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No. 1-10-0130

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, Illinois,
)	County Department,
v.)	Criminal Division.
)	
DUVAL BOYKIN,)	No. 03 CR 2526
)	
Defendant-Appellant.)	Honorable
)	Joseph M. Claps,
)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant was not deprived of his constitutional right to a jury trial where the record establishes that his jury waiver was made knowingly and understandingly. The State failed to present sufficient evidence to prove beyond a reasonable doubt that the defendant violated the Illinois Sex Offender Registration Act (730 ILCS 150/3 (West 2000)) by failing to notify the Chicago police department within ten days of changing his residence address. In violation of the corpus *delicti* rule, the State offered no evidence whatsoever, aside from the defendant's own incriminating statements, that the defendant had changed his residence address. Pursuant to the one-act, one-crime doctrine, the defendant's *mittimus* must be corrected to reflect that he was convicted of only one count of home invasion. We reject the State's invitation to remand for further sentencing, since the trial court had authority to impose concurrent rather than consecutive sentences where

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it found that the evidence at trial established that the defendant had not inflicted "severe bodily injury" on the victim.

¶ 2 Following a bench trial in the circuit court of Cook county, the defendant, Duval Boykin, was found guilty of two counts of home invasion, one count of residential burglary and one count of failure to report a change of address as required under the Illinois Sex Offender Registration Act (SORA) (730 ILCS 150/3 (West 2000)). The defendant was sentenced to concurrent terms of 22 years' imprisonment for each home invasion count, 10 years' imprisonment for residential burglary, and 1 year for failure to report a change of address. On appeal, the defendant argues that: (1) he was denied his constitutional right to a jury trial when the trial court failed to explain to him the difference between a bench and a jury trial; (2) the State failed to prove him guilty beyond a reasonable doubt of failing to report a change of address under the SORA (730 ILCS 150/3 (West 2000)); and (3) one of his home invasion convictions must be vacated pursuant to the one-act-one-crime doctrine. For the reasons that follow, we affirm in part and reverse in part. We further order that the defendant's *mittimus* be changed to reflect a single conviction for home invasion.

¶ 3 I. BACKGROUND

¶ 4 The record reveals the following pertinent facts and procedural history. The defendant was arrested on December 29, 2002, for his attack upon the victim, Lydia Walker. He was subsequently charged with two counts of home invasion (720 ILCS 5/12-11(a)(1), (a)(2) (West 2000)), two counts of residential burglary (720 ILCS 5/19-3 (West 2000)), four counts of attempted aggravated sexual assault (720 ILCS 5/12-14(a)(1), (a)(2), (a)(3), (a)(4) (West 2000)), one count of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2000)) and one count of violating

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the SORA (730 ILCS 150/3 (2000)).

¶ 5 A. Pretrial Proceedings

¶ 6 Prior to trial, at several status hearings (on October 25, 2005, December 5, 2005 and May 12, 2006), the public defender indicated that the defendant wished to proceed with a bench trial.¹ Subsequently on June 28, 2006, the defendant was brought before the judge and asked whether he wished to proceed with a bench or jury trial. The following colloquy then took place:

"The Court: The question, Mr. Boykin, is are you seeking a bench trial or a jury trial? Mr. Boykin, are you seeking a bench trial or jury trial, a trial before a judge or a trial before a jury? Mr. Boykin?

The Defendant: I'm trying to think, your Honor. I'm trying to figure out which would be best in my position.

The Court: Okay. Well, I'm happy to give you a few minutes to think about that. But this is a case that's been pending since the year 2003.

The Defendant: I know that but –

The Court: It's been set for trial before and you have demanded trial.

The Defendant: So if I go with a jury, how do that play out?

The Court: What do you mean how would it go? We would select 12 individuals from the community. That's what a jury trial is. And those 12 individuals would hear the facts of the case and determine whether or not those facts have proven guilty of any of the

¹The defendant's trial was continued for several years because the victim moved and could not be easily located.

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charges for which you are charged. That's how it plays out. What's the answer Mr. Boykin?

The Defendant: What do you think?

Mr. Prusak [the public defender]: It's your call of the —.

The Court: The attorney can only give you advice on that. The person that has to make that decision would be you. Is this the jury waiver, Mr. Prusak?

Mr. Prusak [the public defender]: Yes, your Honor, tender to [*sic*] jury waiver.

The Court: Is this your signature, Mr. Boykin, although I saw you sign your name, is this your signature?

The Defendant: Yes, sir.

The Court: Did anyone make any promises or threats to you, Mr. Boykin, to get you to waive your right to a trial by jury?

The Defendant: No.

The Court: Did you take make [*sic*] decision, sir, after talking to your attorney of your own free will?

The Defendant: Yes."

¶ 7

B. Trial

¶ 8 Following this exchange, the defendant proceeded with his bench trial. The victim, Lydia Walker, first testified that in 2002 she lived in a two-story family home in the 6700 block of South Lafayette Street with her five children, the children's father, Clyde, her sister, Sherry, and Sherry's children. According to Lydia, the home had a front and a back entrance, and the

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bedrooms were all on the second floor. The back door did not latch properly and sometimes the wind blew it open.

¶ 9 Lydia testified that on the morning of December 29, 2002, she was in bed with three of her children, while Clyde slept in another room "down the hall." At about 4:40 a.m., Lydia was woken up by voices of other family members leaving for the laundromat through the back door. Shortly thereafter, Lydia awoke again, this time to a "weight" on top of her. She testified that a black male she had never seen before was sitting on her, holding a knife to her throat.² Lydia then identified the defendant as her assailant in open court.

¶ 10 The defendant told Lydia that he would kill her if she talked or screamed. Lydia asked him how he got into the house and he said that he simply "walked in." Lydia tried to scream for Clyde, and called out his name three times, before the defendant covered her mouth. Lydia continued to struggle with the defendant, and stopped only after her finger was cut and the defendant threatened to kill her again. Lydia averred that at this point, her children, who were in bed with her, woke up and started crying and screaming. The defendant threatened Lydia that if she did not calm the children, he would start killing them "one by one." Lydia asked the children to be quiet and put them on the bed.

¶ 11 According to Lydia, the defendant then instructed her to take her clothes off, and told her that he was going to "f**k her." She responded, "In front of my kids?" and he replied "Yes." Lydia averred that she began unbuttoning her pajama top, in an attempt to buy herself time and figure out how to escape. The defendant then walked over to the other side of the bed, next to

²Lydia recognized the knife as one from her own kitchen.

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the bedroom door and started tearing off pieces of duct tape, which Lydia recognized as duct tape kept in her kitchen utility drawer.

