

No. 1-09-3494

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. 03 CR 14312
)	
ALEXANDER TERUEL,)	Honorable
)	Bertina Lampkin,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Garcia concurred in the judgment.

ORDER

- ¶ 1 **Held:** Judgment entered on defendant's conviction of first degree murder affirmed; issue regarding sex offender registration is moot and defendant forfeited his claim of prosecutorial misconduct.
- ¶ 2 Following a jury trial, defendant Alexander Teruel was found guilty of first degree murder, then sentenced to 50 years' imprisonment. On appeal, defendant requests this court to enter an order stating that he need not register as a sex offender. He also contends that he did not receive a fair trial because the State improperly inflamed the passions of the jury and repeatedly disparaged him during closing and rebuttal arguments.
- ¶ 3 The record shows that defendant was charged with six counts of first degree murder and

two counts of aggravated unlawful use of a weapon in connection with the shooting death of 18-year-old Juan "Pokey" Washington. At trial, the State established that in the late afternoon hours of June 2, 2003, defendant and Latoya Day were driving in defendant's van when Lorenzo "Stank" Davis flagged them down and told defendant that his car had broken down. Lorenzo then entered defendant's van, and they drove to Lorenzo's car which was parked on the north end of the 1000 block of Keystone Avenue, towards Thomas Street. As defendant and Lorenzo were looking under the hood of the car, Juan and others were standing about 15 to 20 feet away in the middle of the block.

¶ 4 Defendant and Lorenzo reentered defendant's van, and defendant drove into the alley behind his house, exited the van and went inside to get his 9-millimeter caliber Smith and Wesson handgun. He then returned to the van and drove south towards Augusta Boulevard, stopping in the alley between Pulaski Road and the 1000 block of Keystone Avenue. Defendant exited the van and walked through a gangway, at which point Latoya and Lorenzo lost sight of him. He emerged on Keystone Avenue where he approached within 7 to 10 feet of Juan, who had one hand on his phone and one hand in his pocket. Juan turned, closed his phone and removed his hand from his pocket which, according to defendant's video statement, caused defendant to be "in fear of my life." Defendant pulled his gun from his waistband and fired three shots at Juan. When Lorenzo heard these shots, he exited the van and ran through a gangway onto Keystone Avenue where he saw Juan lying in the street, bleeding. Meanwhile, defendant returned to the van and drove to his brother's house with Latoya. He later disassembled the gun into three pieces and threw them into the river at different locations. Juan died from gunshot wounds to the back of his head, the right side of his lower back and the back of his left thigh.

¶ 5 Defendant testified on his own behalf, *inter alia*, that while he was looking at Lorenzo's car on the day in question, Juan made a confrontational gesture toward him. Defendant went home and called a detective "to handle the matter," but when there was no answer, he grabbed his

gun for "security purposes." He then parked in the alley behind Lorenzo's car, exited the van with the assumption that Lorenzo was following him and walked through a gangway leading to where the car was parked. At the time, his "intentions were to thoroughly inspect and assess the damage to Lorenzo Davis' car so we know, would know what parts were needed when we go to the auto parts store." However, as he exited the gangway, he and Juan noticed each other, and when defendant asked him "like do we have any beef," Juan raised his shirt and "from the look of things, he just started reaching for a gun." Defendant then pulled his gun out and fired three shots at Juan but did not intend to kill him.

¶ 6 During closing arguments, the State argued, *inter alia*, that:

"[defendant] is presumed innocent, not honest. He is the one person who has a motive to lie, to get up there and make up the most self-serving story he can think of to get himself out from under the weight of all of that evidence.

He's got the motive to lie. What did he do? He sat there and he lied and lied and lied. Look at all of the evidence against him that he says is not the way it happened."

The State also argued that defendant did not have an unreasonable belief to justify his use of deadly force, stating, "His unreasonable belief was all made up. It was all his lies." In addition, the State argued:

"Why keep changing your story? Because he had the benefit. He was the only person that testified before you that had the benefit of sitting here in this courtroom and listening to all of the other witnesses. He had the benefit of trying to explain away all of the evidence which convicts him.

He's willing to say anything to get away from the responsibility of killing Juan Washington."

¶ 7 In rebuttal, the State continued to argue that defendant had lied, stating in conclusion:

"Folks, at the beginning of this trial, all of you took an oath, and in that oath you swore to find the truth, to follow the law, and ultimately to do justice." The State argued that "justice demands that you find the defendant guilty of the first degree murder of Juan Washington," then urged the jury:

"Do justice, ladies and gentlemen. Do justice and return the verdict that says that [defendant] is, in fact, guilty of the first degree murder of Juan Washington.

Also, do justice by signing the verdict form that says that we have proven the allegation that the defendant personally discharged a firearm that proximately caused death to another. Do justice, ladies and gentlemen. Find him guilty of the first degree murder of Juan Washington."

