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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 01 CR 18019
	)	
JEFFREY BOWERS,	)	Honorable
	)	Daniel P. Darcy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Karnezis concur in the judgment.

**ORDER**

*Held:* Where defense counsel failed to make an adequate offer of proof at a hearing on a motion *in limine*, review of the issue on appeal was forfeited. Where defendant did not testify at trial, the appellate court could not review his claim that the circuit court improperly refused to rule on his motion *in limine* to bar admission of his prior conviction. Where the circuit court did not comply with Supreme Court Rule 431(b), the court erred. Where defense counsel objected to the court's sequestration of the jury at trial, but failed to include the issue in his posttrial motion, defendant forfeited review of the issue. Furthermore, where defendant failed to make an argument for plain error review on appeal, plain error review was forfeited. Finally, where a defendant's sentence did not comport with the statute that required him to be

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sentenced to consecutive terms, notwithstanding the practical impossibility of serving those terms, the sentence was vacated for voidness and remanded for resentencing. Affirmed in part as modified and vacated in part and remanded for resentencing.

## BACKGROUND

Following a jury trial, defendant Jeffrey Bowers was convicted of two counts of first-degree murder, two counts of first-degree murder during which he personally discharged a firearm, two counts of attempted first-degree murder, and two counts of aggravated battery with a firearm and was sentenced to life imprisonment without parole. Defendant now appeals his convictions, arguing: (1) the circuit court erred in excluding evidence that would have rebutted the State's theory of the case; (2) the circuit court erred in failing to make a timely ruling on his motion *in limine* to preclude admission of his prior convictions; (3) the court failed to conduct a proper *voir dire* of the jury in violation of Supreme Court Rule 431(b); and (4) the court improperly coerced the jury's verdict by ordering that the jury be sequestered. Additionally, he seeks an order correcting the mittimus to properly reflect his convictions. For the following reasons, we affirm in part with modifications, vacate in part, and remand for resentencing.

Defendant was charged by indictment with twelve counts of first-degree murder under sections 9-1(a)(1), (a)(2), and (a)(3) of the Code of Criminal Procedure of 1963 (Code) (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2000)), four counts of attempted murder under sections 8-4 and 9-1(a)(1) of the Code (720 ILCS 5/8-4, 9-1(a)(1) (West 2000)), two counts of aggravated battery with a firearm under section 12-4.2(a)(1) of the Code (720 ILCS 5/12-4.2(a)(1) (West 2000)), and three counts of aggravated discharge of a firearm under section 24-1.2(a)(2) of the

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Code (720 ILCS 5/24-1.2(a)(2) (West 2000)) for his involvement in the shootings of Harold Hines, Tredarryl Fort, Steve Lawrence, and Christopher Cork in the early morning hours of June 23, 2001.

The State's theory of the case was that at approximately 1 a.m., defendant and two accomplices, Anton Grant and Yob Robinson, dressed in dark clothing and went to a block party in the 7800 block of South Constance. Defendant and his accomplices began firing into the crowd, fatally wounding Hines and Fort and seriously injuring Lawrence and Cork.

Defendant initially asserted a theory of self-defense, claiming that Grant and Robinson were trying to shoot at him and that he fired back in self-defense. In support of that theory, defense counsel intended to call two witnesses who he claimed could corroborate the fact that Grant and Robinson were defendant's enemies, that they were trying to kill defendant, and that the three men would never have conspired to commit a crime together. Defendant maintained that two years earlier, Grant and Robinson were charged with aggravated battery after shooting defendant. Defense counsel sought to call as witnesses the assistant State's Attorney who prosecuted Grant's and Robinson's bond hearings and a detective who investigated the shooting of defendant two years prior. Additionally, defendant intended to present evidence to rebut any inference that Grant or Robinson had been charged with the shootings in the present case.

Before trial, the State made a motion *in limine* to prevent defense counsel from calling the assistant State's Attorney and the detective as witnesses. At the hearing on the motion, defense counsel tendered to the court copies of the complaints in the earlier case against Grant and Robinson and argued:

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“with respect to Mr. Robinson at least, when he appeared for his bond hearing, we have the transcript of the bond hearing \*\*\* and it’s our understanding that the [S]tate’s [A]ttorney who represent[ed] the People for that bond hearing is available to testify.

But, judge, she sought special conditions of bond for both of these gentlemen. And one of those special conditions, at least with respect to Mr. Robinson only, was still in the court file, and special conditions of bond for a case that was still pending at the time of this incident, that these people are to have no contact with [defendant].”

In response, the State argued that defense counsel had not established the relevance of that testimony. The State noted that the earlier shooting of defendant was unrelated to the shooting of the victims in the present case. Additionally, the State argued that

“defense [counsel] has yet to say exactly what this means to the [d]efense, how is it relevant because I think it’s presumptively irrelevant to [the facts of this case] unless there’s some offer of proof specifically who’s going to say what that makes it relevant to this case.”

