

No. 1-10-2317

**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).

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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 of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 12406
	)	
MAURICE PERRY,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Joseph Gordon and McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant waived for review his claim that the trial court denied his right to due process and a fair trial in denying his post-trial motions; conviction for communicating with a witness proved beyond a reasonable doubt; mittimus corrected; judgment affirmed.

¶ 2 Following a bench trial, defendant Maurice Perry was found guilty of two counts of intimidation and two counts of communicating with a witness, then sentenced to four years' imprisonment. On appeal, he contends that his right to due process and a fair trial were violated when the court misapprehended the law and facts in denying his motions to reconsider and for a new trial. He also contends that the requisite *mens rea* for the offense of communicating with a

witness was not proved beyond a reasonable doubt, and that his mittimus should be corrected.

¶ 3 The record shows that defendant was arrested for communicating with witness Mark Lightfoot regarding his pending appearance to testify against Terrell Ivy, who was accused of shooting him in 2008. Defendant was subsequently charged with harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2008)) in that he communicated directly with Lightfoot in such a manner as to produce mental anguish or emotional distress (count I). He was also charged with intimidation (720 ILCS 5/12-6(a)(1) (West 2008)) in that he communicated to Lightfoot by telephone or in person a threat to inflict physical harm to him with the intent to cause him to sign an affidavit about Ivy's case (count II, ), and not testify in court in Ivy's case (count III). He was further charged with communicating with a witness (720 ILCS 5/32-4(b) (West 2008)) in that he, with the intent to deter Lightfoot from testifying freely, fully and truthfully in Ivy's pending case, communicated directly with Lightfoot: a threat of injury to him (count IV), and an offer of money (count V).

¶ 4 At trial, Lightfoot acknowledged that he was convicted of heinous aggravated battery in 1999 and served time in prison. He then testified that he grew up with defendant, whom he considered a friend, and also knew as Reesie-Bo. Lightfoot further testified that defendant was also a friend of Ivy, who shot him in 2008, and based on that relationship, Lightfoot wanted to talk to defendant to learn why Ivy had shot him.

¶ 5 In May 2009, Lightfoot was given a telephone number, which he believed belonged to defendant because defendant was expecting a call from him. When the telephone call was answered, he recognized the sound of defendant's voice, a man he has known for over 20 years. Defendant and Lightfoot agreed that defendant would call him back, but Lightfoot then took a Valium and fell asleep.

¶ 6 When he awoke, he noticed that he had missed three phone calls from defendant. Lightfoot returned the call, and asked defendant why he was shot. Defendant, in turn, asked him if he was "going to court on buddy." Lightfoot stated that "buddy" was Ivy, and that he told defendant he was going to court on Ivy's case. Defendant then told Lightfoot that he would get \$10,000 if he signed an affidavit from Ivy's attorney. Lightfoot explained that he "was supposed to sign [the] affidavit. [I] get \$10,000. [Ivy] gets released from jail for shooting me, and we all walk away happy. I didn't see no happiness in this." Lightfoot declined this offer, and defendant told him that if he showed up at court he would "slide up" on him, and "blow [his] head off," *i.e.*, that defendant would shoot him. Defendant and Lightfoot talked several times between May 20 and 26, 2009, and each time they spoke, defendant identified himself as Reesie-Bo, and talked about the money and the affidavit to not testify against Ivy.

¶ 7 On May 27, 2009, Lightfoot went to Ivy's preliminary hearing at the Branch 48 courthouse on 51st Street. When he walked inside the courtroom, he saw defendant, and they nodded at each other. Lightfoot then testified at the hearing, and noticed that defendant was watching from the seating area. When he exited the courthouse, he saw defendant standing with another person at the bottom of the stairwell looking up. When police ran outside, defendant and the other person "went down to Wentworth" Avenue, and left in a car.

¶ 8 Richard Gibson testified that he was a friend of both Ivy and defendant. On May 27, 2009, he picked up defendant and Ivy's girlfriend, and drove them to the courthouse for Ivy's hearing. He parked directly across from the courthouse on Wentworth Avenue, then went inside the courtroom with them. Gibson stated that while he was there, he did not see Lightfoot. He, however, then testified that he saw Lightfoot but not after Lightfoot testified. Gibson further testified that defendant did not leave his presence at any time, and that if there was any communication between Lightfoot and defendant it was not in his presence. He acknowledged,

however, that he left the courtroom to use the washroom, and during that time he was unaware of what defendant was doing in the courtroom. At the end of the hearing, he went to his car with defendant and Ivy's girlfriend, and drove them home.