¶ 12 According to Lydia, at this point, one of her children, Corey, got off the bed, and opened the bedroom door in an attempt to escape. The defendant "snatched" the boy back inside and warned Lydia again that if she did not calm down her children he would "start killing them." Lydia testified that she contemplated opening the door herself and running out to get Clyde, but she decided not to because she feared that the defendant would stab her children. Instead, Lydia lunged at the defendant and snatched the knife out of his hands, blade first, thereby cutting herself. A struggle ensued. Lydia continued to battle the defendant even as a television set fell on top of her, striking her leg, and she lost her balance, hitting her head on the window ledge. According to Lydia, the defendant then got on top of her, straddling her with both legs and pinning her to the ground in an attempt to take the knife back from her. Lydia, who was repeatedly cut in the struggle, freed her right arm and swung as hard as she could at the defendant. She felt the knife hit something and saw blood. She felt the defendant jump off her, and before she could get up, realized that he was gone.

¶ 13 According to Lydia, the children ran out of the room, calling for Clyde. When the police arrived, Lydia described her assailant as a heavyset bald black male in his mid-30s who "reeked of alcohol," and reminded her of "Rock" from television. The police showed Lydia a State of Illinois identification card (ID) with the defendant's photograph and Lydia identified the man in the photograph as her assailant. Soon thereafter, as she was being walked to an ambulance, Lydia saw the defendant in a second ambulance parked in front of hers. She immediately pointed

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at him and shouted, "that's him, that's him."

¶ 14 On cross-examination, Lydia admitted that she had been a crack addict in the past, "some years ago," but denied using crack at the time of the incident. Lydia admitted that she was a "casual user" and that she had used crack four days before on Christmas Eve. Lydia, however, denied that her drug abuse affected her memory. She also denied ever buying drugs from the defendant.

¶ 15 After Lydia's testimony, the State called her nine-year-old son, Clifford Walker, to the stand. Clifford, who was six years old at the time of the incident, remembered the night when he was sleeping with his mother and two siblings and his mother was attacked. He testified consistently with his mother and described her attacker as fat, bald, smelling "like cologne," and wearing a red suit. Clifford added that when his mother finally cut the assailant across the face, he watched as the man ran down the steps and out of the house bleeding. Clifford made an in-court identification of the defendant as "someone who looked like" his mother's attacker. On cross-examination, he admitted that the defendant looked different in court than on the night in question because he had glasses. He also admitted that there were no lights in the bedroom on the night of the incident. Clifford finally acknowledged that although his mother and his siblings screamed loudly that night, no one came to the bedroom to rescue them.

¶ 16 Chicago Police Officer Alla Awadallah next testified that on December 29, 2002 at about 6:20 a.m., he responded to a 911 call in the 6700 block of South Lafayette. As he approached the front door of the two-story house, he saw blood on the ground and the surrounding snow. Officer Awadallah knocked on the door and a young boy, whom he subsequently identified as Clifford

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Walker, answered. Officer Awadallah testified that after speaking to Clifford, he went inside the house and saw blood on the wall, leading up the staircase. Officer Awadallah found Lydia bleeding, crying, shaking and covered in blood. He went inside the bedroom and observed a blood-stained knife, four pieces of duct tape, a roll of duct tape and a blood-splattered comforter. After obtaining a description of Lydia's assailant from her, Officer Awadallah put out a flash message with the following description: a black, heavy built, bald black male in his 30s, approximately 6 feet tall and weighing 230 pounds, wearing a dark red suit and is bleeding.

¶ 17 Officer Awadallah testified that after speaking to Lydia he went outside and followed the trail of blood to a neighboring house. Based on a conversation with emergency dispatch, he walked over to an ambulance vehicle parked in front of that house. Inside, he observed a heavy built bald black male wearing a dark suit, who "reeked of alcohol" and had severe and bloody lacerations to his hand. Officer Awadallah identified the defendant as the man he observed in the ambulance. He testified that he took the defendant's ID and showed it to Lydia, who identified the defendant as her attacker. Officer Awadallah also testified that as Lydia was being placed in a second ambulance, she saw the defendant inside the other ambulance, pointed at him and cried, "that's him, that's him." Once Officer Awadallah accompanied the defendant's ambulance to the University of Chicago Hospital.

¶ 18 The parties next stipulated that if called to testify, Dr. Robert Mulliken would state that he treated the defendant in the emergency room of the University of Chicago Hospital on the night of December 29, 2002. Dr. Mulliken would aver that the defendant appeared intoxicated and that he was treated for a stab wound to his hand.

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¶ 19 Registered nurse, Euphemia Connell, next testified that she worked in the emergency room at St. Bernard's Hospital and that at about 7:45 a.m., on December 29, 2002, she treated Lydia. Connell stated that when she first observed Lydia, Lydia was shaking and crying and had marks on her neck and lacerations to her fingers, thumb and foot. Connell averred that Lydia was given pain medication and vaccinations to prevent any infections and her wounds were sutured with 27 stitches.

¶ 20 On cross-examination, Connell admitted that Lydia's treatment did not include toxicology screening, but explained that she saw no need for it. According to Connell, Lydia was responsive to questions and did not appear to be under the influence of alcohol or drugs. She further explained that although Lydia was crying, she did not appear to be erratic.

¶ 21 Chicago Police Officer Michael Emmett next testified that he photographed the scene of the crime and collected relevant forensic evidence therefrom, including, *inter alia*: (1) the knife Lydia was attacked with and (2) the roll and strips of duct tape in Lydia's bedroom. The parties stipulated that other officers and evidence technicians obtained further forensic evidence relevant to the investigation, including: (1) the bloody comforter and bedspread in Lydia's room and (2) swabs of blood from several locations inside the house, including rugs, the front door, the foyer wall, and Lydia's bedroom. The police also obtained buccal swabs from both Lydia and the defendant for purposes of DNA matching.

¶ 22 The parties stipulated that DNA testing was performed on numerous items retrieved from the house. The bloody knife had two blood stains. DNA testing on the first blood stain revealed that it contained a mixture of DNA from which neither the defendant, nor Lydia could be

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excluded. The second stain on the knife matched Lydia's DNA but not that of the defendant. As to the duct tape and strips, they contained a mixture of DNA, which matched Lydia's DNA but did not match that of the defendant. Swabs of blood collected throughout the house matched the DNA profiles of both Lydia and the defendant. Specifically, the defendant's DNA matched swabs of blood found on the front door ledge, the front storm door, the first floor hallway rug and the front foyer. On the other hand, Lydia's DNA matched the swab of blood collected from the hallway rug on the second floor.

¶ 23 The State next presented evidence regarding the defendant's SORA (730 ILCS 150/3 (West 2000)) violation charge. The State first introduced a certified statement of the defendant's prior 1997 conviction for aggravated criminal sexual assault in case No. 94 CR 12684. The State next recalled Officer Awadallah who testified that, while being treated at the University of Chicago Hospital, the defendant told him that he lived at 1118 West Garfield Street, but later at the police station said that his address was 1939 West 59th Street.

¶ 24 Chicago Police Detective Solomis Karadjias next testified that he is assigned to the criminal registration unit, which registers offenders who reside in Chicago. Detective Karadjias explained that any sex offender that comes to the unit has to provide the detective with documentation establishing that he is a convicted sex offender, the charges of which he was convicted and his last residence.

