

No. 1-12-1923

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).

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 6901
)	
ELIJAH WILLIAMS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant's murder conviction affirmed despite defendant's claim that plea-related discussions were admitted at trial in violation of Rule 402(f); mittimus corrected to reflect one murder conviction.

¶ 2 Following a jury trial, defendant Elijah Williams was convicted of first degree murder and sentenced to a mandatory term of natural life imprisonment because it was his second murder conviction. On appeal, he contends that he was denied his right to a fair trial by the introduction of his plea-related discussions in violation of Supreme Court Rule 402(f) (Ill. S. Ct. R. 402(f) (eff. July 1, 2012)). Defendant also requests the mittimus to be corrected to reflect a

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single conviction for first degree murder, instead of three convictions, pursuant to the one-act one-crime doctrine.

¶ 3 Defendant was charged in 2009 for the 1991 murder of Elaine Harris. Chicago police reopened the case in 2007 when DNA found on the victim was found to match the DNA of defendant, who was in prison in Alabama for a separate murder.

¶ 4 At trial, Michael Hodges testified that he lived at 4843 West Crystal Street in Chicago. At 5:30 a.m. on March 21, 1991, he exited his garage in the alley and noticed what looked like clothing on the ground. When he got closer, he realized it was a bloody body. He went to his neighbor's home, told him what he saw, and called police.

¶ 5 Chicago police officer James Kranz testified that on the night in question he was working with Officer John Woodall when he received a call regarding a female "down" in the alley near 4834 West Division Street in Chicago. Once there, the officer observed that the woman had her throat slit, and was dead. The officer testified that the victim's underwear was pulled down, her pants were off and lying above her head, and her shirt was pushed up almost exposing her breasts.

¶ 6 Chicago police forensic investigator Officer Ronald Salter testified that on March 21, 1991, he and his partner, Officer Dennis Veneigh, were assigned to investigate this murder. Officer Salter placed bags on the victim's hands so that any evidence on her hands would be preserved. Officer Salter noted that there was a large amount of blood in the alley and collected a vial of blood from the scene. He did not find the knife used to cut the victim's throat.

¶ 7 Retired Chicago police officer Kevin McDonald testified that in 2007 he was working cases that were a couple of years old and had gone "cold" because of a lack of evidence. On October 3, 2007, he was working on the Harris homicide with Detectives Dan Engel and Adam

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Katz, when he learned that there was a match between the DNA found on the victim and that of defendant who was in Alabama. From 1990 to 1991, defendant lived in Chicago, about a mile from the murder scene. On May 14, 2008, Detectives McDonald and Engel flew to Alabama with Assistant State's Attorney Tom Prisco to meet with defendant. The following day, the officers met with defendant while the ASA waited outside the room. Detective McDonald advised defendant of his rights, and asked him if he patronized prostitutes, which he vehemently denied. The officers showed defendant photographs of women, including the victim, to see if he could identify the victim. Defendant told them that he did not know any of the women. Detective Engle then showed defendant an Illinois State Police Crime Lab report which showed that his DNA matched DNA found on the victim. At this point, defendant became "frustrated," and "not sure what he should do at that time."

¶ 8 Detective McDonald testified that defendant then stated that he recalled one occasion of visiting a prostitute on North Avenue, but was told that was not the incident in question. Detective McDonald told defendant that it would be in his best interest to tell them the truth of what happened, and in response, defendant asked what would happen if he told them what occurred. Detective McDonald told defendant that they would then tell the ASA what he told them, and it would be up to the ASA to determine whether or not he would be charged with anything. Defendant then asked to speak to the ASA making that decision.

¶ 9 Detective McDonald further testified that ASA Prisco then came into the room, and advised defendant that he was not his attorney. After being advised of his rights again by the ASA, defendant agreed to speak with the ASA and the two detectives. Defendant asked the ASA "what kind of deal he could get if he made a statement." ASA Prisco told defendant that he could not grant any deal, "that that wasn't an option." Defendant then looked at the photographs

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of the women again, picked up two, including the victim, and eventually put the other female's photo down and continued holding the victim's photograph. Defendant asked the ASA if he gave a statement, what will happen, and the ASA stated that after he reviews all the facts, he will determine whether to charge him. The officers told defendant again that it was in his best interest to tell the truth. Defendant became more frustrated and a little more belligerent as the conversation continued. When asked if he knew the picture of the girl he was holding, defendant responded, "maybe I do, maybe I don't," and "I've known prostitutes all over the world, I fucked her in Africa," referring to the victim.