¶ 9 At the close of evidence, the court found defendant guilty of two counts of intimidation and two counts of communicating with a witness. In doing so, the court stated that it found defendant intimidated Lightfoot by offering him money to "not [] go to court, not to testify," and then threatened him by stating that he would blow his head off. The court noted that Lightfoot knew defendant's voice from their long friendship, and also found that defendant was not guilty of harassment because there was no evidence of anguish and emotional distress.

¶ 10 Defendant filed motions to reconsider and for a new trial primarily alleging that Lightfoot was incredible. During oral arguments, defendant claimed that there was no corroborative evidence such as phone records or any other type of evidence to corroborate his story, and that there was no corroborative evidence that he knew defendant was the person on the telephone. The State responded that, to a certain extent, the defense witness corroborated Lightfoot's testimony that he did show up and testify against Ivy. In denying defendant's motions, the court stated that it found Lightfoot credible. The court further stated that he:

"[k]nows the defendant's voice. And he testified to several phone calls. \*\*\*

His testimony was corroborated, Counsel. The defendant was in court on this matter with the witness, Lightfoot, and there was somewhat of a stare down on that when Mr. Lightfoot just refused to go along with this intimidation, and the Court finds him to be as [] indicated already to be a credible witness."

¶ 11 On appeal, defendant first contends that his convictions for intimidation and communicating with a witness should be reversed and his cause remanded for a new trial because the trial court misapprehended the law and the facts, thereby denying him his right to a fair trial. He specifically refers to the trial court's determination that Lightfoot testified to a "stare down" between himself and defendant, which corroborated his testimony. Defendant claims that this was an inaccurate reflection of the facts, and that it also shows that the court misapprehended the nature of the corroborating evidence, and therefore failed to consider the crux of his defense that Lightfoot's testimony was unreliable and uncorroborated.

¶ 12 To preserve an issue for review, defendant must object at trial and raise the matter in a written post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant did neither, and as a result, he failed to preserve this issue for review. *Enoch*, 122 Ill. 2d at 186.

¶ 13 Defendant, nonetheless, claims that application of the forfeiture rule is less rigid when the trial judge's conduct is at issue. Although judicial misconduct can provide a basis for relaxing the forfeiture rule (*People v. Sprinkle*, 27 Ill. 2d 398 (1963)), the supreme court has clarified that this exception applies only in extraordinary situations such as when the trial judge makes inappropriate comments to the jury or relies on social commentary in sentencing defendant to death (*People v. McLaurin*, 235 Ill. 2d 478, 488 (2010)). The fact that forfeiture is rarely relaxed in noncapital cases underscores the importance of the uniform application of the rule except in the most compelling situations. *McLaurin*, 235 Ill. 2d at 488. Here, defendant has not presented any extraordinary or compelling reason to relax the rule under *McLaurin*, and given that he was represented by counsel and had the opportunity to raise a contemporaneous objection, we decline to do so.

¶ 14 Notwithstanding, defendant further claims that the matter should be considered as plain error. The plain error doctrine is a narrow and limited exception to the general waiver rule

allowing a reviewing court to consider a forfeited issue that affects substantial rights. *People v. Herron*, 215 Ill. 2d 167, 177-79 (2005). The burden of persuasion remains with defendant, and the first step is to determine whether an error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). For the reasons that follow, we find none, and thus no plain error to preclude forfeiture of this issue.

¶ 15 Defendant claims that the court, in denying his motion to reconsider, erroneously found that Lightfoot had testified to a stare down between himself and defendant and that his testimony could be corroborated by such. We observe, however, that the testimony of a single witness is sufficient to convict (*People v. Brown*, 388 Ill. App. 3d 104, 108 (2009)), and thus, no corroboration is required (*People v. Washington*, 375 Ill. App. 3d 1012, 1029 (2007)).

¶ 16 That said, the court's description of the interaction between defendant and Lightfoot as a "stare down" could reasonably be inferred from the evidence. After testifying to the telephone calls with defendant, Lightfoot testified that when he first entered the courtroom he and defendant nodded at each other, that while he was in the courtroom he saw defendant watching from the seating area, and that as he was leaving the courthouse he saw defendant at the bottom of the stairwell looking up. *People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009). The court's succinct description of this encounter was reasonably inferrable from the evidence presented. This included Gibson's corroborative testimony that defendant was in the courtroom at Ivy's hearing and left in a car on Wentworth Avenue. Under these circumstances, we find no error, and thus honor defendant's forfeiture of the issue.

¶ 17 Defendant next contends that the evidence was insufficient to convict him of communicating with a witness because the evidence presented at trial does not establish the requisite *mens rea* that he intended to deter Lightfoot from testifying freely, fully and truthfully. Rather, defendant maintains that the evidence shows that he intended to deter Lightfoot from

appearing in court to testify, or, in other words, from testifying at all, which is prohibited by the compounding a crime statute (720 ILCS 5/32-1 (West 2008)). In making this assertion, defendant relies on this court's decision in *People v. Robinson*, 186 Ill. App. 3d 1 (1989). The State, relying on a more recent ruling in *People v. Stuckey*, 2011 IL App (1st) 092535, responds that *Robinson* was wrongly decided, and that the *mens rea* includes the intent to deter a witness from appearing in court in order to testify. Since this matter involves statutory interpretation, our review is *de novo*. *People v. Johnson*, 2011 Ill. 111817, ¶15.