¶ 25 Detective Karadjias stated that on July 24, 2002, he met with the defendant to register him as a sex offender. At that time, the defendant provided the detective with: (1) a Sex Offender Registration Act Notification form issued by the Shawnee Correctional Center and

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signed by the defendant; (2) a referral form from the defendant's parole officer and (3) a letter indicating that the defendant was residing at a shelter called Brothers Keeper. After completing a background check on the defendant to verify the details of these documents, Detective Karadjias completed an Illinois Sex Offender Registration Form with the defendant and took the defendant's photograph. He then went over the form with the defendant and specifically explained to him his duty to register and to notify authorities within ten days of any change of address. The defendant signed the form.

¶ 26 Detective Karadjias next testified that according to his records, this was the first and last time the defendant registered with the police.³ The detective testified that the address provided at this time was 1939 West 59th Street. On cross-examination, the detective agreed that this was a halfway house and that in order to move one has to ask permission.

¶ 27 After the State rested, the Assistant State's Attorney (ASA) advised the court that the public defender representing the defendant was the subject of pending ARDC complaints. The public defender told the court that he had discussed this matter with his client and that he did not "think it would have any impact on the case whatsoever." The court then asked the defendant whether he had been informed of the ARDC complaints against his attorney and whether he nevertheless wished to continue to be represented by him. The court also asked the defendant if he had any questions regarding these complaints. The defendant stated that he was aware of the complaints, that he had no questions and that he wished to continue the representation.

³The LEADS screen printout that Detective Karadjias relied on in his testimony was admitted into evidence at trial.

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¶ 28 The defendant next proceeded with his case-in-chief by taking the stand. The defendant testified that he spent the night between December 28 and December 29, 2002, drinking at several clubs and bars before ending up at a drug dealer's house on the corner of 68th Street and Perry Avenue. The defendant admitted that at that time he supported himself by selling crack cocaine. He explained that he regularly walked the corner between 68th Street and Perry Avenue and sold "dime bags" to neighborhood people.

¶ 29 The defendant testified that on the morning of December 29, 2002, he had seven bags of crack cocaine that he originally intended to sell. However, he soon realized he "did not want to be out on the street" because he was drunk. He therefore decided to walk around the corner to a friend's house to call a taxi. On his way there, he ran into Lydia and Clyde. The defendant explained that he had known Lydia for about two months. Lydia was a repeat customer and he had sold her crack cocaine on at least 15 to 20 occasions. Clyde was not a customer, but the defendant knew him from the neighborhood and knew where both Lydia and Clyde lived.

¶ 30 According to the defendant, when Lydia saw him stumbling toward her, she accosted him and asked him whether he was drunk. When he reassured her that he was "alright," she asked him for a bag of crack cocaine. The defendant opened his hand, which contained seven "dime bags," so Lydia could choose which one she wanted. According to the defendant, instead of taking one "dime bag," Lydia grabbed a couple, and pushed the rest out of his hand. As he bent down to pick them up, Clyde pushed him to the ground and Lydia started running.

¶ 31 The defendant testified that he was angry because he was "duped," and therefore gave chase. Lydia and Clyde ran into their house through the back door and the defendant followed

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them inside. The defendant averred that he did not have a knife or any other type of weapon on him. The defendant chased Lydia and Clyde up the stairs where he stumbled and Clyde wrestled him to the ground, while Lydia helped by "smacking" the defendant. According to the defendant, while Clyde held him by the waist, Lydia appeared with a knife. The defendant grabbed the knife out of Lydia's hand but was cut in the process. Lydia then grabbed the knife back from him, and he kicked her in order to escape. Lydia fell back into the wall and the defendant ran down the stairs and out of the house. The defendant stated that he was bleeding profusely, so he ran next door to the house of neighbors he knew. He banged on the door and told them that someone had just tried to rob him. The neighbors wrapped his hand in towels and called an ambulance and the police.

¶ 32 The defendant testified that he never entered Lydia's bedroom. In fact, he never got further than the top of the stairs before Clyde wrestled him. The defendant further averred that he never tried to rape Lydia, that he never put his hand over her mouth or threatened to kill he or her children. In fact, the defendant stated that he never saw any children while he was inside the house.

¶ 33 On cross-examination, the defendant admitted that he was very drunk that night. He also admitted that he wore a red suit. The defendant admitted that he spoke to several police officers and an ASA on the night of the incident. He stated that he told police "over and over again" that Lydia and Clyde tried to rob him and that they stabbed him. He acknowledged that he did not know what happened to the rest of the drugs that were not taken by Lydia; he feared he might have dropped them, but could not remember. The defendant next denied that he initially told

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police that he never went inside Lydia's house; he stated that he only told police that he could not remember whether he went inside because he was drunk. The defendant also acknowledged that while in the ambulance, he heard Lydia talking to police, but stated that he was "real drunk" so he "just laid back and we went from there."

¶ 34 The defendant was next questioned regarding his registration of address pursuant to the SORA (730 ILCS 150/3 (West 2000)). He stated that he did not have a permanent address and that he last registered as sex offender at the shelter he was paroled to from prison. The defendant did not recall the address of this shelter, but testified that he lived there only for about three weeks before "they put me out." The defendant admitted that he did not register as a sex offender ten days after leaving the shelter. He explained that he "didn't have nowhere to register for" since he "didn't have a house." The defendant also denied having told police that his address was 1118 West Garfield Street.

¶ 35 In rebuttal, the State called Detective Robert Lenihan and ASA Molly Riordan, both of whom testified that they spoke to the defendant at the police station on December 29, 2002 after *Mirandizing* him. The defendant told the detective and the ASA that he was approached by Lydia and Clyde in the street and asked for drugs. The defendant told Lydia and Clyde he had no drugs for sale, but the two attacked him with a knife and stabbed him. Clyde tried to grab the defendant but he fought him off and ran into a neighbor's house. Both Detective Lenihan and ASA Riordan testified that the defendant told them he never went inside Lydia's house. ASA Riordan further testified that the defendant denied having gone onto Lydia's porch or onto her steps. When asked how his blood was all over the house, the defendant told her that Lydia and

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Clyde must have brought it in on their clothes.

¶ 36 After hearing closing arguments, the trial court found the defendant guilty of two counts of home invasion, one count of residential burglary, one count of aggravated battery and one count of failure to report a change of address under the SORA (730 ILCS 150/3 (West 2000)). The court, however, found the defendant not guilty of attempted aggravated criminal sexual assault and residential burglary based upon the intent to commit aggravated criminal sexual assault.

¶ 37 C. Sentencing

¶ 38 The defendant's sentencing hearing was held on March 15, 2007. In aggravation, the State argued that the facts of the case (namely the defendant's attack on Lydia in the presence of her children with a kitchen knife) mandated the maximum sentence for each crime. Furthermore, the State pointed out that the defendant is a seasoned criminal with prior convictions for aggravated criminal sexual assault, several convictions for possession and delivery of a controlled substance, multiple charges of burglary, robbery, aggravated battery, armed robbery, as well as misdemeanor convictions for thefts and battery.