¶ 10 Detective McDonald then asked defendant what he did on March 21, 1991, and defendant told him he went to a club the night before near Cicero Avenue and Division Street in Chicago. As he was walking up to the club, he noticed a prostitute, the victim. He asked to have sex with her, and she agreed. However, he told her he wanted to go to the club first, and if she was still around when he came out, they could have sex. While in the club, defendant had several drinks and used cocaine. When he exited the club, he did not see the prostitute, and went into the nearby alley to urinate. He then saw the victim, they reached a price of \$40 for sex, and walked further down the alley where they engaged in sex. While they were having sex, the victim began moving in a manner that made him feel like she was trying to hurry him along, which upset him. After he ejaculated, he took out his knife, and slit the victim's throat. He then placed her on the ground, urinated on her, and took back his money. As he left the area, he threw his knife in the sewer. The ASA asked him if they could memorialize the statement in written form, and defendant said that was not an option because he could not read very well. Defendant then gave a videotaped statement, and the officers later transported him back to Chicago.

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¶ 11 The parties stipulated that Dr. Kirschner from the Cook County Medical Examiner's Officer performed an autopsy on the victim in 1991. He collected buccal swabs from the vaginal, rectal and oral portions of the victim's body, as well as fingernail clippings. These were sent to the Illinois State Police Crime Lab for analysis. The parties further stipulated that in 1991, Therese Finn was a serologist for the Chicago Police Department, and received the vaginal swabs and determined there was semen present in it. The rectal swab test indicated that semen may be present.

¶ 12 The parties stipulated that Cynara Anderson was an expert in DNA analysis. In October 2006, she received the fingernail clippings from the victim, swabbed the surfaces of the clippings, and sent them to be analyzed for DNA evidence on February 21, 2007. She also sent the oral swab for DNA analysis. "At some point later," a search in the DNA database detected an association to defendant indicating that he may be a donor of the DNA evidence found in this case.

¶ 13 The parties further stipulated that Lisa Kell, a forensic scientist in the Forensic Biology DNA section of the Illinois State Police Forensic Sciences Command, would testify that two DNA profiles were identified on the vaginal swab, the victim and defendant. The DNA profile matching defendant would be expected to occur 1 in 1 quadrillion black, 1 in 1.4 quadrillion white, or 1 in 1.1 quadrillion Hispanic unrelated individuals. Kell would further testify that she identified two DNA profiles on the rectal swab. Assuming one of them was the victim, Kell determined that the other DNA profile matched defendant's DNA. This male DNA profile would be expected to occur within the same statistics listed for the vaginal swab.

¶ 14 ASA Tom Prisco testified that he was assigned to this case and flew to Alabama with Detectives Engel and McDonald. On May 15, 2008, the detectives met with defendant while

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ASA Prisco waited outside the office. Later that day, Detective Engel came out of the room and told him that defendant wanted to speak to him. ASA Prisco then entered the room and defendant asked him, “[w]hat kind of deal are you going to give me.” He told defendant that he was “not there to give him any deals, there would be no deals.” When ASA Prisco asked defendant if he would like to give a written statement, defendant told him that he could not read or write, and then agreed to do a videotaped statement. This videotape was played to the jury.

¶ 15 During closing arguments, the State argued, in relevant part, that defendant asked Detective McDonald and ASA Prisco, “[c]an I make a deal? What will happen if I make a statement?” Defendant was “conniving” and “trying to get out from under this rock, this rock of evidence that holds him there.”

¶ 16 The jury ultimately found defendant guilty of three counts of murder, and he was sentenced to a mandatory term of natural life imprisonment based on a previous murder he committed in Alabama. Defendant now appeals.

