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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. 12 CR 16856
)
 LAVELLE SCOTT,) Honorable
) Kenneth J. Wadas,
 Defendant-Appellant.) Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment on defendant’s convictions for aggravated criminal sexual assault and aggravated kidnapping affirmed where the evidence was sufficient to sustain all counts, and admission of the victim’s prior consistent statements was proper to rebut a charge of recent fabrication; mittimus amended to correct name of offense.

¶ 2 Following a bench trial, defendant Lavelle Scott was convicted of five counts of aggravated criminal sexual assault and one count of aggravated kidnapping. The trial court sentenced defendant to consecutive prison terms for each conviction for an aggregate sentence of 48 years’ imprisonment.

¶ 3 The five convictions for aggravated criminal sexual assault were based on multiple acts defendant committed against his victim, J.M., which occurred in various locations inside an apartment building during a three-hour assault. Counts 1, 2 and 3 were based on contact between defendant's penis and J.M.'s vagina. Count 1 was based on the act which occurred inside a parking garage, and Counts 2 and 3 were based on acts which occurred in a fourth-floor hallway and stairwell. Counts 4 and 5 were based on acts which occurred inside a parking garage. Count 4 was based on contact between defendant's penis and J.M.'s mouth, and Count 5 was based on contact between his penis and her anus. All five of the counts were aggravated because defendant committed the assaults during the course of committing another felony, kidnapping.

¶ 4 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of two counts of aggravated criminal sexual assault predicated upon acts that occurred in a fourth-floor hallway and stairwell (Counts 2 and 3) because a surveillance video rebutted any claim that he and the victim went to the fourth floor. Defendant also contends that the trial court erred when it admitted the victim's prior consistent statements because they did not fall under an exception to the rule barring such statements as inadmissible hearsay. In addition, defendant asserts that his mittimus should be amended to reflect the correct name of the aggravated kidnapping offense. We affirm and correct the mittimus.

¶ 5 Defendant was tried on five counts each of aggravated criminal sexual assault and criminal sexual assault, and two counts of aggravated kidnapping. J.M., who was 15 years old at the time of the assault, testified that on August 17, 2012, she had been away from home for several days and was staying with her friend Alicia. That evening, she and Alicia went to a party where they met a woman named Shay and her boyfriend, defendant. After leaving the party, J.M.

and Alicia were walking to the train station when they came across defendant and Shay. The four of them walked to Shay and defendant's apartment building at 1025 West Hollywood Avenue. Upon arriving, J.M. said that she wanted to leave and began arguing with Alicia in the garage. Shay then accused J.M. of stealing marijuana from her, and the four of them went upstairs to Shay's apartment to discuss the matter. There, J.M. smoked one hit of marijuana, but did not drink. A police officer briefly came to the apartment in response to a noise complaint and left. Shortly thereafter, Alicia left the apartment. J.M. also decided to leave.

¶ 6 J.M. walked down a stairwell to the lobby, then observed defendant approaching her quickly from behind. As J.M. tried to scream for help, defendant wrapped his arm around her neck and placed his hand over her mouth. He threatened to kill J.M. if she made any noise. Defendant pulled J.M. backwards through a door and into the parking garage. He told J.M. that he was going to make her "his prostitute." He also said that he was in a gang and had a weapon he could shoot her with, but she never saw a weapon.

¶ 7 Defendant pulled J.M. behind a green minivan and pushed her down to her knees. He then placed his penis inside her mouth for a short time. Defendant pulled J.M. up from the ground, turned her around, and attempted to put his penis inside her anus. He was unsuccessful, but made contact between his penis and her anus. Defendant then inserted his penis inside her vagina.

¶ 8 J.M. pretended to have a seizure and began shaking and acting disoriented which caused defendant to stop his assault. He appeared nervous and opened the garage door that led outside. Defendant held J.M. by the arm and walked her around the back of the apartment building. She did not see anyone outside and did not scream because she was afraid of what he might do.