¶ 39 In mitigation, defense counsel pointed out that the defendant came from a broken home and that he is a father to two children (15 and 16 years old). Defense counsel argued that, contrary to the State's position, the facts of the case do not establish that the defendant entered Lydia's home to attack her or threaten her children, but rather that this was simply a "drug deal gone awry." In support of this position, defense counsel reminded the court that no DNA matching the defendant's blood was ever found on the second floor of the victim's home,

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corroborating his version of events, *i.e.*, that he never made it past the top floor staircase.

Defense counsel further argued:

"any injuries that resulted to the complaining witness were brought on by her pulling the knife out, and when my client chased after her. As far as the injuries she did suffer, they are not something that rises to great bodily harm, a cut on her hand. It's clearly from her taking the knife out and attacking my client. He didn't allege self-defense because he chased her into her house. But, clearly, based upon the record and base upon his testimony, this is just a drug deal gone bad."

The defendant made a statement on his own behalf reiterating defense counsel's arguments.

¶ 40 After mitigation, the following colloquy took place between the court and the ASA:

"The Court: Okay. Are you suggesting that there's great bodily harm?"

Ms. Petrone [ASA]⁴: No, Judge, I don't believe it's charged aggravated battery, it's charged with a deadly weapon, which a knife was. You saw the knife during the trial, the

⁴We note that the original transcript of the sentencing hearing reflects that it was defense counsel who responded to the court's inquiry concerning great bodily harm. However, the parties agree that the original transcript incorrectly identifies the prosecutor as defense counsel at other points in the record. The appellate defense counsel, therefore, obtained a corrected transcript from the court reporter and filed a motion to supplement the record with a certified copy. We granted that motion. Since the State does not challenge the propriety of this transcript, we will proceed as if it were the correct copy and presume that it was the ASA who responded to the court's inquiry.

size of it, and the evidence did show it had the blood of both the defendant and the victim on it."

¶ 41 After hearing arguments by both parties, the court merged the aggravated battery conviction into the home invasion conviction and sentenced the defendant to 22 years' imprisonment for each home invasion count (both being Class X felonies). The court also sentenced the defendant to 10 years' imprisonment for residential burglary (a Class 3 felony), and 1 year imprisonment for failure to report a change of address as required under the SORA (730 ILCS 150/3 (West 2000)) (a Class 4 felony). The court ordered that all terms be served concurrently. The defendant now appeals.

¶ 42

II. ANALYSIS

¶ 43

A. Adequate Waiver of Jury Trial

¶ 44 On appeal, the defendant first contends that he was denied his constitutional right to a jury trial because the trial court did not adequately apprise him of the difference between a bench and a jury trial. The defendant acknowledges that he has failed to properly preserve this issue for review by failing to object to it at trial or in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988) (noting that in order to preserve an issue for appeal, defendant must first make an objection to the alleged error at trial, and then raise it in a posttrial motion); see also *People v. Allen*, 222 Ill. 2d 340, 352 (2006) (noting that "even constitutional errors can be forfeited"). He nevertheless asks this court to review his claim under the plain error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) ("[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. *Plain errors or defects affecting*

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substantial rights may be noticed although they were not brought to the attention of the trial court") (emphasis added); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 45 The plain error doctrine is a narrow and limited exception to the general rule of forfeiture (*People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29 (citing *Herron*, 215 Ill.2d at 177)), and it "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and 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) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *Herron*, 215 Ill.2d at 186-87). Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Bowman*, 2012 IL App (1st) 102010 at ¶ 29 (citing *People v. Lewis*, 234 Ill.2d 32, 43 (2009)).

¶ 46 We first note that our supreme court has explicitly held that the right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions and as such, if violated, may always be considered under the second prong of the plain error doctrine. *In re R.A.B.*, 197 Ill. 2d 358, 363 (2001); see also *People v. Owens*, 336 Ill. App. 3d 807, 810-11 (2002); *People v. Williamson*, 311 Ill. App. 3d 54, 57 (1999). The defendant's failure to question the adequacy of his jury waiver in the circuit court, either by objection or in a posttrial motion, therefore, does not mean that he has forfeited the alleged error on review. See *In re R.A.B.*, 197 Ill. 2d at 363; see also *Owens*, 336 Ill. App. 3d at 810-11; *Williamson*, 311 Ill. App. 3d at 57. Accordingly, we

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consider his claim on appeal. "Because the facts of this case [with respect to the jury waiver] are not in dispute, the question is a legal one and our review is *de novo*." *Bracey*, 213 Ill. 2d at 270.

¶ 47 The defendant argues that the trial court did not ensure that his waiver of the right to a jury trial was valid. To be valid, a waiver must be both understandingly and knowingly made. See 725 ILCS 5/103-6 (West 2008) ("[e]very person accused of an offense shall have the right to a trial by jury unless *** [it is] understandingly waived by defendant in open court."); see also *Owens*, 336 Ill. App. 3d at 810; *In re R.A.B.*, 197 Ill. 2d at 364; *People v. Frey*, 103 Ill. 2d 327, 332 (1984). "Whether a jury waiver is valid cannot be determined by application of a precise formula, but rather turns on the particular facts and circumstances of each case." *People v. Bracey*, 213 Ill. 2d 265, 269 (2004) (citing *In re R.A.B.*, 197 Ill. 2d at 364 and *Frey*, 103 Ill. 2d at 332); see also *Owens*, 336 Ill. App. 3d at 810.

¶ 48 "Although the trial court is not required to provide a defendant with any particular admonishment or information regarding the constitutional right to a jury trial, it has a duty to ensure that any waiver of that right is made expressly and understandingly." *People v. Hernandez*, 409 Ill. App. 3d 294, 297 (2011) (citing *People v. Rincon*, 387 Ill. App. 3d 708, 717 (2008)). A written waiver, as mandated by section 115-1 of the Code of Criminal Procedure of 1963 ("All prosecutions *** shall be tried by the court and a jury unless the defendant waives a jury trial in writing" (725 ILCS 5/115-1 (west 2002))), is one means by which a defendant's intent may be established. *Bracey*, 213 Ill. 2d at 269; see also *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006) ("Although a written and signed jury trial waiver alone does not demonstrate the defendant's understanding, it 'lessens the probability that the waiver was not made knowingly.'"

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[Citations]"). However, adherence to this provision, while recommended, is not always dispositive of a valid waiver. *Bracey*, 213 Ill. 2d at 269 (citing *People v. Scott*, 186 Ill. 2d 283 (1999)). Nor is the lack of a written waiver fatal, if it can be ascertained that the defendant understandingly waived his right to a jury trial. *Bracey*, 213 Ill. 2d at 269 (citing *People v. Tooles*, 177 Ill. 2d 462 (1997)). "Regardless of whether the defendant executed a written jury waiver, the record must show that the defendant understandingly relinquished the right to a jury trial." *Hernandez*, 409 Ill. App. 3d at 297 (citing *Bracey*, 213 Ill.2d at 270). Generally, a jury waiver will be found valid if it is presented by defense counsel in the defendant's presence in open court, without any objection by the defendant. *Bracey*, 213 Ill.2d at 270; *Frey*, 103 Ill.2d at 332.

