing. Diciaula had not been promised anything in exchange for his testimony, but acknowledged his testimony would be considered at his sentencing.

¶ 23 Diciaula testified, in March 2010, his home was searched pursuant to a warrant. An item found was a firearm, People's exhibit No. 32. Diciaula identified the firearm as his "Tec gun" taken by the police. Diciaula testified he bought the gun through one of his friends, Mario Dunning, whom he met in jail. Diciaula owned the gun approximately two years.

¶ 24 According to Diciaula, he "went somewhere in Bloomington" to purchase the gun. There, Dunning, another person, and Diciaula were present. When asked if the other individual was in the courtroom, Diciaula testified "I think so, but I honestly can't identify him from—I've only met him one time, and I don't want to point at the wrong person." Diciaula testified he had identified "number two" in a photo lineup (People's exhibit No. 47) as the individual who sold

him People's exhibit No. 32.

¶ 25 Diciaula testified, when he purchased his gun, he selected it from a table that had other guns on it. He recognized People's exhibit No. 31 and People's exhibit No. 45. Diciaula attempted to purchase People's exhibit Nos. 31 and 45 as well, but "they wanted to keep those for—because I guess they're special." Diciaula did not recognize other guns. Diciaula purchased four other handguns during the transaction.

¶ 26 Diciaula testified, of the weapons he purchased that day, he kept three, two were stolen, and he "sold about half of them." Diciaula further testified, when he purchased the guns, a female was present "upstairs in the kitchen."

¶ 27 John Atteberry, a Bloomington detective, testified he learned from an agent with Alcohol Tobacco and Firearms (ATF) that a gun taken from the Hopper residence (People's exhibit No. 32) had been found. Detective Atteberry participated "in a proffer session" with Diciaula. After the interview of Diciaula, Detective Atteberry wanted to confirm the information Diciaula provided. He set up photo lineups with defendant and Dunning in them. Diciaula stated he was Dunning's marijuana source. Dunning approached Diciaula, telling him he knew someone who had several guns he wanted to sell. During a lineup, Diciaula identified defendant as the individual who sold him the guns.

¶ 28 Megan Bachman, defendant's former girlfriend, testified she and Clarence were friends. Bachman had known Clarence for six years. In July 2010, police officers interviewed her. Bachman remembered telling the police Clarence had brought a duffel bag to her house. The duffel bag was hunter green and it was long. She had described it as "an Army duffel bag."

¶ 29 According to Bachman, when Clarence brought the bag to her house, he went

downstairs with defendant. She believed this occurred in "[m]aybe May." Bachman told the police she had, at some point, seen defendant and Clarence with weapons. Bachman, during her testimony, stated she did not remember having seen the two with guns. Bachman recalled telling the police the date she saw the men with the guns was after the date Clarence brought the duffel bag to her house. The men were arrested on September 9, 2008.

¶ 30 Bachman testified, over a hearsay objection, regarding a conversation she had with Clarence's mother, Angelina Comas-Thompkins. The State asserted the coconspirator exception applied. The State argued the conspiracy involved defendant, Clarence, Angelina, and Dunning. The trial court allowed the testimony. According to Bachman, Angelina told her she found weapons and turned them over to someone who worked in the police department. Angelina also told Bachman she "should look to see if [she has] any guns; and if [she] did, to let her know and she would have the police come get them."

¶ 31 Bachman testified she did not know the contents of the duffel bag. She and defendant had resided together but were not dating at the time of her testimony.

¶ 32 Greg Patton, a teacher at Bloomington High School, testified he was also a coach and he worked at Western Avenue Community Center, where he mentored children. Clarence had been referred to Patton and became a part of the mentoring program. Patton had met Clarence's mother, Angelina. The two talked quite often about Clarence.

¶ 33 According to Patton, he received a call from Angelina regarding weapons. He could not specify a date. During the call, Angelina told Patton she had some disturbing news and needed to talk to him. Patton met with Angelina, who showed him weapons she found. Patton told her she needed to get the guns off the street and to turn them in. Angelina refused, stating

she did not want to get involved. Patton took the "wrapped up" guns to the police department.

¶ 34 Patton testified he could not remember the name of the officer to whom he spoke. He also could not remember the conversation with the officer. Patton stated he told the officer "we found these and we got to get these off the streets." Patton did not tell them he got the guns at the Clarence's residence.