¶ 17 Defendant contends that he was denied his right to a fair trial by the repeated introduction of plea-related discussions he had with Detective McDonald and ASA Prisco in violation of Supreme Court Rule 402(f). Defendant acknowledges that he failed to raise this issue below, thereby forfeiting the issue for review (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), but maintains that it may be reviewed as plain error under the substantial rights prong.

¶ 18 The plain error doctrine is a narrow and limited exception to the general waiver rule allowing a reviewing court to consider a forfeited issue that affects substantial rights. *People v. Herron*, 215 Ill. 2d 167, 177-79 (2005). The burden of persuasion remains with defendant, and the first step in plain error review is to determine whether any error occurred. *People v. Lewis*,

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234 Ill. 2d 32, 43 (2009). For the reasons that follow, we find there was no plain error to preclude defendant's forfeiture of this issue.

¶ 19 Supreme Court Rule 402(f) (eff. July 1, 2012) provides, in pertinent part, that if a plea discussion does not result in a guilty plea, neither the plea discussion or any resulting agreement, plea, or judgment shall be admissible against defendant in any criminal proceeding. A statement is plea-related, and therefore inadmissible under Rule 402(f), if defendant exhibited subjective expectation to negotiate a plea and the expectation was reasonable under the totality of the objective circumstances. *People v. Jones*, 219 Ill. 2d 1, 24 (2006) (citing *People v. Friedman*, 79 Ill. 2d 341, 351 (1980)).

¶ 20 Recently, in *People v. Rivera*, 2013 IL 112467, ¶ 19, the supreme court further described the analysis in determining whether defendant's statements were made part of a plea discussion. The supreme court explained that not all statements made by a defendant in the hope of obtaining concessions are plea discussions, and that there is a difference between a statement made in the course of a plea discussion and an otherwise independent admission, which is not excluded by Rule 402(f). *Id.* The determination is not a bright-line rule, but turns on the factual circumstances of each case. The reviewing court may consider the nature of the statements, to whom defendant made the statements, and what the parties to the conversation said. *Id.* Before a discussion can be characterized as plea-related, it must contain the rudiments of the negotiation process, *i.e.*, a willingness by defendant to enter a plea of guilty in return for concessions by the State. *Id.* Where defendant's subjective expectations to engage in plea negotiations are not explicit, the objective circumstances surrounding the statement take precedence in evaluating whether the statement was plea-related. *Id.*

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¶ 21 Here, defendant maintains that his statements to Detective McDonald asking what would happen if he told them what occurred, the detective's response that police then tell the ASA what he told them, and it would be up to the ASA to determine whether or not he would be charged with anything, and defendant then asking to speak to the ASA making that decision were plea-related. He also maintains that his statements to ASA Prisco, "[w]hat kind of deal are you going to give me," and the ASA's response, that he was "not there to give him any deals, there would be no deals," were also plea-related. He further contends that the State then mentioned this testimony during closing argument.

¶ 22 We find this case similar to *Rivera*. In *Rivera*, 2013 IL 112467, ¶ 6, it was admitted into evidence that defendant asked the detective what "guarantees" would he have if he gave a confession, and was told that he could have no guarantees whatsoever, and that he could not promise him anything. Evidence also showed that defendant then spoke to the ASA and asked what guarantees would he have that he was not going to jail if he spoke to him, and was told by the ASA that there would be no guarantees. *Id.* ¶ 7. The supreme court found that defendant's statements to the detective did not indicate that he was willing to plead guilty, did not exhibit a subjective expectation to negotiate a plea, and even if there was any such expectation, it was not reasonable under the totality of the objective circumstances because defendant was told that the detective could not guarantee him anything. *Id.* ¶¶ 26-27. The supreme court further found that defendant's statements to the ASA did not exhibit a subjective intent to enter plea negotiations because defendant did not offer to plea guilty or even to confess, and it noted that not all statements made in the hope of gaining concessions are plea-related statements under Rule 402(f). *Id.* ¶ 29. The court also found that the repeated disclaimers from the detective and ASA that they could not offer defendant any guarantees eroded the reasonableness of any belief

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defendant had that the parties were engaged in plea bargain discussions. *Id.* ¶ 31. In sum, the supreme court found that the record did not reveal that defendant believed he was negotiating a plea when he made the statements at issue, nor would such a belief have been reasonable under the circumstances. *Id.*