¶ 8 Following deliberations, the jury found defendant guilty of first degree murder, and that he personally discharged the firearm that proximately caused Juan's death. Thereafter, the court sentenced him to 50 years' imprisonment.

¶ 9 In this appeal from that judgment, defendant first contends that this court should enter an order stating that he is not required to register as an offender under the Sex Offender Registration Act (SORA), or under the Child Murderer and Violent Offender Against Youth Registration Act (VOYRA). He claims that the Illinois Department of Corrections (IDOC) website states that he is required to register as a sex offender even though there was no indication that his killing of Juan was sexually motivated, or that Juan was under 18 years of age.

¶ 10 The State responds that defendant's request is improper because the remedy he seeks is administrative and not judicial in nature. The State also responds that there is no indication that he will be required to register under VOYRA, and so his request has no basis and should be dismissed.

¶ 11 We have taken judicial notice of defendant's offender custody status on the IDOC website

(*People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010)), and find no indication that he is required to register under either SORA or VOYRA. Although the documents included in the appendices of the parties' briefs suggest that the IDOC website may have indicated at one time that he was required to register as a sex offender, this is clearly no longer the case. Where no actual controversy exists and there is no effectual relief to be granted, we find that the issue is moot. *People v. S.L.C.*, 115 Ill. 2d 33, 39 (1986).

¶ 12 Defendant next contends that the State improperly inflamed the passions of the jury and repeatedly disparaged him during closing and rebuttal arguments. He specifically calls our attention to the State's repeated assertion that he lied, and its repeated charge to the jury that it "do justice" by finding him guilty of first degree murder. He then acknowledges that counsel failed to object to these comments and asserts that, if this court finds that the issue of prosecutorial misconduct was not properly preserved, we can take notice of the errors under the doctrine of plain error.

¶ 13 The State responds that defendant has forfeited this issue by failing to object at trial or to raise the issue in a posttrial motion, and that he has also failed to establish plain error. In reply, defendant claims that the issue was properly preserved in a posttrial motion which "included an argument that the prosecutor made prejudicial and erroneous statements designed to arouse the prejudices of the jury." Initially, we observe that this language has been deemed too general to have alerted the court to the error now raised on appeal, and with defendant's failure to object constitutes waiver. *People v. Sutton*, 316 Ill. App. 3d 874, 894 (2000). Accordingly, we agree with the State that defendant has not properly preserved the issue for review and that the issue is forfeited. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 14 As a consequence, we may review this claim of error only if defendant has established plain error. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). This rule is a narrow exception to the waiver rule, allowing a reviewing court to consider unpreserved claims of error where a

defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Under both prongs, the defendant bears the burden of persuasion, and he must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. If the defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 15 Defendant here generally asserts that the aforementioned State's remarks in closing and rebuttal argument exceeded the bounds of impartiality and fairness requiring reversal. He then claims that plain error review may be appropriate and cites the standard. Following that, defendant states, "In the present case, the prosecutor's improper comments deprived [defendant] of a trial by a fair and unbiased jury." He also states, "In a closely balanced case such as this, where the jury had to weigh competing versions of events, the prosecutor's arguments constituted reversible error." Defendant has not, however, identified the evidence at trial that made this case closely balanced, and we note that he did not contest the sufficiency of that evidence to sustain his conviction. Similarly, in his reply brief, defendant states that "[t]his was a closely balanced case where the key question was whether [defendant] believed the victim was reaching for a gun" without citing any particular evidence, after which he concludes: "[t]he present case was closely balanced and the improper arguments by the prosecutors in closing and rebuttal arguments denied [defendant] a fair trial."

¶ 16 In *Hillier*, 237 Ill. 2d at 549, the supreme court advised reviewing courts finding that the defendant has forfeited an issue to hold the defendant to his burden of demonstrating plain error. "[W]hen a defendant fails to present an argument on how either of the two prongs of the plain-error doctrine is satisfied, he forfeits plain-error review." *Hillier*, 237 Ill. 2d at 545-46.

¶ 17 Here, defendant has essentially asserted that this case was closely balanced because the jury had to resolve a question of fact, and that he was denied a fair trial because the State made improper remarks during closing argument. This is not *argument* as to how the two prongs of the

1-09-3494

plain error doctrine are satisfied, but rather, conclusions phrased in the lexicon of plain error review. Defendant has cited no evidence that was closely balanced nor offered any *explanation* as to why the alleged error was so severe that it must be remedied to preserve the integrity of the judicial process. Under similar circumstances, the defendant's failure to so argue resulted in the waiver of his plain error argument on appeal. *People v. Nieves*, 192 Ill. 2d 487, 503 (2000); see also *People v. McDade*, 345 Ill. App. 3d 912, 914 (2004). We reach the same conclusion in this case and, therefore, honor his procedural default of this matter. *Hillier*, 237 Ill. 2d at 545.

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.