¶ 9 Defendant and J.M. reentered the building through the front entrance, walked through the lobby, and entered an elevator. Defendant took her to a different floor than the one where Shay's apartment was, but J.M. did not know which floor. She did not see anyone, but heard voices. Defendant forced J.M. down to the floor in the hallway, pulled down her pants and placed his penis inside her vagina. J.M. again began acting delusional, speaking loudly and incoherently. She heard a voice coming closer, and defendant stopped his assault.

¶ 10 Defendant grabbed J.M. by the arm and led her inside a stairwell. He again forced her to the floor, pulled down her pants, and placed his penis inside her vagina. J.M. again began acting delusional and talking nonsense. Defendant then stopped his assault and brought J.M. downstairs in an elevator to the lobby.

¶ 11 Defendant continued holding J.M. by the arm and brought her outside. As they walked down the street, J.M. began speaking loudly, saying "crazy stuff." Defendant then began walking a few steps behind her.

¶ 12 J.M. observed an Asian man walking down the street and mouthed to him "help me." She then screamed that she had been raped and needed help. Defendant put his arm around J.M.'s neck and told the man that she was lying. Defendant pushed the man in the chest. J.M. broke free from defendant and ran to a gas station where she asked the employees for help, and waited for the police.

¶ 13 When the police arrived, J.M. told them what happened. They transported her to Weiss Hospital where a doctor processed a sexual assault kit. J.M. sustained bruising to her neck, forearm and underarm. She also had scratches on her knees, head and toes. Later that evening, J.M. went to the police station and identified defendant in a lineup.

¶ 14 The State presented a surveillance video from the lobby of the apartment building. As the video played, J.M. identified defendant approaching her from behind as she tried to leave the building. This court viewed the video, which is approximately two minutes long. It depicts defendant approaching J.M. and grabbing her from behind. Defendant's arm is wrapped around J.M.'s neck with his hand covering her mouth. As J.M. struggles with defendant, he pulls her backwards towards a doorway, then turns around and walks her forward through the door that leads to the parking garage.

¶ 15 On cross-examination, J.M. denied telling detectives at the hospital that there was only one occurrence of oral sex in the garage, and testified that it occurred multiple times. Defense counsel then asked her "[i]s it your testimony that when you spoke with the officer – the detectives at the hospital, it's your testimony today that you told them there were numerous times of oral sex?" J.M. replied "I believe so." J.M. further denied telling the detectives that there was only one instance of vaginal sex. Counsel asked J.M. if she told the detectives that the sexual acts occurred only in the garage, and she replied that the oral sex occurred only in the garage, but the vaginal sex also occurred in two additional places in the building. Counsel then asked "[s]o, it's your testimony at the hospital, when you were interviewing the detectives [*sic*], that you told them that there was vaginal sex in other places in that building?" J.M. replied "[y]es." She told the detectives that vaginal sex occurred on the fourth floor and in the stairwell. She also told them that defendant attempted to have anal sex, and that he threatened to kill her. J.M. acknowledged, however, that she did not tell the detectives that defendant brought her outside from the garage and then brought her back inside the building through the front door.

¶ 16 J.M. also acknowledged that she did not tell the police officers at the gas station that vaginal sex occurred in the fourth-floor hallway and stairwell, or that she and defendant went outside and reentered the building. She explained that she was “panicking” at the time and did not remember. Counsel then asked “[n]ow, you testified today that after the garage you were brought out onto the street, correct?” J.M. replied “[y]es,” then acknowledged that she did not try to run away or scream for help at that time. Counsel also asked “[n]ow, when you testified that you went to [the] fourth floor hallway, you are stating that there was vaginal sex right on the hallway there, is that correct?” She replied “[y]es.” J.M. acknowledged that when she spoke with Detective Dwyer and an assistant state’s attorney (ASA) at the police station later that evening, she did not tell them that there was vaginal sex in the stairwell, that defendant attempted to have anal sex, or that he threatened to kill her.