The court then ruled that defense counsel was permitted to cross-examine Grant and Robinson about the earlier shooting to establish their motive, bias, or interest in testifying against him.

The State then represented that it did not intend to call Grant or Robinson as witnesses and noted that neither Grant nor Robinson were listed as potential defense witnesses. The following colloquy then occurred:

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“DEFENSE COUNSEL: Judge, several of the same detectives who investigated this 1999 shooting [of defendant by Grant and Robinson] are the same detectives who investigated the [shootings in this case]. They were very familiar with Mr. Robinson and Mr. Grant.

COURT: Are you saying that [Grant and Robinson] aren't going to testify?

DEFENSE COUNSEL: Judge, I don't know where they are, first of all.

COURT: Okay. Well, if they are going to testify, I'll allow them – you can cross[-]examine them with regard to motive, bias, interest because I think that's relevant to their testimony, especially when they were charged and the case was pending of shooting this defendant.

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I'm not going to allow anybody to go into the facts of [the 1999 shooting], but with regard to the fact that if [Grant and Robinson] should get up and testify, I'll allow the [d]efense to cross[-]examine them with regard to motive, bias, interest as to the shooting and that's it.

DEFENSE COUNSEL: Judge, we're specifically asking, we have a large number of these officers under [d]efense subpoena, to be permitted to present the facts of the 1999 shooting of the police investigation. They both pled guilty, Judge. We have certified copies of the conviction for –

COURT: You're going to have police officers testify to these facts?

DEFENSE COUNSEL: Yes, Judge.

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COURT: No.

DEFENSE COUNSEL: I mean at least as far as the investigation, as far as what they saw and what they observed, not as far as hearsay—

COURT: No, I'm not going to allow that. I'm not going to allow that.

DEFENSE COUNSEL: But, Judge, the detectives in this case are several of the same detectives who investigated [the 1999 shooting].

COURT: It doesn't make any difference to me. I'm not going to allow them to testify.

If [Grant and Robinson] should testify, they had cases pending, I'll allow that. But I'm not going to have officers – police testify about some other shooting that occurred in 1999, [about] how they were involved in the investigation, who shot who and everything else, no, I won't allow that.”

Defense counsel then made an oral motion *in limine* to prevent the State from arguing or presenting evidence suggesting that defendant, Grant, and Robinson were “working together” to commit the shootings. The court denied that motion.

The State also moved *in limine* to prevent defense counsel from soliciting testimony to show that neither Grant nor Robinson were themselves charged with the murders in the present case. Defense counsel responded that the State planned to introduce evidence of Grant's and Robinson's arrests for weapons violations; therefore, the defense should be permitted to elicit testimony from the investigating officers to clarify that neither Grant nor Robinson were charged with the murders or attempted murders in this case. If the defense were prevented from

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presenting such evidence, counsel argued, the jury would conclude that Grant and Robinson were “charged with this murder, [and] either have been convicted, or have been acquitted or been awaiting trial and being tried separately from [defendant].” The court granted the State’s motion and excluded evidence of “who else was possibly or could have been charged with any murders in this case.”

Defendant also filed a motion *in limine* to bar the State from introducing evidence of defendant’s prior convictions. The court deferred its ruling on defendant’s motion until after hearing defendant’s trial testimony, pursuant to *Luce v. United States*, 469 U.S. 38 (1984).

During jury selection, the court interviewed prospective jurors as a group and individually. Specifically, the court made the following remarks to the groups of potential jurors:

“Ladies and gentlemen, do all of you understand that the defendant is presumed to be innocent of the charges against him and doesn’t have to offer any evidence on his own behalf, but he must be proven guilty beyond a reasonable doubt by the State?

Is there anybody that doesn’t understand that principle of law?

Let the record reflect no hands are raised.

Is there anyone here that disagrees with that principle?

Let the record reflect no hands raised.

If the defendant decides not to testify in his own behalf, would any of you hold that against him? If you would, please raise your hands.

Let the record reflect no hands raised.”

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After conferring with the State and defense counsel, a panel of twelve jurors was subsequently chosen from those groups and sworn.