¶ 49 In the present case, the defendant acknowledges that he signed a jury waiver in open court, but argues that the trial court's admonitions were insufficient to assure a knowing and intelligent waiver. The defendant contends that the trial court did not fully explain to him the difference between a bench and a jury trial and instead rushed him to proceed without first ascertaining whether he understood the difference. In support of his argument, the defendant cites to *People v. Talley*, 130 Ill. App. 2d 957 (1971), contending that the facts of that case are similar to the cause at bar. After a review of the record, we disagree with the defendant, and find *Talley* inapposite.

¶ 50 The transcript of the pretrial proceedings reveals that prior to trial, the trial court asked the defendant, who was represented by counsel, whether he wished to proceed with a bench or jury trial. The defendant stated that he was "trying to figure out which would be best in [his]

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position." The court offered the defendant a few minutes to think about it, but reminded the defendant that the case had been set for trial before and had been pending for about three years, and that the defendant had demanded a trial. The defendant then asked the court: "So if I go with a jury, how do that play out?" The court then explained the concept of a jury trial to the defendant in the following manner: "We would select 12 individuals from the community. That's what a jury trial is. And those 12 individuals would hear the facts of the case and determine whether or not those facts have proven you guilty of any of the charges for which you are charged."

¶ 51 The transcript further reveals that after hearing the court's explanation, the defendant turned towards his counsel and asked him what he thought, and counsel responded that it was the defendant's choice. The court confirmed that the defendant had to make the choice between a jury and bench trial. Defense counsel then tendered the defendant's signed jury waiver form to the court. According to the transcript, the court commented that although it had seen the defendant sign the waiver, it wanted to confirm that the defendant's signature was on the waiver form. The court, therefore, proceeded to question the defendant in the following manner:

"The Court: Is this your signature, Mr. Boykin, although I saw you sign your name, is this your signature?"

The Defendant: Yes, sir.

The Court: Did anyone make any promises or threats to you, Mr. Boykin, to get you to waiver you right to a trial by jury?"

The Defendant: No.

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The Court: Did you take make [*sic*] decision, sir, after talking to your attorney of your own free will?

The Defendant: Yes."

After this colloquy, the court accepted the defendant's waiver, and the parties proceeded with a bench trial.

¶ 52 Based upon the aforementioned transcript, we find nothing in the record to suggest that the court's admonitions were insufficient to apprise the defendant of the difference between a jury and a bench trial. As already noted above, "there is no constitutional requirement that the court apprise a defendant of his right to a jury trial" *Rincon*, 387 Ill. App.3d at 718. Nor is the court "charged with delivering a specific, scripted admonition." *People v. Bannister*, 232 Ill. 2d 52, 66 (2009); see also *Bracey*, 213 Ill.2d at 270 ("For a waiver to be valid, the court need not impart to defendant any set admonition or advice.") Moreover, the court here explicitly explained to the defendant that if he wished to proceed with a jury trial, 12 individuals, selected from the community, would decide his innocence or guilt. In addition, although the defendant may have initially been confused about the meaning of a jury trial, nothing in the record suggests that after the trial court explained the concept to him, he continued to be puzzled about its meaning. On the contrary, the record reveals that after the court's explanation, the defendant affirmatively chose to proceed with a bench trial, by signing the jury waiver order in open court, and acknowledging his signature before the judge. Accordingly, we find that the defendant knowingly and understandingly waived his right to a jury trial. *Rincon*, 387 Ill. App.3d at 718; *Bannister*, 232 Ill. 2d at 66; see also *Bracey*, 213 Ill.2d at 270.

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¶ 53 Our conclusion is buttressed by the fact that the defendant has had extensive prior dealings with the criminal justice system, including several convictions for possession of a controlled substance in 1990 and 1991, a conviction for delivery of a controlled substance in 1992 and two separate aggravate criminal sexual assault convictions in 1997. See *People v. Turner*, 375 Ill. App. 3d 1101, 1109 (2007) ("The defendant's two prior criminal convictions, along with six prior traffic convictions, while not necessary to our decision, add additional support for a finding of a knowing waiver because the convictions demonstrate a familiarity with the criminal justice system and, thus, a familiarity with her right to a trial by jury and with the ramifications of waiving that right"); see also *People v. Tooles*, 177 Ill. 2d 462, 471 (1997) (holding that the defendant's four prior convictions supported a presumption of familiarity with jury waivers, thereby supporting a finding of a valid waiver in the defendant's case); *People v. Johnson*, 347 Ill. App. 3d 442, 445 (2004) (finding that the defendant's prior traffic and battery convictions demonstrated a familiarity with the criminal justice system and supported a finding of a knowing waiver); *People v. Villareal*, 114 Ill. App. 3d 389, 393 (1983) (noting that "the accused's prior involvement with the criminal justice system may be utilized to determine his understanding" of his right to a jury trial).

¶ 54 *Talley*, 130 Ill. App. 2d 957, does not offer much support for the defendant's position. Unlike here, in that case the defendant was not asked to choose between a bench or jury trial, but rather proceeded with a plea of guilty after being inadequately admonished about his constitutional right to proceed with a trial. *Talley*, 130 Ill. App. 2d at 957-59. The *Talley* court's decision to overturn the defendant's conviction on the basis of an invalid waiver, was premised

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entirely on the trial court's failure to explain to the defendant his right to proceed with a trial.

Talley, 130 Ill. App. 2d at 960-61. As the *Talley* court noted:

"After asking defendant if he understood his rights to a jury trial and receiving defendant's negative answer, the court made no attempt to explain such rights. Rather than reflecting defendant's understanding waiver of his right to jury trial the record affirmatively shows the defendant did not know of such right and therefore was incapable of an understanding waiver thereof." *Talley*, 130 Ill. App. 2d at 960-61.

Unlike in *Talley*, as already elaborated above, in the instant case, the trial court explained the meaning of a jury trial to the defendant, as well as made certain that the defendant understood that by signing the waiver form he was relinquishing his right to that type of trial. Accordingly, we conclude that the defendant knowingly and understandingly waived his right to a jury trial. *Rincon*, 387 Ill. App.3d at 718; *Bannister*, 232 Ill. 2d at 66; see also *Bracey*, 213 Ill.2d at 270.

¶ 55 B. Sufficiency of Evidence of the SORA Charge

¶ 56 The defendant next contends that the State failed to prove him guilty beyond a reasonable doubt of failure to report the change in address within ten days as required under the SORA (730 ILCS 150/3 (West 2000)). The defendant contends that his conviction on this count was entirely based upon his own uncorroborated statements and admissions in violation of the *corpus delicti* rule. The State argues that the only relevant question here, is whether, when considering all of the evidence in the light most favorable to the State, a rational fact finder could have found all of the elements of the offense proved beyond a reasonable doubt. The State contends that under this standard, there is more than sufficient evidence to find that the defendant was guilty for failing to

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register his change of address under the SORA (730 ILCS 150/3 (West 2000)). For the reasons that follow, we disagree with the State.