¶ 23 Here, as in *Rivera*, defendant's statements to Detective McDonald, asking what he would get in exchange for telling him what happened, did not indicate a subjective expectation to negotiate a plea. *Friedman*, 79 Ill. 2d at 351. Furthermore, the detective told him that it was only up to the ASA regarding whether he would be charged with anything, and when he talked to the ASA he merely asked what kind of deal can he get, and was told by the ASA that there would be no deals. These statements do not evidence a willingness by defendant to enter a plea of guilty in return for concessions by the State. *Rivera*, 2013 IL 112467, ¶ 19. Furthermore, as in *Rivera*, even if there was any subjective expectation to negotiate a plea, it was not reasonable under the totality of the objective circumstances because defendant was told by the ASA that there would be no deals. *Id.* ¶¶ 27, 31.

¶ 24 We find *Friedman*, *People v. Hill*, 78 Ill. 2d 465 (1980), and *People v. Glidewell*, 17 Ill. App. 3d 735 (1974), cited by defendant in support of his position, distinguishable. In *Friedman*, evidence showed that defendant contacted the Office of the Attorney General inquiring about "making a deal," and stated that if he is convicted, he would rather go to a federal prison as opposed to a state prison. *Friedman*, 79 Ill. 2d at 350. The supreme court noted that defendant's statements were an offer to enter negotiation, stated generally the terms upon which he would be willing to negotiate, and thus, were plea-related and inadmissible under Rule 402(f). *Id.* at 352-53. Here, unlike *Friedman*, defendant did not indicate any concessions he wanted from the State, or even engage in any plea negotiations.

¶ 25 In *Hill*, the defendant told the ASA he wanted to speak to the “honcho, the head man,” wanted to “talk a deal,” and told the ASA that he would confess to both murders, plead guilty and testify against the person who paid him to kill one of the men, if he would be sentenced to a minimum term of 14 years’ imprisonment. *Hill*, 78 Ill. 2d at 469-70. *Hill* is clearly distinguishable from this case because the defendant in *Hill* asked to plead guilty and stated what he wanted as concessions from the State in exchange for his guilty plea. Here, defendant did not state he would plead guilty and did not indicate what he would want from the State in exchange.

¶ 26 In *Glidewell*, 17 Ill. App. 3d at 735-36, defendant’s discussions with the ASA requesting a sentence recommendation by the State if he plead guilty were admitted at trial, and the reviewing court held that these statements were plea negotiations which were improperly admitted at trial. Here, defendant did not request to plead guilty in exchange for a concession by the State. *Rivera*, 2013 IL 122467, ¶ 19. Furthermore, and as explained above, defendant’s statements did not reflect a willingness to enter a plea of guilty in return for concessions by the State, and even if there was any subjective expectation to negotiate a plea, it was not reasonable under the totality of the objective circumstances where defendant was told by the ASA that there would be no deals. *Id.* ¶¶ 19, 27, 31. Accordingly, there were no plea negotiations as contemplated by Rule 402(f). We thus conclude that there was no plain error to excuse defendant’s forfeiture of this issue. See *People v. Johnson*, 218 Ill. 2d 125, 139 (2005) (“Clearly, there can be no plain error if there is no error ***.”)

¶ 27 Defendant next contends, the State concedes, and we agree that defendant should have only been convicted of one count of first degree murder because there was only one victim under the one-act, one-crime doctrine. *People v. Plummer*, 151 Ill. App. 3d 94, 98 (1986). Accordingly, we correct the mittimus to reflect one conviction for first degree murder, Count I,

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which carried the most culpable *mens rea*. *People v. Fields*, 199 Ill. App. 3d 888, 902 (1990); Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). We need not remand for resentencing because defendant was sentenced to mandatory life imprisonment based on committing a prior murder in Alabama, and that sentence does not change if defendant is only convicted of one rather than three murders in Illinois. 730 ILCS 5/5-8-1 (West 2012).

¶ 28 We affirm the judgment of the circuit court of Cook County, and correct the mittimus accordingly.

¶ 29 Affirmed; mittimus corrected.