At trial, the State presented the following relevant evidence. Denise Lewis testified that she was a passenger in a car driving east on 77th Street near Constance around the time of the shooting. She noticed a group of approximately five men walking on the sidewalk and thought she recognized them as friends. The driver slowed down and Lewis called after the men. At that time, the area was well lit by street lights and lights on the houses that the men passed. She did not know the men. She testified that all of the men were dressed in black. Specifically, she noticed one man wearing a black hooded sweatshirt, whom she identified as defendant. She testified that defendant was holding something under his sweatshirt with both hands. She saw the tip and butt of a large gun sticking out of defendant's sweatshirt. She also identified Robinson as one of the men in the group and testified that he had a silver handgun. After the men turned down Constance, Lewis's car continued on. She testified that a few minutes later, she heard gunfire that lasted a long time, although she admitted on cross-examination that in her earlier grand jury testimony, she said she did not hear gun shots. The day after the shooting, Lewis went to the police station and identified defendant and Robinson in a photo array. Two days later, she identified defendant and Robinson in a line up. She testified that on cross-examination that Grant was also one of the men in the group and that he also carried a handgun, but she never identified Grant in a photo array or line up.

Christopher Cork then testified that he was on the porch of a friend who lived on Constance when he heard gunshots. He ran into a nearby gangway to escape the gunfire, but was

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shot in the leg. He then looked out onto Constance and saw someone in dark clothing shooting an assault rifle, but could not see the face of the shooter. On cross-examination, he testified that there was a lot of gunfire and that it sounded like it was coming from two or three different kinds of guns.

Tony Wooden testified that he was walking along Constance away from the block party just before the shooting. Wooden passed defendant, who was walking toward the block party carrying an AK-47 assault rifle. He stated that he had known defendant for about three years as someone from the neighborhood. Wooden testified that he paused briefly as he passed defendant, looked at him, then put his head down and kept walking. He then turned the corner and ran away. Shortly thereafter, he heard a lot of gunshots that sounded like they came from three different kinds of guns. The next day, Wooden identified defendant in a photo array. Two days later, Wooden identified defendant in a line up. Wooden denied that he recognized any other shooters, but on cross-examination, he was impeached with his initial statement to the police and his grand jury testimony in which he stated that he saw Grant at the scene of the shooting.

Derrell Dennis testified that he was with some friends outside of his house on Constance on the night of the shooting, including the victims, Harold Hines and Tredarryl Fort. Dennis had just left that group and crossed to the other side of the street when the shooting began. He turned around and saw defendant shooting an assault rifle into the crowd of people on the other side of the street. Dennis stated that he had a profile view of defendant, who was in the street underneath a streetlight, and that his view was unobstructed even though he was hiding behind a

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bush. He stated that he heard gunfire from multiple guns, but did not identify any of the other shooters. He knew defendant as someone he had seen around for the past four or five years.

Approximately three weeks later, Dennis identified defendant in a line up as the person shooting the assault rifle.

Steve Lawrence testified that he was with Fort and his brother, Michael, in front of his apartment building on Constance on the night of the shooting. Hines had just walked away from the group, as had Wooden, who began his walk toward 78th Street. Lawrence then saw defendant approach from the direction of 78th Street shooting a “big gun” approximately two and a half feet long in his direction. Lawrence was shot in the leg and fell to the ground. He testified that he was on the ground “playing dead” as defendant continued to walk in his direction, and then defendant’s gun jammed. Lawrence crawled to the hallway of the apartment building, where his brother helped treat his wound. Lawrence testified that the area was well lit by street lights and his view of defendant was unobstructed. The next day, Lawrence identified defendant in a photo array. On cross-examination, Lawrence testified that he did not know Grant. When shown a picture of Grant by defense counsel, Lawrence incorrectly identified him as defendant.

Michael Lawrence then testified that he was with Fort and his brother, Steve, when he first heard the gunshots. Michael testified that he could see that the gunfire was pointed in his direction. He testified that two people were shooting into the crowd of people on Constance. As the shooter approached him from 78th Street, Michael saw that defendant was the shooter and he was using an assault rifle. Michael crawled into the hallway of the apartment building and assisted his brother. When the shooting stopped, Michael found Fort lying on the ground with a

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gunshot wound in his back. The next day, Michael identified defendant in a photo array. Two days later, Michael identified defendant in a line up. Michael also identified Grant in a photo array as being the second shooter carrying a gun with a long clip, called a TEC-9.

The State also presented the testimony of the investigating officers and detectives, as well as forensic experts and a medical examiner.

Defendant called Detective Scott Rotkovich, one of the investigating officers, to testify in his case in chief. Detective Rotkovich testified about which forensic tests he ordered to be performed on the evidence recovered at the crime scene and about the circumstances surrounding the arrest of Robinson for a weapons violation. Defendant also tendered two stipulations for impeachment purposes regarding a conflicting statement Wooden made to one of the investigating detectives and the content of Lewis's grand jury testimony. Defendant did not present any other evidence or testify on his own behalf.