¶ 17 On redirect examination, J.M. confirmed that she told Detective Dwyer and the ASA that defendant brought her back inside the building through a different door, that he brought her into a different room that had brown carpeting, that they left that room, and that he brought her into a hallway with red stairs where he again forced her to have sex. The State then asked J.M. questions about her testimony from the preliminary hearing held on September 7, 2012, about three weeks after the assault. Defense counsel objected, asserting “the answers used predates the preliminary hearing.” The trial court overruled the objection.

¶ 18 J.M. stated that at the preliminary hearing she testified to the following. After entering the parking garage, defendant threatened to kill her and told her that he was going to make her his prostitute. Defendant unsuccessfully attempted to insert his penis inside her anus. After they exited the garage, defendant walked towards the front door to reenter the building. He brought

her into an elevator and took her to another floor, but she did not know which floor. Defendant laid her on the floor and inserted his penis inside her vagina. He then walked her to a staircase and she pretended to have another seizure, but it appeared that he did not believe her. He again laid her on the floor, made her remove her pants, and inserted his penis inside her vagina. Afterwards, he walked her to the door through which they had entered.

¶ 19 Akrapong Lin was walking on Hollywood Avenue shortly before 6 a.m. when he turned a corner and observed J.M. “meandering” down the street towards him with defendant following a couple of steps behind her. When Lin got closer, J.M. began babbling nonsensical words to him. Lin noticed that she was very young, and he stopped and asked her to repeat herself. J.M. continued talking like “a little kid.” Defendant approached and asked Lin if he had a cell phone so they could call her people for help. Lin lied and said his phone was not charged. J.M. then said that she had been raped, began crying, and repeatedly asked Lin for help.

¶ 20 Lin agreed to help J.M. go to the police. As they began to walk away, defendant grabbed J.M. around the waist from behind and began pulling her. J.M. grabbed tightly onto Lin’s arms as both men pulled her. Lin asked J.M. if she was related to defendant, and she replied “[n]o. He raped me.” Defendant claimed they were related. Defendant then placed one hand on Lin’s throat and tried to push him away. Lin punched defendant in the neck, and defendant fell to one knee. J.M. broke free and ran down Hollywood Avenue into oncoming traffic, leaving her shoes behind. Defendant ran inside the Kenmore Avenue entrance of the subject apartment building.

¶ 21 Lin retrieved J.M.’s shoes, called the police, and headed down Hollywood Avenue looking for her. A cab driver pointed towards the gas station. Lin entered and found J.M. sitting on the floor. Later that day, Lin identified defendant in a lineup.

¶ 22 Maria Fabela was working at the Shell gas station at the intersection of Hollywood Avenue and Broadway about 6 a.m. on August 18 when J.M. ran inside and said someone was trying to rape her. J.M. was crying and very scared. Her hair was in disarray and she was not wearing any shoes. J.M. asked Fabela to call the police and waited behind the counter until they arrived. Surveillance video from the gas station depicting this event was played for the court.

¶ 23 Later that morning, Chicago police sergeant Arthur Harb and Officer Cain went to the second-floor apartment where Shay was house-sitting, found defendant there, and asked him to walk downstairs with them. When they reached the lobby, defendant fled out of the building and down the street. Shortly thereafter, other officers used a Taser to detain defendant inside another apartment building.

¶ 24 Defendant provided a written statement to police and an ASA which was read into the record by Chicago police detective Susan Ruck. The statement, in relevant part, indicated that the assault occurred between 2:30 a.m. and 5:50 a.m. Defendant stated that he met J.M. at a party, and afterwards, J.M. and her friend came to the apartment where Shay was house-sitting. When J.M. left the apartment, her friend told defendant not to let her leave, and he chased her down the stairs and into the lobby. As J.M. tried to leave the building, he grabbed her with his forearm. Defendant identified a photograph of him with his forearm around J.M. and his hand over her mouth.