¶ 35 Patton stated Angelina, after Clarence was arrested, contacted him because she believed Patton turned in Clarence. Two to three days later, the police contacted Patton for more information. Patton went to the police department and told the officers where he had gotten the guns.

¶ 36 On cross-examination, Patton testified he did not see Clarence in possession of the guns. When Angelina initially contacted Patton regarding the guns, Angelina told him she found them. Patton admitted, at one point, he told officers he initially received a call about something around a Dumpster that was causing concern, prompting him to go to the Dumpster where he found the bundle. It was "years" later when he told the police he had gotten the guns from Angelina. When Angelina gave him the guns, they were in a parking lot.

¶ 37 Angelina Comas-Thompkins testified Clarence, her son, went to school with defendant. Angelina knew Patton. She testified she did not think Patton had contact with Clarence outside of the school.

¶ 38 Angelina testified she did not recall September 9, 2008. According to Angelina, her dog found the weapons while Angelina was walking her "in the back of the apartment so people don't step in it." The dog "kept clawing at something underneath the garage." Angelina investigated and found wrapped guns. She called Patton and told him she found something and

he should take them. Angelina denied telling anyone she found the guns at her residence. She also denied handing the guns to Patton. Angelina stated she stopped talking to Patton in 2008. She did not recall calling him during 2010 to accuse him of getting Clarence arrested.

¶ 39 Scott Sikora, a Bloomington police officer, testified he was on duty on September 9, 2008. On that day, Officer Sikora met with Patton at the police station. According to Officer Sikora, Patton told him a concerned citizen contacted him about some kids near a Dumpster. Patton reported he went to the Dumpster and found several firearms wrapped in towels. Among the items Patton brought in were People's exhibit Nos. 31, 33, and 36.

¶ 40 Jared Roth, a Bloomington detective, testified he was involved in the investigation of the home invasion and armed robbery at the Hopper residence. On September 9, 2008, Detective Roth learned several of the weapons taken during the Hopper home invasion were found behind a Dumpster. After additional information was obtained in 2010, Patton was interviewed again and the officers learned Patton received the guns from Angelina. Detective Roth obtained phone records from that time period and learned there were six phone calls between Angelina and Patton on September 9, 2008. Several phone calls also occurred in October 2010. The first of the October calls occurred on the 4 or 5; the latter group occurred between October 22 and October 27. Just before the initial October calls, the police spoke with Angelina and told her Clarence was a suspect in the Hopper home invasion. The second set of phone calls occurred after Angelina was served with a grand-jury subpoena.

¶ 41 On cross-examination, Detective Roth testified he spoke with Bachman during his investigation. Bachman told him she saw Clarence with a duffel bag in her basement. Detective Roth confirmed Bachman told him she saw Clarence take the duffel bag downstairs and then

back to his car.

¶ 42 The trial court concluded the State proved both Clarence and defendant guilty beyond a reasonable doubt. The court noted the case against the defendants was circumstantial and "it would be without argument that the evidence against [Clarence] has some aspects to it that are stronger than against [defendant]." The court observed the following:

"[T]he amazing coincidence here is so amazing as to boggle the mind, which is that with all the other evidence intertwining [defendant] with [Clarence] and with the sale of these guns and the possession of these guns and the short time period before they are both arrested in early September, both Mr. and Mrs. Hopper gave a description which was pretty consistent between the two of them of the two robbers."

The court concluded Clarence was "the taller one" and defendant "the shorter one." Both men were young black males. The court observed defendant had two tattoos on his arm. One tattoo was a cross. It was further up on defendant's forearm. The other, more on the side of his arm, was "calligraphy-like" lettering "with a lot of curlicues." The court found this to be an "amazing coincidence" defendant had a tattoo in the arm area where Richard saw tattoos and defendant's lower-arm tattoo "could well fit the description." The court noted Richard had suffered a traumatic head injury and concluded it was commendable Richard could identify a tattoo after having a gun pointed at his head and at his wife's head. The court believed the fact defendant fit "the description and [had] tattoos on his lower arm" implicates defendant when considered "with the totality of the case."

¶ 43 This appeal followed.