After the trial and the conclusion of closing arguments, the court gave the jury instructions and sent the jurors to deliberate. They began their deliberations at approximately 1:00 p.m. At approximately 7:00 p.m., the court called the parties into the courtroom and stated the following:

“THE COURT: Bring the defendant out. Let the record reflect it's approximately 7 [p.m.]. Jurors have been deliberating about 6 and a half hours, and I don't think they have had dinner; so I have instructed the sheriff to order them to a hotel and we're going to sequester them over the evening, and we will have everybody back here at 10 [a.m.]. \*\*\*

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DEFENSE COUNSEL: May I be heard. It's my position at this point in time – I have no issue with the jury breaking now. They have been at this for I think [Y]our Honor stated the amount of time accurately.

Judge, I'm objecting to sequestration at this point in time. I'm asking that the case be held over until Monday. \*\*\*

Given that it is Mother's Day weekend and I'm afraid sequestration given the timing of a holiday will influence their wish to wrap up deliberations quicker. I ask it be held over until Monday and you order them not to watch the news or look at internet news and not to discuss this case with anybody and not to think about the case in terms of internal deliberations, and keep the case out of their mind and come back Monday morning.

It's my objection for the record.

THE COURT: Your objection will be noted for the record. We will sequester them until tomorrow morning. Be back here at 10 [a.m.].”

At approximately 7:10 p.m., the court reconvened the parties and announced that the jury had reached a verdict. The following colloquy then occurred:

“THE COURT: When [the jurors] rang the buzzer, I was informed that one of the sheriffs [was] in there and the jurors told [him] that all of the forms, they did sign one wrong verdict form.

Mr. Wolf [defense counsel].

DEFENSE COUNSEL: Judge, first of all, it was our understanding that

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the jurors – that the deputies were informed we have a verdict within 30 seconds and that didn't happen, and the buzzer went off at least when I saw it at about 7:08. Apparently in their haste to come up with a verdict to avoid sequestration, that's what I'm hearing, they apparently signed at least one wrong verdict form.

THE COURT: There's absolutely no evidence of that Mr. Wolf, absolutely none in their haste they signed the wrong verdict form. That may be your opinion, sir, but there is absolutely no evidence of that.”

The court and the parties agreed on a process to allow the jurors to submit the correct verdict forms.

At 7:25 p.m., the verdicts were read. The jury found defendant guilty of two counts of first-degree murder of Hines and Fort, two counts of first-degree murder of Hines and Fort during which defendant personally discharged a firearm, two counts of attempted first-degree murder of Cork and Lawrence, and two counts of aggravated battery with a firearm against Cork and Lawrence. The court then stated, “based upon the jury's verdicts, the [c]ourt judges you guilty of the offenses and I will enter judgment on the finding.”

Defendant filed a posttrial motion asserting 57 claims of error, which was denied. The court sentenced defendant to “natural life without the possibility of parole mandated by statute.” The following colloquy then occurred:

“THE STATE: There were other counts that the [c]ourt hasn't addressed. I know he has been sentenced to natural life on the murder, but under any other circumstances there are consecutive counts.

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THE COURT: Well, on the murders, but on the other – It’s my understanding that you can’t do any more than natural life.

THE STATE: I just wanted to make the [c]ourt aware there are others.

THE COURT: I could sentence him to life plus 30, but I think the courts right now and the case law as it appears, the new case that came down, I can’t do that. So based on what I hear, I am going to sentence him on the murder counts to natural life.”

The mittimus reflected that defendant had been convicted of eight counts of murder. It further stated that defendant was sentenced to “natural life with out parole” and that “all counts [were] to merge.”

#### ANALYSIS

On appeal, defendant first argues that he was deprived of his right to present relevant evidence that would have rebutted the State’s theory that defendant colluded with Grant and Robinson in committing these crimes and refuted the State’s implication that Grant and Robinson were also charged with the shootings. Specifically, he argues that he should have been permitted to present the testimony of a detective who investigated the alleged shooting of defendant by Grant and Robinson two years earlier and the testimony of the assistant State’s Attorney who appeared at Grant’s bond hearing following his arrest for that shooting.

Defendant has forfeited this issue on appeal because he failed to make an adequate offer of proof as to the witnesses’ proposed testimony. The exclusion of evidence at trial is unreviewable on appeal unless a formal offer of proof was made below. *People v. Wood*, 341 Ill. App. 3d 599, 604 (2003) (citing *People v. Peeples*, 155 Ill. 2d 422, 457 (1993)). An offer of