¶ 57 We begin by noting that to sustain any conviction, the State must prove beyond a reasonable doubt both: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged. *People v. Lara*, 2012 IL 112370, ¶ 17 (citing *People v. Sargent*, 239 Ill. 2d 166, 183 (2010)); see also *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993). It is well-established that "the *corpus delicti* cannot be proven by a defendant's admission, confession, or out-of-court statement alone." *Lara*, 2012 IL 112370, ¶ 17. Rather, when a defendant's confession or admission is part of the proof of the *corpus delicti*, the State must also provide corroborating evidence independent of the defendant's statements. *Lara*, 2012 IL 112370, ¶ 17 (citing *Sargent*, 239 Ill. 2d at 183); see also *Cloutier*, 156 Ill.2d at 503.

¶ 58 To avoid running afoul of the *corpus delicti* rule, the independent evidence need only "tend to show the commission of a crime" and "need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt." *Lara*, 2012 IL 112370, ¶ 18. If the corroborating evidence is sufficient, it may be considered, together with the defendant's confession, to determine if the State has sufficiently established the *corpus delicti* to support a conviction. *Lara*, 2012 IL 112370, ¶ 18; see also *Sargent*, 239 Ill.2d at 183 ("Although the corroboration requirement demands that there be some evidence, independent of the confession, tending to show the crime did occur, that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt."); see also *People v. Willingham*, 89 Ill. 2d 352, 361 (1982) ("[I]f the independent evidence tends to prove that an offense occurred, then such evidence, if

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corroborative of the facts contained in the confession, may be considered along with the confession in establishing the *corpus delicti*. In such event, the independent evidence need not establish beyond a reasonable doubt that an offense did occur."); *People v. Furby*, 138 Ill. 2d 434, 451-52 (1990) ("There is no requirement that the independent evidence and the details of the confession correspond in every particular. [Citations.] What is necessary are facts or circumstances independent of the confession and consistent therewith tending to confirm and strengthen the confession.")

¶ 59 Our supreme court has recently explained the relationship between the *corpus delicti* rule and the requirement that a defendant be found guilty of having committed the crime beyond a reasonable doubt. See *Lara*, 2012 IL 112370, ¶ 30-51. In *Lara*, our supreme court held that "far less independent evidence" is required "to corroborate a defendant's confession under the *corpus delicti* rule than to show guilt beyond a reasonable doubt." *Lara*, 2012 IL 112370, ¶45. The court found that in order to satisfy the *corpus delicti* rule, there need not be independent evidence of each element of the charged offense, or indeed of any particular element of the charged offense. See *Lara*, 2012 IL 112370, ¶30 ("[T]he *corpus delicti* rule does not universally mandate corroboration of every element of every charged offense"). Rather, corroboration is sufficient if the independent evidence, or reasonable inferences therefrom, overall " 'correspond' with the confession." *Lara*, 2012 IL 112370, ¶45 (quoting *Willingham*, 89 Ill. 2d at 359). As the court in *Lara* explained:

"[O]ur interpretation is consistent with the interaction between the roles of the *corpus delicti* and the fact finder in a criminal case. The *corpus delicti* is merely the

commission of a crime, and an evidentiary showing lower than reasonable doubt is warranted before the defendant's confession and the other supporting evidence is permitted to go to the fact finder. [Citation.] Under our system of criminal justice, the trier of fact alone is entrusted with the duties of examining the evidence and subsequently determining whether the State has met its burden of proving the elements of the charged offense beyond a reasonable doubt. Once the case is in the hands of the fact finder, its role is to evaluate the credibility of the witnesses, weigh the conflicting evidence, draw reasonable inferences, resolve evidentiary conflicts to determine the facts, and, finally, to apply the law as instructed to arrive at a verdict. [Citation.] Inherent in those responsibilities is the need to consider a variety of evidence, some conflicting or unclear, addressing the *corpus delicti*, the identity of the offender, or both.

The primary purpose of the *corpus delicti* rule is to ensure the fact finder can consider a reliable confession. [Citation.] Unless a confession cannot be sufficiently corroborated to fulfill this purpose, it remains one stick in the evidentiary bundle given to the trier of fact. Setting the bar too high for admitting a defendant's confession under the *corpus delicti* rule would intrude on the scope of the fact finder's exclusive duties. As long as the confession is reasonably reliable, it falls within the domain of the trier of fact.

* * *

By not requiring corroboration of every element, or any one particular element, our interpretation of the *corpus delicti* rule supports the fact finder's role. Simultaneously, it permits the trial court to perform its proper legal function of ensuring

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the admissibility and overall reliability of the confession ([citation]) because the corroborating evidence must still 'tend[] to connect the defendant with the crime' ([citation]). Only then may the jury consider the ultimate question of whether all the evidence has proven the commission of the charged offense (the *corpus delicti*) beyond a reasonable doubt. Defendant's reading of the rule would bar the use of a confession if the details relating to the elements of the offense did not completely align with the confession, contradicting our [prior] determination *** that 'every detail need not correspond.' [Citations.] Consequently, we reject any interpretation that would partially usurp the fact finder's exclusive responsibilities to evaluate the credibility of the witnesses, weigh the conflicting evidence, and draw appropriate inferences from the evidence.

Accordingly, consistent with our precedents, we hold that the *corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime. The independent evidence need not precisely align with the details of the confession on each element of the charged offense, or indeed to any particular element of the charged offense." *Lara*, 2012 IL 112370, ¶46-51.

¶ 60 In articulating the aforementioned parameters of the *corpus delicti* rule, the court in *Lara* made clear that it in no way intended to diminish years of precedent holding that, once the confession was permitted to go to the trier of fact, for purposes of a conviction, the State was nevertheless required to prove each element of the crime beyond a reasonable doubt. See *Lara*,

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2012 IL 112370, ¶45.

¶ 61 Applying the principles set forth in *Lara*, we first address whether the record below reflects corroborating evidence corresponding with the defendant's confession that he failed to register his change of address as required by the SORA (730 ILCS 150/6 (West 2000)), so as to satisfy the *corpus delicti* rule. The defendant argues that the only evidence regarding his change of address and his failure to notify the police department of that change within ten days, as required by the SORA (730 ILCS 150/6 (West 2000)), came from his own incriminating statements to Officer Awadallah and his admissions at trial. The defendant contends that the State failed to present any evidence whatsoever corroborating these statements. The State, on the other hand, argues that the defendant's statements were corroborated by the testimony of Detective Karadjias and Officer Awadallah. For the reasons that follow, we disagree with the State.