¶ 25 Defendant stated that he pulled J.M. into the garage and took her behind a minivan. J.M. grabbed his shirt as though she was scared and said she would do whatever he wanted. Defendant told J.M. to give him oral sex, and she did so for about an hour. He then told her that

he wanted to have sexual intercourse. She removed her pants and underwear, and he inserted his penis inside her vagina. This act continued for about 30 minutes and he ejaculated inside her.

¶ 26 Defendant further stated that J.M. appeared as though she was going to faint, and said that she has seizures and needed fresh air. Defendant took her outside and she began speaking with a Mexican man who was walking down the street. Defendant then returned to Shay's apartment.

¶ 27 Attached to defendant's statement is a photograph taken from the surveillance video which depicts defendant and J.M. in the lobby of the apartment building. Defendant is standing behind J.M. with his hand covering her mouth. Defendant wrote "[t]his is me" on the photo and signed it.

¶ 28 On cross-examination, Detective Ruck acknowledged that when she interviewed J.M. at the hospital, J.M. told her that there was one act each of oral sex and vaginal sex in the garage. J.M. did not state that vaginal sex occurred in the fourth-floor hallway or stairwell, nor did she say that defendant threatened to kill her.

¶ 29 Detective Ruck viewed the surveillance videos from multiple cameras on the main floor of the apartment building. She did not see defendant and J.M. reenter the building after leaving.

¶ 30 The State presented stipulations that Dr. Ted Samawi treated J.M. at Weiss Hospital and processed a sexual assault kit, including vaginal swabs. Semen found on those swabs and on J.M.'s underwear matched defendant's DNA. The State presented another stipulation that a fingerprint recovered from the rear hatch glass of a green Dodge Caravan parked in the garage of the apartment building matched J.M.

¶ 31 Defendant acknowledged that he had prior convictions for possession of a controlled substance and burglary. He testified that in August 2012, he was living in an apartment at 1025 West Hollywood Avenue. The building had three parking garages, and there were surveillance cameras in the lobby.

¶ 32 On the night of August 17, defendant and his girlfriend Shay went to a party where they met J.M. Defendant and J.M. drank liquor and smoked marijuana, and he also snorted cocaine and took ecstasy pills. Defendant left the party with Shay, J.M., her friend, and a few of defendant's friends. They went to an apartment in defendant's building where defendant drank more liquor and smoked marijuana. J.M. smoked marijuana but did not drink.

¶ 33 J.M. and her friend began fighting in the lobby. Defendant and Shay stopped the fight, and they all returned to the apartment. A police officer came to the apartment due to the disturbance, but left after a few minutes. Shortly thereafter, J.M. was going to leave and her friend told defendant to stop her. J.M. left the apartment and defendant followed her and stopped her in the lobby. He put his hand over her mouth because he thought someone would call the police to report a disturbance, and he did not want the police to return to the apartment.

¶ 34 Defendant brought J.M. into the garage to calm her down. They smoked marijuana and talked. They then engaged in consensual sex. Defendant denied that he threatened or forced J.M. to have sex with him. He also denied telling her that he had a gun and would kill her. They engaged in oral and vaginal sex one time each inside the garage. Afterwards, they exited the garage and went outside. Defendant denied that they reentered the building and had sex in the fourth-floor hallway and stairwell. J.M. walked towards the train station, and defendant walked to Thorndale Avenue. He later returned to his apartment.

¶ 35 When the police came to his apartment, defendant was still under the influence of drugs and alcohol. He walked downstairs with the officers, but fled when they reached the lobby because he had marijuana inside his pocket. The police chased defendant, used a Taser on him twice, and arrested him. Defendant acknowledged that he signed the written statement, but claimed he did not know what he was signing because he was still under the influence and they did not read it to him.

¶ 36 Defendant presented a stipulation that during an interview at Weiss Hospital, J.M. did not tell Detective Ross that defendant attempted to have anal sex with her, or that his penis made contact with her anus.