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proof permits the reviewing court to determine whether the evidence was properly excluded. *Wood*, 341 Ill. App. 3d at 604. An adequate offer of proof requires that the proponent of the evidence assert, with particularity, the substance of the witness's anticipated testimony. *Snelson v. Kamm*, 204 Ill. 2d 1, 23 (2003); *Wood*, 341 Ill. App. 3d at 604. It is insufficient for the proponent to speculate as to the witness's testimony or merely summarize the testimony in a conclusory fashion. *People v. Andrews*, 146 Ill. 2d 413, 421 (1992). Rather, the proponent must "explicitly state what the excluded testimony would reveal and may not merely allude to what might be divulged by the testimony." *Andrews*, 146 Ill. 2d at 421. Most importantly, the proponent must establish the admissibility of the testimony in his offer of proof. *Wood*, 341 Ill. App. 3d at 604 (citing *Andrews*, 146 Ill. 2d at 421). Failure to make an adequate offer of proof at trial results in forfeiture of the issue on appeal. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792 (2006); see also *Gallagher v. Lenart*, 226 Ill. 2d 208, 229-30 (2008) (clarifying that forfeiture is the "failure to make a timely assertion of a right," whereas waiver is the "intentional relinquishment of a known right").

Here, during the hearing on the motion *in limine*, defense counsel failed to "explicitly state what the excluded testimony would reveal" or specifically identify who would provide that testimony. Counsel clearly expressed that he sought to rebut certain inferences he expected would arise from the State's evidence. He also asserted generally that he wanted to call an assistant State's Attorney and a detective who investigated the 1999 shooting to establish his rebuttal. However, counsel never identified the witnesses by name, never proffered the precise nature of the testimony and, as a consequence, never asserted the basis of admissibility, which is

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necessary to our review of the claimed error. See *Wood*, 341 Ill. App. 3d at 604 (citing *Andrews*, 146 Ill. 2d at 421).

The State argued that any testimony from those witnesses would be irrelevant and specifically noted that defense counsel had not to that point made an offer of proof or otherwise established the relevance of the testimony. Even after that prompting by the State, defense counsel did not attempt to make a formal offer of proof by identifying who specifically would testify, what those witnesses would say, how their testimony pertained to the facts of this case, or the basis for the admissibility of the testimony. Thus, he failed to make an adequate offer of proof and the issue is unreviewable on appeal. See *Snelson*, 204 Ill. 2d at 23; *Andrews*, 146 Ill. 2d at 421; *Kamesha J.*, 364 Ill. App. 3d 792.

Even if we could consider counsel's "speculat[ion] as to the witness[es'] testimony" (*Andrews*, 146 Ill. 2d at 421) or his summary of the possible testimony, the witnesses he intended to present would be incompetent to testify to the personal relationships between Grant, Robinson, and defendant. Nor could they competently provide a motive for the earlier shooting of defendant by Grant and Robinson. As the circuit court recognized, only Grant and Robinson could establish those facts, and if they were called to testify, defense counsel would be permitted to cross-examine them. However, any testimony by the detective or the assistant State's Attorney to that effect would lack a proper foundation, and likely would be barred as hearsay.

As to the evidence that defendant claims would show that Grant and Robinson were not charged in this case, even if we could consider those conclusory representations made by defense counsel, it is well established that evidence regarding the prosecution of a co-offender is

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irrelevant to the defendant's guilt or innocence. See *People v. Walker*, 392 Ill. App. 3d 277, 291-92 (2009).

Defendant's next argument on appeal is that the circuit court erred in refusing to rule on his motion *in limine* to bar admission of his prior conviction until after he testified. However, this issue also is procedurally defaulted and we cannot review it on appeal. The supreme court recently made clear that any alleged error by the circuit court in refusing to rule on a defendant's motion *in limine* is unreviewable on appeal if the defendant did not testify at trial, regardless of whether the court's refusal resulted from its "blanket policy" on the administration of such motions. *People v. Freeman*, 936 N.E.2d 1110, 1123 (2010) (citing *People v. Averett*, 237 Ill. 2d 1, 5 (2010), and *People v. Patrick*, 233 Ill. 2d 62, 77 (2009)). Moreover, the court determined that honoring the procedural default in this context is not a deprivation of a defendant's constitutional rights. *Freeman*, 936 N.E.2d at 1123.

Here, defendant did not testify at trial and, thus, the issue is forfeited and unreviewable. Defendant made no argument for plain error review of this issue pursuant to Supreme Court Rule 615(a) (eff. Aug. 27, 1999) and, thus, we need not address the issue as such. See *People v. McCoy*, 2010 WL 4227795, at \*3 (citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (where defendant fails to argue for plain error review on appeal, he has forfeited the opportunity for such review)).

Nevertheless, even if defendant had sought plain error review, this issue is not amenable to such review. A defendant's decision not to testify at trial "goes beyond normal forfeiture." *Averett*, 237 Ill. 2d at 12. As with the failure to make a formal offer of proof in the circuit court,

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a defendant's failure to testify at trial deprives the court of review of an adequate record from which to evaluate the circuit court's decision on the admissibility of the prior convictions.