¶ 18 Defendant was convicted of, *inter alia*, communicating with a witness. The "communicating with jurors and witnesses" statute provides, in relevant part, that a person commits the offense of communicating with a witness if he, with the intent to deter any witness from testifying freely, fully and truthfully to any matter pending in any court, 1) forcibly detains such witness, or 2) communicates, directly or indirectly, to such witness any knowingly false information or a threat of injury or damage to the property or person of any individual or 3) offers or delivers or threatens to withhold money or another thing of value. 720 ILCS 5/32-4(b) (West 2008).

¶ 19 In *Stuckey*, this court held that the plain and ordinary language of the statute shows the legislative intent to make it unlawful to detain a witness, threaten a witness, or offer money to a witness so that he would not appear in court to testify. *Stuckey*, ¶¶21, 24. Defendant, relying on *Robinson*, claims that the *mens rea* does not include deterring a witness so that he refuses to appear in court to testify.

¶ 20 In *Stuckey*, the court examined the communicating with a witness statute in section 32-4(b) of the Criminal Code of 1961 (Code) (720 ILCS 5/32-4(b) (West 2008)) and the compounding a crime statute in section 32-1 of the Code (720 ILCS 5/32-1 (West 2008)), and determined that the two statutes were not redundant as found by the majority in *Robinson*.

*Stuckey*, ¶¶14-15. In reaching that conclusion the court in *Stuckey* determined that the construction of the *mens rea* element of the communicating with a witness statute in *Robinson* that excluded the intent to induce a witness not to appear in court was unreasonable when applied to the rest of section 32-4(b). *Stuckey*, ¶18. The court reasoned that such an interpretation would create a loophole allowing for acts of detaining or threatening a witness that are explicitly contemplated by the statute to go unpunished. *Stuckey*, ¶18. We agree with that reasoning and interpretation and likewise decline to follow *Robinson*.

¶ 21 We also find the factual situation here distinct from *Robinson* and *Stuckey* in that, in addition to being threatened with bodily injury if he appeared in court, Lightfoot was offered money to not appear and sign an affidavit that would lead to the release of Ivy. By signing the affidavit, he would be testifying (*People v. Ousley*, 235 Ill. 2d 299, 318 (2009); Black's Law Dictionary 1613 (9th ed. 2009) (testimony defined as evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition)). As such, if Lightfoot signed the affidavit in exchange for the money, he would be refusing to testify freely, fully and truthfully. Thus, under either of the interpretations of the communicating-with-a-witness statute, a rational trier of fact could conclude that the *mens rea* for count V (intent to deter witness from testifying by offering money) was proved beyond a reasonable doubt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 22 Defendant lastly contends that the mittimus should be altered to conform with the trial court's oral judgment. He maintains that he is not raising a one-act-one-crime or lesser included offense issue, but simply claims that the court's oral judgment should prevail.

¶ 23 The oral pronouncement of the court is its judgment, and the written order of commitment is merely evidence of that judgment. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). Where the two conflict, the oral pronouncement prevails. *Jones*, 376 Ill. App. 3d at 395.

¶ 24 Here, the court stated the following at the conclusion of the sentencing hearing:

"[F]or each of these charges, intimidation and communicating with a witness, that's a total of four counts. That's four years Illinois Department of Corrections. Sentence will be served consecutive to Case Number 09 6187. And the charges being Classes 3 and 4. They merge.

For intimidation of a witness is four years. And the two counts they merge. For communicating with a witness, that's four years on each count. And they merge as well."

¶ 25 Through this oral pronouncement, the court merged the two counts for intimidation into one count and the two counts for communicating with a witness into another, not four counts into one. The mittimus, however, shows that a sentence of four years' imprisonment was imposed on each of the four counts, and that the four counts merged. Since, as noted above, the oral pronouncement prevails as the court's judgment (*Jones*, 376 Ill. App. 3d at 395), we order the mittimus to be corrected to reflect that count IV merged with count V, and count III merged with count II. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995). We further order that the mittimus be corrected to accurately reflect that communicating with a witness is a Class 3 felony offense. 720 ILCS 5/32-4(b) (West 2008).

¶ 26 In light of the foregoing, we affirm the judgment of the circuit court of Cook County and order that the mittimus be corrected as indicated.

¶ 27 Affirmed; mittimus corrected.