¶ 62 In the present case, the defendant was charged in count X with failing to register a change of address within ten days as required by the SORA (730 ILCS 150/6 (West 2000)). Specifically, count X of the indictment alleged that the defendant "having previously been convicted of aggravated criminal sexual assault under case number 94 CR 12684 and changed his address and knowingly failed to report in writing to the law enforcement agency with whom he last registered, to wit: the Chicago police department, within ten days of such change of address" in violation of the SORA (730 ILCS 150/6 (West 2000)). To sustain a conviction for a violation of section 6 of the SORA (730 ILCS 150/6 (West 2000)), the State was required to prove that: "(1) [the] defendant was previously convicted of aggravated criminal sexual assault; (2) [the]

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defendant changed his residence address; (3) [the] defendant failed to report the change; (4) in writing to the Chicago police department; (5) within ten days of such change of address." *People v. Harris*, 333 Ill. App. 3d 741, 745 (2002), *appeal denied*, 202 Ill.2d 632 (2002); see also 730 ILCS 150/6 (West 2000) ("If any person required to register under this Article changes his or her residence address *** he or she shall, in writing, within ten days inform the law enforcement agency with whom he or she last registered ***."); *People v. Bell*, 333 Ill. App. 3d 35, 41-42 (2002)

¶ 63 In the present case, the parties stipulated at trial and the defendant concedes on appeal that he was previously convicted of aggravated criminal sexual assault. The parties also agree that Detective Karadjias conducted the defendant's original registration, and explained to the defendant his duty to notify the authorities of any change in his address. The parties disagree as to whether there is corroborating evidence to support the defendant's admissions that he changed his address and then failed to register it with the police within ten days of the change.

Specifically, the State contends that Detective Karadjias' testimony that in 2002 he registered the defendant at a halfway house located at 1939 West 59th Street and that this was the last time the defendant registered with police, corroborates the defendant's admission regarding his failure to register. We disagree.

¶ 64 While Detective Karadjias's testimony certainly corroborates the defendant's admission that he initially registered his address with the police, and that he never reregistered after that, it in no way either corroborates or disputes that the defendant *actually* changed his address. In fact, there is no evidence, whatsoever, aside from the defendant's own statements to Officer

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Awadallah and at trial that he changed his address. The only evidence of the defendant's change of address, and his subsequent failure to notify the police of that change within ten days, as required by statute, comes from the defendant's own incriminating statements to Officer Awadallah and at trial. At trial, the defendant confessed that he did not have a permanent address and that he last registered as a sex offender at the shelter he was paroled to from prison, which is located at 1939 West 59th Street. The defendant stated that he lived there for only about three weeks before "they put me out." He admitted that he did not register ten days after leaving the shelter because he "didn't have nowhere to register for" since he "didn't have a house." Aside from the defendant's own admissions at trial as to his change of address and failure to register, the State offered only the testimony of Officer Awadallah who stated that the defendant initially told him that he lived at "1118 West Garfield" but that later, at the police station, he said that he lived at "1939 West 59th Street." Aside from these self-incriminating statements, the State offered no further, direct or circumstantial, corroborative evidence that "corresponded" with the defendant's confession or "tended" to establish that the defendant changed his address. Accordingly, even under the fairly forgiving *corpus delicti* standard articulated in *Lara*, we are unable to conclude that the evidence relied upon by the State to corroborate the defendant's confession satisfied the *corpus delicti* rule. *Lara*, 2012 IL 112370, ¶51. For these same reasons, we are unable to conclude that, even when viewed in the light most favorable to the State, the defendant's statements alone were sufficient to prove that the defendant failed to notify the police of his change in residence address within ten days as required under SORA (730 ILCS 150/6 (West 2000)). See *Harris*, 333 Ill. App. 3d 741, *appeal denied*, 202 Ill.2d 632 (2002).

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¶ 65 In coming to this conclusion, we find our decision in *Harris*, 333 Ill. App. 3d 741, *appeal denied*, 202 Ill. 2d 632, to be directly on point. Just as here, in *Harris*, the defendant was convicted of violating the SORA (730 ILCS 150/6 (West 2000)) by failing to report a change of address within ten days. *Harris*, 333 Ill. App. 3d at 743, *appeal denied*, 202 Ill. 2d 632. At trial, a police officer testified that when he ticketed the defendant for smoking on a CTA platform, the defendant gave his name and address. *Id.* The officer checked with the sex offender registration unit and learned that the address provided by the defendant was different from his registered address. *Id.* The defendant told the officer that he had been living at the new address for over a month. *Id.* On appeal, the defendant challenged his conviction under the *corpus delicti* rule. This court first found that the conversation between the officer and the individual from the sex offender registration unit had been improperly admitted. *Harris*, 333 Ill. App. 3d at 748-52, *appeal denied*, 202 Ill. 2d 632. The court then noted that the only competent evidence of the fact that the defendant failed to notify the police of his change in address within ten days was: (1) testimony that in August 2000 the defendant reported that he lived at 1939 West 59th Street and (2) the defendant's statement to the detective on April 11, 2001 that he "was currently living at 6040 South Harper, Apartment 909, and that he had been staying there for a month." *Harris*, 333 Ill. App. 3d at 751-52, *appeal denied*, 202 Ill. 2d 632. Under this record, the court concluded that the defendant's admissions as to his original address, as well as his new address, where "he had been staying for a month," were inherently unreliable and failed to satisfy the *corpus delicti* rule, as well as prove the defendant guilty beyond a reasonable doubt. *Harris*, 333 Ill. App. 3d at 751-54, *appeal denied*, 202 Ill. 2d 632. As the court in *Harris* explained:

"[D]efendant's change in address and the amount of time he resided at the new address are elements of the crime of violating section 6 of the Sex Offender Registration Act. The State is required to prove each element of the alleged violation of the act beyond a reasonable doubt. [Citation.] Without corroboration, defendant's statement was insufficient evidence to prove defendant guilty beyond a reasonable doubt. *** We find no inconsistency between application of the corroboration component of the *corpus delicti* rule and the application of the rational fact finder test based on reasonable doubt, which is the standard of review after a criminal conviction. In the context of a challenge to the sufficiency of the evidence, it is the defendant's statement, together with the corroborating evidence taken as a whole, which are required to pass the rational fact finder test. [Citation.]

* * *

The State failed to provide corroborating evidence independent of the defendant's incriminating statements *** regarding defendant's change in address and regarding the amount of time he resided at the new address, which were elements of the crime of violating the duty to register provision of the Act ***. Therefore, defendant was not proved guilty *** beyond a reasonable doubt because his conviction was based on an uncorroborated confession." *Harris*, 333 Ill. App. 3d at 752-54, *appeal denied*, 202 Ill. 2d 632.