*Averett*, 237 Ill. 2d at 12. Thus, we would be forced to speculate on the substance of the defendant's testimony as well as the questions asked by the prosecution on cross-examination.

*Averett*, 237 Ill. 2d at 12. Consequently, plain error review is unavailable on this issue because without defendant's testimony, there is nothing to review. See *Freeman*, 936 N.E.2d at 1123-24; *Averett*, 237 Ill. 2d at 12.

Defendant next argues that he was denied a fair trial by an impartial jury because the court failed to properly conduct the *voir dire* in accordance with Supreme Court Rule 431(b) (eff. May 1, 2007). Rule 431(b) provides that:

“The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section.”

Supreme Court Rule 431(b) (eff. May 1, 2007).

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Defendant acknowledges that he failed to object to the court's administration of *voir dire* and that he also failed to raise this issue in his posttrial motion. Thus, he has forfeited the issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (a defendant must object at trial and in the posttrial motion to preserve an issue for review). However, he properly seeks plain error review.

Under the plain error rule, we may review an otherwise forfeited issue pursuant to Supreme Court Rule 615(a) (eff. Aug. 27, 1999) when a clear or obvious error occurs and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) the error is so serious that it affected the fairness of the trial and undermined the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step in applying the plain error test is to determine whether any error occurred. *Piatkowski*, 225 Ill. 2d at 565. The defendant bears the burden of persuasion on both the threshold question of plain error and in establishing at least one of the two prongs to receive review of the unpreserved error. *In re M.W.*, 232 Ill. 2d 408, 431 (2009). When the defendant fails to sustain his burden, we are bound to honor the procedural default. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

According to defendant, the court erred because it did not ask strictly adhere to the rule's requirement that the court ask jurors if they understood *and* accepted the legal principle that the defendant need not testify on his own behalf. In response, the State contends that the court sufficiently complied with the requirements of Rule 431(b). Because there is a conflict among the appellate courts on this issue, each party was able to cite several opinions in support of their conflicting positions.

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The supreme court recently resolved this issue in *People v. Thompson*, No. 109033 (Oct. 21, 2010). Pursuant to *Thompson*, the circuit court must strictly comply with Rule 431(b) and “ ‘shall ask’ ” potential jurors, either individually or as a group, whether they understand and accept each of the enumerated principles contained in the rule. *Thompson*, No. 109033, at 6. Failure to do so violates Rule 431(b) and results in error. *Thompson*, No. 109033, at 6-7.

Here, with respect to the fourth principle, the court asked the potential jurors if they would “hold [it] against” defendant if he chose not to testify. The court did not ask the potential jurors whether they understood that concept or whether they accepted it, which is a clear violation of Rule 431(b). *Thompson*, No. 109033, at 6-7. Thus, we find that the court erred in its administration of the rule.

Nevertheless, defendant is not entitled to plain error review because he cannot demonstrate that he is entitled to such review under either prong of the test. First, the evidence in this case was not closely balanced. Although defendant correctly notes that there was no physical evidence connecting defendant to the shooting, five eyewitnesses placed defendant at the scene of the crime and all of them testified that they saw him carrying or shooting an assault rifle. In assessing the reliability of the eyewitness identifications to determine the closeness of the evidence, we examine five factors: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *Piatkowski*, 232 Ill. 2d at 567.

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Here, each witness's testimony was sufficiently reliable under this test. They each had unobstructed views of defendant in well lit areas; several of the witnesses knew defendant; they were looking at defendant while he was shooting or carrying an assault rifle; and they each identified him in a line up or photo array or both within 3 days of the shootings. For example, Lewis had ample opportunity to view defendant because he looked right at her while she was driving alongside him. The area was illuminated by streetlights and lights from nearby houses. She paid close attention to him because she thought she recognized him as a friend of hers. She saw that defendant was carrying a gun so large that partially appeared through the top and bottom of his sweatshirt. Although Lewis did not know defendant, she accurately identified him in a photo array the day after the shooting and identified him in a lineup two days after that.

Wooden paused and looked right at defendant as they passed each other on the street right before the shooting. He knew who defendant was and had known him for several years. Defendant was carrying an AK-47 assault rifle. Wooden also identified defendant in a photo array the next day as the person carrying an assault rifle and identified him in a line up two days later.

Dennis had an unobstructed view of defendant shooting an assault rifle into the crowd of people on Constance. Defendant was standing under a streetlight while he was shooting. Although Dennis only saw defendant's profile from his location, he had known defendant for four or five years. Dennis also identified defendant in a line up as the shooter of the assault rifle.

Steve Lawrence was looking at defendant as defendant was shooting an assault rifle at him. Lawrence could see that it was defendant approaching because it was a well lit area.

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Lawrence identified defendant in a photo array as the person who shot him with an assault rifle.