¶ 44 II. ANALYSIS

¶ 45 A. Reasonable Doubt

¶ 46 Defendant first argues the State failed to prove him guilty beyond a reasonable doubt. Defendant contends the only evidence to implicate him was Diciaula's identification of him and Bachman's statement to the police. Defendant argues the identification by Diciaula is undermined by a number of factors, including (1) Diciaula could not identify defendant in court, (2) Diciaula may receive a lighter sentence by testifying against defendant, and (3) Diciaula's only identification of defendant occurred during a photo lineup.

¶ 47 When a defendant challenges the sufficiency of the evidence of his criminal conviction, this court's task is to consider the evidence "in the light most favorable to the prosecution" and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 558-59 (2005). In completing this task, we carefully examine the record, "while giving due consideration to the fact that the court *** saw and heard the witnesses." *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). We consider all the evidence, "not just the evidence convenient to the State's theory of the case." *People v. Wheeler*, 226 Ill. 2d 92, 117, 871 N.E.2d 728, 742 (2007). Only when we find evidence is so unreasonable, improbable, or unsatisfactory it justifies a finding of reasonable doubt will we reverse a conviction. *Smith*, 185 Ill. 2d at 542, 708 N.E.2d at 370.

¶ 48 By focusing on Diciaula's identification of him, defendant effectively dismisses the other circumstantial evidence in the case linking him to Clarence and the offense. Diciaula's

identification is just one link in the evidence against defendant. On review, our task is not to "be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *Wheeler*, 226 Ill. 2d at 117, 871 N.E.2d at 742. We review the evidence as a whole to consider whether defendant's conviction is supported. See *Wheeler*, 226 Ill. 2d at 117-18, 871 N.E.2d at 742.

¶ 49 We find the evidence, viewed in its entirety, is not so unreasonable, improbable, or unsatisfactory to justify a finding of reasonable doubt. The evidence overwhelmingly places Clarence in the Hopper residence on July 29, 2008. See *People v. Thompkins*, 2013 IL App (4th) 120018-U. Clarence worked for the moving company that moved the Hoppers into the residence and assisted in that move. Clarence had the same stature as the tall robber. The tall robber went to the gun room before being told where the guns were and carried out the stolen weapons in a long, green duffel bag. Within six weeks of the home invasion, Clarence was arrested for a different armed robbery and possessed a gun stolen from the Hopper residence. Clarence's mother, Angelina, found the guns at or near the residence she shared with Clarence and instigated the return of those guns to the police immediately after Clarence's arrest for the other armed robbery.

¶ 50 The record establishes defendant and Clarence were connected. Angelina testified the two went to school together. Defendant's girlfriend, Bachman, testified she knew Clarence for years and saw them together and Bachman saw Clarence enter her basement with defendant and a green duffel bag.

¶ 51 The evidence, viewed in the light most favorable to the prosecution, also places defendant in the Hopper residence. As stated, the court found the Hopper's description of the man who held Barbara's wrist as a young black male in his early 20s who was short and not as

thin as the other man fit defendant. The court also found Richard's description of the tattoo of "intertwined snakes" matched the placement and design of the "curlicue" tattoo on defendant's forearm. The record does not contradict these findings.

¶ 52 Additional evidence in the record supports the identification evidence. As mentioned above, defendant's live-in girlfriend placed defendant and Clarence together with the green duffel bag in the basement. Diciaula's testimony establishes he purchased a weapon, determined to have originated from the Hopper residence, in the basement of a home with a woman who was upstairs. In a photo lineup, Diciaula identified defendant as the man who sold him that weapon. While Diciaula failed to identify defendant at trial, Diciaula stated he believed he saw the same individual in the courtroom but hesitated to identify him.

¶ 53 Defendant's cases regarding identification are factually distinguishable. For example, in *People v. Hernandez*, 312 Ill. App. 3d 1032, 1036, 729 N.E.2d 65, 68 (2000), the shooter's profile was only "momentarily exposed" to the witness from 90 feet away and the witness failed to identify the defendant in the first photo lineup. In *People v. Rodriguez*, 312 Ill. App. 3d 920, 935-36, 728 N.E.2d 695, 709-10 (2000), the eyewitness identification of the defendant was contradicted by another eyewitness and there was "no other corroborative evidence linking defendant to the crime."