¶ 37 In closing argument, defense counsel asserted that defendant and J.M. engaged in consensual sex inside the garage, and that J.M. regretted her decision as soon as the night came to an end. Counsel argued “[t]his comes down to credibility, your Honor. And what [J.M.] has shown is that as the time has gone on, she’s exaggerated. She’s embellished. She’s added things in.” Counsel noted that J.M. testified that she heard voices when they were on the fourth floor, and argued that “[s]he would have yelled out, gotten away from him at that point if that was, in fact, true, if that [was] in fact, what occurred.”

¶ 38 The trial court found that the surveillance video showed that defendant acted with “brute force” and corroborated J.M.’s testimony. The court further found that J.M.’s testimony was credible and defendant’s was not. Accordingly, the court found defendant guilty of all counts.

¶ 39 At the hearing on defendant’s motion for a new trial, defense counsel argued that the State failed to prove defendant guilty of the two counts of aggravated criminal sexual assault that occurred in the fourth-floor hallway and stairwell. Counsel argued that the surveillance video

would have shown defendant and J.M. reentering the building and going to the fourth floor if that had actually occurred. The State responded that J.M. testified credibly and clearly about all of the acts. It further argued that the court saw a specific video from a specific timeframe, and that there was no evidence that a building engineer reviewed the entire scope of all of the videos and found nothing. The trial court found that the evidence was sufficient to find defendant guilty of all of the counts and denied his motion.

¶ 40 The trial court merged the five counts of criminal sexual assault into the five counts of aggravated criminal sexual assault, and merged together the two counts of aggravated kidnapping. The court then sentenced defendant to consecutive prison terms on the five counts of aggravated criminal sexual assault and one count of aggravated kidnapping. For Counts 1, 4 and 5, defendant was sentenced to 10 years' imprisonment for each act of aggravated criminal sexual assault which occurred inside the parking garage, *i.e.*, contact between his penis and J.M.'s vagina, her mouth, and her anus. For Counts 2 and 3, defendant was sentenced to six years' imprisonment for the acts involving contact between his penis and her vagina which occurred in a fourth-floor hallway and stairwell. He was also sentenced to six years' imprisonment for Count 7, the aggravated kidnapping. Defendant's aggregate sentence is 48 years' imprisonment.

¶ 41 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of the two counts of aggravated criminal sexual assault predicated upon acts that occurred in the fourth-floor hallway and stairwell because the surveillance video rebutted any claim that he and J.M. went to the fourth floor. Defendant asserts that if he and J.M. reentered the building, took an elevator to the fourth floor, and later descended back to the lobby, they would have been recorded by the surveillance camera. He points out that Detective Ruck

testified that she viewed surveillance videos from multiple cameras and did not see them reenter the building. Defendant argues that the video therefore demonstrated that they never went to the fourth floor, and that the offenses for those two counts never occurred. He also notes that J.M. did not mention these two assaults during her initial interviews with police and the ASA.

¶ 42 The State responds that the video does not rebut J.M.'s testimony, but instead, showed that her encounter with defendant was not consensual. The State asserts that there is no evidence that Detective Ruck viewed all of the available video footage for the entire three-hour period during which defendant held and assaulted J.M. against her will. It further argues that J.M. made several statements to various officers, hospital personnel and an ASA, and collectively, those statements were consistent with her trial testimony.

¶ 43 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 44 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not

reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 45 To prove defendant guilty of aggravated criminal sexual assault under Counts 1, 2 and 3, the State was required to prove that defendant knowingly committed three separate acts of sexual penetration upon J.M. by making contact between his penis and her vagina by the use of force or threat of force, during the course of a kidnapping. 720 ILCS 5/11-1.30(a)(4) (West 2012). For Count 4, the State was required to prove that such contact occurred between his penis and her mouth. 720 ILCS 5/11-1.30(a)(4) (West 2012). For Count 5, the State had to show that such contact occurred between his penis and her anus. 720 ILCS 5/11-1.30(a)(4) (West 2012). In addition, to prove defendant guilty of aggravated kidnapping, the State was required to prove that he knowingly, by force or threat of imminent force, carried J.M. from one place to another with the intent of secretly confining her against her will, and committed a criminal sexual assault upon her. 720 ILCS 5/10-2(a)(3) (West 2012).