Defendant was also walking in Michael Lawrence's direction while shooting the assault rifle. Michael could see the gunfire coming from defendant's gun. Michael Lawrence also identified defendant in a photo array the next day and identified jim in a line up two days after that.

All of these witnesses provided sufficiently reliable eyewitness identifications under the test. See *In re M.W.*, 232 Ill. 2d at 435; *contra Piatkowski*, 225 Ill. 2d at 568-70. Taken together, the five eyewitnesses' testimony provides overwhelming support for the State's case and we cannot say that the evidence was so closely balanced that the error threatened to tip the scales of justice against defendant. Therefore, defendant has not met his burden of proving that he was entitled to plain error review under the first prong.

With respect to the second prong, defendant cannot establish that the error affected a right so important that we must presume prejudice, regardless of the closeness of the evidence.

*Thompson*, No. 109033, at \*12 (quoting *People v. Herron*, 215 Ill. 2d 167, 187 (2005)).

*Thompson* made clear that while a trial before a biased jury is a denial of a substantial right that permits us to presume prejudice, we cannot presume that a jury was biased simply because the circuit court failed to properly administer Rule 431(b). *Thompson*, No. 109033, at \*12-13. Thus, by itself, a violation of Rule 431(b) "does not implicate a fundamental right or constitutional protection" so important that we must presume prejudice. *Thompson*, No. 109033, at \*12-13. Nor has defendant presented any other evidence demonstrating that the jury was biased against him. Thus, defendant has not succeeded in arguing for plain error review under the second prong

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either and we must honor the procedural default.

The last substantive issue that defendant raises on appeal involves the court's "improper hastening" of the jury's verdict. Defendant argues that ten minutes after the court informed the jury that it would be sequestered over a holiday weekend, the jury returned its verdict convicting him on all counts. Therefore, he argues, the court's sequestration announcement was coercive.

We must again conclude that this issue is forfeited. Defense counsel astutely objected to the sequestration order at trial. However, as explained above, he must also have raised the issue in a posttrial motion to preserve the issue for review. See *Hillier*, 237 Ill. 2d at 544-45; *Enoch*, 122 Ill. 2d at 186. Our review of the posttrial motion reveals that he did not do so. Therefore, the issue is forfeited. Again, apparently not recognizing the forfeiture, defendant made no argument for plain error review of this issue and it is also forfeited. See *Hillier*, 237 Ill. 2d at 545, 549 (after determining that an issue has been forfeited on appeal, the appellate court must honor the procedural default where the defendant has not demonstrated plain error).

Finally, defendant contends that the mittimus erroneously lists convictions for eight counts of first-degree murder based on multiple theories of culpability. He contends that under the one-act, one-crime doctrine, the mittimus may only reflect two convictions for the murders of Hines and Fort. The State concedes that defendant's mittimus should only reflect two murder convictions, but also asserts that the court erred by not sentencing defendant on his other convictions for the attempted murder and aggravated battery of Cork and Lawrence pursuant to section 5-8-4(a)(1) of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-8-4(a)(1) (West 2000)).

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The jury found defendant guilty of: two counts of intentional murder for the murders of Hines and Fort (720 ILCS 5/9-1(a)(1) (West 2000)); two counts of intentional murder in which defendant personally discharged a firearm in the murders of Hines and Fort (720 ILCS 5/9-1(a)(1), 730 ILCS 5/5-8-1(d)(iii) (West 2000)); two counts of attempted murder for the shootings of Cork and Lawrence (720 ILCS 5/8-4, 9-1(a)(1) (West 2000)); and two counts of aggravated battery with a firearm against Cork and Lawrence (720 ILCS 5/12-4.2(a)(1) (West 2000)). The court then found defendant “guilty of the offenses and [entered] judgment on the finding.” He was not convicted on any of the knowing murder charges. Nevertheless, the mittimus reflects only that defendant was convicted of four counts of intentional murder and four counts of knowing murder.

The mittimus should be corrected to properly reflect the offenses for which defendant was convicted and to remove the offenses for which he was not convicted. That is, the mittimus should list defendant’s two convictions for attempted murder and two convictions for aggravated battery, but not the four convictions for knowing murder (720 ILCS 5/9-1(a)(2) (West 2000)). Pursuant to our authority under Supreme Court Rule 615(b), we direct the clerk of the circuit court to make those necessary changes to the mittimus. See *People v. Walker*, 403 Ill. App. 3d 68, 81 (2010).