¶ 54 We recognize Diciaula, awaiting sentencing on federal charges, had an incentive to testify in this case. The trial court was aware of the charges against Diciaula, as well as his potential bias. However, the court had the opportunity to view Diciaula's demeanor during his testimony and found his testimony credible. The record does not show this decision was against the manifest weight of the evidence. *In re Christopher K.*, 217 Ill. 2d 348, 373, 841 N.E.2d 945,

960 (2005) ("A trial court's credibility determinations *** will be upheld on review unless they are against the manifest weight of the evidence.").

¶ 55 B. Hearsay

¶ 56 Defendant next argues the trial court erred by finding Angelina was a coconspirator and by admitting her statements to Bachman showing Angelina found the weapons and told Bachman to search for weapons at her residence. Defendant challenges two pieces of Bachman's testimony: Angelina stated she found the weapons and had taken them to the police and "[t]hat I should look to see if I have any guns, and, if I did, to let her know and she would have the police come get them."

¶ 57 The State argues defendant forfeited this argument and the admission of the statements was not reversible error. Regarding forfeiture, the State maintains defendant insufficiently raised the issue in the posttrial motion by simply arguing the trial court "erred in denying timely objections made by defense counsel." Regarding the statements, the State contends the admission of the first statement was not reversible error because it was cumulative of other properly entered evidence. The State argues the second statement was not improperly admitted because it was an instruction and not hearsay.

¶ 58 Defendant disputes the State's contention of forfeiture. Defendant argues, because the coconspirator exception was a main focus during trial, his posttrial motion provided the trial court sufficient notice of its assertion of error. Defendant argues, even if this court were to find the issue forfeited, the matter should be considered plain error because, he contends, the evidence was closely balanced.

¶ 59 We begin with the forfeiture issue. The question of whether defendant suffi-

ciently preserved the issue on appeal by simply stating the trial court "erred in denying timely objections made by defense counsel" is close. The record shows the coconspirator exception was a key argument at trial and thus the court, through defendant's posttrial assertion, was likely apprised of defendant's contentions of error. See *People v. Coleman*, 391 Ill. App. 3d 963, 971, 909 N.E.2d 952, 960 (2009) ("A posttrial motion must alert the trial court to the alleged error with enough specificity to give the court a reasonable opportunity to correct it."). Given the closeness of the issue and the fact the forfeiture rule has no effect on this court's jurisdiction (*Ballinger v. City of Danville*, 2012 IL App (4th) 110637, ¶ 13, 966 N.E.2d 594), we find the issue not forfeited.

¶ 60 We turn to Angelina's statements to Bachman. The first is that Angelina stated she found the weapons and turned them in to the police. In the context of Bachman's testimony, this statement is hearsay as it is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Caffey*, 205 Ill. 2d 52, 88, 792 N.E.2d 1163, 1187 (2001). The admission of this statement, however, is not reversible error as it is cumulative of properly admitted testimony. See *People v. Mulvey*, 366 Ill. App. 3d 701, 714, 853 N.E.2d 68, 78-79 (2006) (holding because the statements "were merely cumulative of other properly admitted testimony, any error in their admission was harmless"). Mirroring Bachman's testimony, Angelina testified she found the guns outside her apartment and she called Patton to tell him to take them and Patton testified Angelina gave him the guns to turn them into the police. Defendant is not entitled to a new trial on this ground.

¶ 61 We further find no error in the admission of Angelina's statement to Bachman she "should look to see if [she has] any guns" and, if she did, "to let her know and she would have the

police come get them." Contrary to the trial court's conclusion, the statement is not " 'an out-of-court statement offered to prove the truth of the matter asserted' " (*Caffey*, 205 Ill. 2d at 88, 792 N.E.2d at 1187 (defining hearsay)). Angelina's statement is an instruction to Bachman. It contains no "truth of the matter asserted." It is not a statement of fact. It can be neither true nor untrue. It is thus not hearsay. See *People v. Sorrels*, 389 Ill. App. 3d 547, 553-54, 906 N.E.2d 788, 793-94 (2009) (quoting *Holland v. State*, 713 A.2d 364, 369-70 (1998)).

¶ 62 Having found the admission of the statements was not reversible error, we need not address defendant's arguments regarding the coconspirator exception to the hearsay rule. We note this court, in *People v. Thompkins*, 2013 IL App (4th) 120018-U, found Angelina's statements hearsay and determined the exception did not apply to permit their admission. In *Thompkins*, however, the State raised arguments different from those raised here.

¶ 63 III. CONCLUSION

¶ 64 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 65 Affirmed.