¶ 46 Viewed in the light most favorable to the State, we find that the evidence was sufficient to allow the trial court to find defendant guilty of the two counts of aggravated criminal sexual assault that occurred in the fourth-floor hallway and stairwell. J.M. testified that following the assault in the garage, defendant brought her back inside the building through the front entrance, walked through the lobby, and brought her onto an elevator. He took her to another floor, but she did not know which floor. She testified that defendant then forced her down to the floor in the hallway, pulled down her pants, and placed his penis inside her vagina. J.M. began acting

delusional and heard a voice approaching, and defendant then stopped his assault. She testified that defendant then grabbed her by the arm, led her inside a stairwell, and again forced her to the floor, pulled down her pants, and placed his penis inside her vagina.

¶ 47 It is well settled that the testimony of a single witness, if positive and credible, is sufficient to sustain a conviction, even when contradicted by the defendant. *Siguenza-Brito*, 235 Ill. 2d at 228. Here, the trial court found that J.M.'s testimony was credible and defendant's was not. Consequently, the record shows that J.M.'s testimony alone was sufficient for the court to find defendant guilty of the two assaults that occurred in the fourth-floor hallway and stairwell.

¶ 48 In making this finding, we reject defendant's claim that the surveillance video rebutted J.M.'s testimony. Defendant's claim is based on Detective Ruck's brief testimony that she viewed surveillance videos from multiple cameras on the main floor of the building and did not see defendant and J.M. reenter the building after leaving. Defendant postulates that this testimony established that defendant and J.M. never reentered the building, and thus, the assaults on the fourth floor never occurred.

¶ 49 We find that although the court could consider this testimony when determining whether the assaults on the fourth floor actually occurred, the evidence did not demonstrate that they never occurred. Detective Ruck's testimony was very general and did not specify precisely what videos she viewed from which cameras in what locations. She did not testify about the dates or times of the recordings she viewed or how many hours of video she watched. There was no additional evidence about the surveillance cameras, their locations, or their method of recording. The fact that Detective Ruck did not see defendant and J.M. reenter the building on the segments of video that she viewed does not prove that they never reentered the building.

¶ 50 Furthermore, we reject defendant's suggestion that this court should make its own factual determination based on the surveillance videos in this case and hold that such videos render J.M.'s testimony about the assaults on the fourth floor "unconvincing." Defendant relies on this court's opinion in *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 29, where we found that the surveillance video *admitted into evidence* rendered the victim's testimony too improbable, unconvincing, and contrary to human experience to sustain the conviction.

¶ 51 Significantly, here, the video defendant asks us to rely upon, the video viewed by Detective Ruck, was never presented before the trial court or admitted into evidence, and thus, is not contained in the record. The video was only briefly discussed during defendant's cross-examination of Detective Ruck. Obviously, this court cannot make a factual determination based upon a video that it does not have. We therefore find that the reasoning in *Shaw* is inapplicable to this case.

¶ 52 Moreover, the fact that J.M. did not specifically mention the assaults on the fourth floor during her initial interviews with the police officers at the gas station and the ASA does not show that those assaults never occurred. J.M. explained that when she spoke with the officers who arrived at the gas station shortly after the assault ended, she was in a panic and did not recall all of the details of the assault at that time. In addition, although she did not tell the ASA about the assault in the stairwell, she did tell her that defendant brought her back inside the building through a different door, that he brought her into a different room that had brown carpeting, that they left that room, and that he brought her into a hallway with red stairs where he again assaulted her.

¶ 53 Sitting as the trier of fact, it was the trial court's duty to weigh all of the evidence and resolve any conflicts therein. *Siguenza-Brito*, 235 Ill. 2d at 228. The court found that the evidence presented proved defendant guilty of all of the charges, including the two counts of aggravated criminal sexual assault that occurred in the fourth-floor hallway and stairwell. Based on this record, we find no reason to disturb the trial court's determination.