With respect to the four intentional murder convictions, defendant is correct that the one-act, one-crime rule prohibits him from being convicted of “more than one murder arising out of the same physical act,” even where he has been charged and adjudged guilty of murder under several different theories. *People v. Pitsonbarger*, 142 Ill. 2d 353, 377 (1990). Thus, where, as

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here, there were only two murder victims, there can only be two murder convictions. See *People v. Walton*, 378 Ill. App. 3d at 590; *Pitsonbarger*, 142 Ill. 2d at 377-78. In such cases, only the conviction for the most serious offense against each victim may stand. *People v. Smith*, 233 Ill. 2d 1, 20 (2009).

Defendant was found guilty and convicted of four counts of intentional murder for the murders of Hines and Fort (counts 1, 2, 7, and 8). 720 ILCS 5/9-1(a)(1) (West 2000). However, as noted above, only the convictions on the most serious charges may stand. *Smith*, 233 Ill. 2d at 20. To determine which of the offenses was more serious, we look to the potential punishment for each offense as prescribed by the legislature. *People v. Lee*, 213 Ill. 2d 218, 228 (2004) (“[i]t is common sense that the legislature would provide greater punishment for crimes it deems more serious”).

Defendant’s convictions on counts 1 and 2 represented the intentional murders of Hines and Fort, respectively. His convictions on counts 7 and 8 also represented the intentional murders of Hines and Fort, respectively, where defendant was found to have personally discharged a firearm in the commission of those offenses. A first-degree murder conviction carries a minimum sentence of 20 years and a maximum sentence of death, as in this case. 730 ILCS 5/5-8-1(a) (West 2000). That sentencing range applies for counts 1, 2, 7, and 8 here. However, the jury’s special finding that a defendant personally discharged a weapon requires that an additional 25 years be added to any sentence imposed. 730 ILCS 5/5-8-1(d)(iii) (2006). Therefore, counts 7 and 8 carry a potentially greater sentence and are the more serious offenses. Consequently, we affirm defendant’s convictions on counts 7 and 8. Defendant’s convictions on

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counts 1 and 2 cannot stand and must be vacated. See *Walton*, 378 Ill. App. 3d at 590; *Pitsonbarger*, 142 Ill. 2d at 377-78. The clerk of the circuit court is directed to make those changes to the mittimus. *Walker*, 403 Ill. App. 3d at 81.

As to the State's contention that the circuit court erred in not sentencing defendant on the attempted murder convictions and aggravated battery convictions, we agree. Those offenses involved victims different from the victims of the murders and, therefore, required separate convictions and sentences. See *People v. Shum*, 117 Ill. 2d 317, 363 (1987); *People v. Brown*, 341 Ill. App. 3d 774, 781 (2003). That is, the attempted murder convictions involving Cork and Lawrence did not "merge" with the intentional murder convictions involving Hines and Fort.<sup>1</sup>

Moreover, section 5-8-4(a)(i) of the Code of Corrections provides that the circuit court "shall impose consecutive sentences if: (1) one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury \*\*\* in which event the court shall enter sentences to run consecutively." 730 ILCS 5/5-8-4(a)(i) (West 2006). Here, the court only imposed one life sentence. Therefore, defendant's sentence did not conform to the requirements of the statute, and it is void. 730 ILCS 5/5-8-4(a)(i) (West 2006); *People v. Arna*, 168 Ill. 2d 107, 113 (1995) (holding that appellate court has *sua sponte* duty to correct void sentencing orders where they do not conform to statute). Although the circuit court apparently believed that it could not sentence defendant on the

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<sup>1</sup> However, the attempted murder and aggravated battery convictions against Cork and Lawrence may merge for sentencing purposes. See *People v. Tabb*, 374 Ill. App. 3d 680, 695 (if the court determines that the attempted murder and aggravated battery arise out of the same act, the convictions merge for sentencing purposes).

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additional convictions because it could not impose a sentence greater than natural life, presumably under the authority of *People v. Palmer*, 218 Ill. 2d 148 (2006), the supreme court recently overruled *Palmer*, directing “the courts of this state [ ] to enforce section 5-8-4(a) as written and without regard to the practical impossibility of serving the sentences it yields.” *People v. Petrenko*, 237 Ill. 2d 490, 506-07 (2010). Accordingly, defendant’s sentence is vacated and the matter is remanded for resentencing on all convictions, subject to any applicable maximum (see 730 ILCS 5/5-8-4(c)(2) (West 2006)).

Accordingly, for the foregoing reasons, we affirm defendant’s convictions for the intentional murders of Harold Hines and Tredarryl Fort during which defendant personally discharged a firearm (counts 7 and 8) and vacate any other murder convictions. The mittimus shall be so corrected and shall also reflect defendant’s convictions for the attempted murder and aggravated battery of Christopher Cork and Steve Lawrence. Furthermore, we vacate defendant’s sentence and remand the matter for resentencing in compliance with section 5-8-4 of the Code of Corrections.

Affirmed in part as modified and vacated in part; cause remanded.