¶ 54 Defendant next contends that the trial court erred when it admitted J.M.'s prior consistent statements from the preliminary hearing because they did not fall under an exception to the rule barring such statements as inadmissible hearsay. Defendant argues that his theory of the case was that J.M. was motivated to testify falsely because she immediately regretted having consensual sex with him. He further argues, however, that her statements from the preliminary hearing were not admissible to rebut his claim because those statements were made after the onset of her motive, which occurred immediately after their encounter. Defendant also argues that he made no charge that J.M.'s testimony was recently fabricated, and therefore, that exception does not apply.

¶ 55 The State responds that J.M.'s statements from the preliminary hearing were properly admitted to rebut defendant's claim that her trial testimony was recently fabricated. The State asserts that on cross-examination, defendant never asked J.M. any questions about engaging in consensual sex or regretting such decision, but instead, suggested that she had "embellished" and "added things in" to her trial testimony regarding the vaginal sex in the fourth-floor hallway and stairwell, and the anal sex in the garage. The State argues that J.M.'s testimony at the preliminary hearing merely consolidated the prior statements she made to police, the treating physician and

the ASA on the day of the assault, and that she had no reason or opportunity to fabricate those statements when they were made.

¶ 56 The admission of testimony is within the sound discretion of the trial court, and on review, we will not disturb the court's ruling absent an abuse of that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion occurs only where the trial court's ruling is unreasonable, arbitrary, fanciful, or where no reasonable person would agree with the trial court's view. *Id.*

¶ 57 In general, statements made by a witness prior to trial that are consistent with the witness' trial testimony are not admissible to corroborate or rehabilitate the trial testimony. *People v. Cuadrado*, 214 Ill. 2d 79, 90 (2005). There is an exception to this rule where there is a claim that either the witness recently fabricated the testimony, or that the witness has a motive to testify falsely. *People v. Heard*, 187 Ill. 2d 36, 70 (1999). Under both prongs of this exception, a prior consistent statement is admissible if it was made before the motive to fabricate arose. *Id.*

¶ 58 Here, the record reveals that J.M.'s prior consistent statements from the preliminary hearing were properly admitted to rebut defendant's suggestion on cross-examination that she recently fabricated portions of her trial testimony by embellishing and adding things in that she had not disclosed to the police and the ASA on the day of the assault. When J.M. denied telling detectives that there was only one occurrence of oral sex in the garage and testified that it occurred multiple times, defense counsel asked "[i]s it your testimony that when you spoke with the officer – the detectives at the hospital, it's your testimony today that you told them there were numerous times of oral sex?" The record shows that counsel repeatedly questioned J.M.'s trial testimony in this manner, using phrases such as "[s]o, it's your testimony" and "you testified

today,” and inferring that her testimony regarding the details of the assault was different than what she had told the police on August 18. In so doing, counsel suggested that J.M.’s trial testimony was recently fabricated.

¶ 59 The record further shows that on redirect examination, the State rebutted defendant’s suggestion of recent fabrication by referring to J.M.’s prior testimony from the September 7 preliminary hearing, which was consistent with her trial testimony. The State thereby showed that J.M.’s testimony regarding the assaults in the fourth-floor hallway and stairwell and the anal sex in the garage were not recent fabrications, but instead, that she had made these same statements shortly after the assault occurred. Accordingly, the trial court did not err when it admitted J.M.’s prior consistent statements because that testimony was admissible under the exception to the general bar on such statements. *Cuadrado*, 214 Ill. 2d at 91.

¶ 60 Finally, defendant contends that his mittimus should be amended to correct the name of the aggravated kidnapping offense of which he was convicted. The mittimus incorrectly indicates that defendant was convicted of aggravated kidnapping based on infliction of harm. The record shows, however, that defendant was charged and convicted of aggravated kidnapping while committing another felony. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 406 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant was convicted of the offense of aggravated kidnapping while committing another felony.

¶ 61 For these reasons, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 62 Affirmed; mittimus amended.