¶ 66 Just as in *Harris*, in the present case, the only evidence of the defendant's change of address came from the defendant's own statements regarding his original and new address,

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namely: (1) that when he was paroled in 2002 he lived "for about three weeks" at a halfway house located at 1939 West 59th Street; and (2) that after that he "didn't have nowhere to register for" since he "didn't have a house." In addition, the State offered the defendant's equivocal statements to Officer Awadallah regarding his residence address. Under this record, we find that the defendant's admissions without corroboration were insufficient to satisfy the *corpus delicti* rule, as well as prove him guilty beyond a reasonable doubt. We therefore reverse his conviction and sentence under count X of the indictment for failing to notify the Chicago police department of a change in residence address within ten days (730 ILCS 150/6 (West 2000)). See *Harris*, 333 Ill. App. 3d at 755 (holding that there was insufficient evidence to support the defendant's conviction for violating the duty-to-register provision of the SORA, where the State failed to provide corroborating evidence independent of the defendant's incriminating statements made by the defendant regarding his change in address and the amount of time he resided at the new address, in violation of the *corpus delicti* rule).

¶ 67 C. Violation of the One-Act One-Crime Rule

¶ 68 The defendant next contends that one of his two home invasion convictions must be vacated pursuant to the one-act-one-crime doctrine since both convictions were based upon the same physical act—his entry into Lydia's home. Under the one-act, one-crime rule, multiple convictions may not be based on the same physical act. See *People v. King*, 66 Ill. 2d 551, 566 (1977); *People v. Kuntu*, 196 Ill. 2d 105, 130 (2001); see also *People v. Segara*, 126 Ill. 2d 70, 77 (1988) (holding that if the same physical act forms the basis for two separate offenses charged, a defendant can be prosecuted for each offense, but only one conviction and sentence may be

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imposed); see also *People v. Garcia*, 179 Ill.2d 55, 71 (1997) (holding that where guilty verdicts are obtained for multiple counts arising from the same act, a sentence should be imposed on the most serious offense). The defendant concedes that he did not raise this argument below, but nevertheless asks that we review this issue under the second prong of the plain error doctrine because it affected the integrity of the judicial process. See *People v. Harvey*, 211 Ill.2d 368, 389 (2004); see also *People v. Brexton*, 2012 IL App (2d) 110606, ¶27.

¶ 69 The State concedes that the defendant is entitled to a correction of the *mittimus* to reflect only one conviction for home invasion. The State notes that although the *mittimus* improperly contains both counts of home invasion, the oral pronouncement of the trial court at sentencing was that the defendant be convicted of only one count of home invasion (count II). The State, therefore, agrees with the defendant that this court should exercise its authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), which authorizes the reviewing court to order the clerk to amend the *mittimus* when the sentencing order does not conform with the trial court's oral pronouncement. See *People v. Peebles*, 155 Ill. 2d 422, 496 (1993). Accordingly, we order the defendant's *mittimus* corrected to reflect the trial court's oral pronouncement that both convictions be merged into a single conviction for home invasion with a 22-year sentence of imprisonment.

¶ 70 D. Concurrent vs. Consecutive Nature of the Sentences

¶ 71 The State, nevertheless, argues for the first time on appeal that after the *mittimus* is corrected to reflect a conviction for only one count of home invasion, we must further correct the *mittimus* and order that all of the defendant's sentences be served consecutively, rather than

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concurrently. In the very least, the State asks that we remand to the circuit court for further proceedings on this issue. The State argues that the concurrent nature of the 22-year sentence for home invasion (count II), the 10-year sentence for residential burglary (count III) and the 1-year sentence for the SORA violation (count X)⁵ render the judgement void, because it does not conform to the mandatory sentencing requirement articulated in section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4 (a) (West 2002)). That section requires the imposition of consecutive sentences where "[o]ne of the offenses for which the defendant [i]s convicted [i]s a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(a) (West 2002); see also *People v. Phelps*, 211 Ill. 2d 1, 16 (2004) (quoting *People v. Whitney*, 188 Ill. 2d 91, 99 (1999)).

¶ 72 The State concedes that it failed to raise this issue before the circuit court but argues that because the concurrent nature of the sentences renders them void, it may raise the issue at any time. For the reasons that follow, we disagree.

¶ 73 Our supreme court has "consistently held that a judgment is void if and only if the court that entered it lacked jurisdiction." *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 16 (citing *People v. Davis*, 156 Ill. 2d 149 (1993)); see also *People v. Coady*, 156 Ill. 2d 531 (1993); *In re M.W.*, 232 Ill. 2d 408, 414 (2009) ("[i]f a court lacks either subject matter jurisdiction over the

⁵We note that since we have already found that the State failed to prove the defendant guilty of the SORA (730 ILCS 150/3 (West 2000)) violation beyond a reasonable doubt, we will only address the propriety of the concurrent nature of the 22-year sentence for home invasion and the 10-year sentence for residential burglary.

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matter or personal jurisdiction over the parties, any order entered in the matter is void *ab initio*, and, thus, may be attacked at any time"); *People v. Wuebbels*, 396 Ill. App. 3d 763, 766 (2009); *People v. Hall*, 291 Ill. App. 3d 411, 416-17 (1997).

¶ 74 In *Davis*, our supreme court criticized the persistent carelessness in the manner in which our courts have interchangeably employed the terms "void" and "voidable." As the court stated:

"The term 'void' is so frequently employed interchangeably with the term 'voidable' as to have lost its primary significance. Therefore, when the term 'void' is used in a judicial opinion it is necessary to resort to the context in which the term is used to determine precisely the term's' meaning." *Davis*, 156 Ill. 2d at 155.

Our supreme court then made clear that the term "void" is reserved only for those judgments rendered by a court that lacked jurisdiction. *Davis*, 156 Ill. 2d at 155. As the court explained:

"Whether a judgment is void or voidable presents a question of jurisdiction. [Citation.] Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time. [Citation.] By contrast, a voidable judgment is one entered erroneously by a court having jurisdiction and is not subject to collateral attack." *Davis*, 156 Ill. 2d at 155-56.

¶ 75 The *Davis* court then explicitly recognized three "elements of jurisdiction": (1) personal jurisdiction; (2) subject matter jurisdiction, and (3) "the power to render the particular judgment or sentence." *Davis*, 156 Ill. 2d at 156. Of the third element, the court warned that "jurisdiction or power to render a particular judgment does not mean that the judgment rendered must be one

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that should have been rendered, for the power to decide carries with it the power to decide wrong as well as to decide right." *Davis*, 156 Ill. 2d at 156. Moreover, *Davis* emphasized that:

"once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. Accordingly, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law or both." *Davis*, 156 Ill. 2d at 156.

¶ 76 Since *Davis*, our supreme court "continues to adhere to this formulation of the voidness doctrine." *Hubbard*, 2012 IL App (2d) 101158, ¶ 16 (citing *In re M.W.*, 232 Ill. 2d at 414); see also *Coady*, 156 Ill. 2d at 537; *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) ("[a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally" (internal quotation marks omitted)); see also *People v. Permanian*, 381 Ill. App. 3d 869, 873-76 (2008).

¶ 77 Applying the aforementioned principles to the facts of this case, for the reasons that follow, we are compelled to conclude that the sentences imposed by the trial court were not void. The State here does not, nor could it, argue voidness on the basis of the court's lack of personal or subject matter jurisdiction. Rather, the State solely contends that the trial court had no authority to impose concurrent rather than consecutive sentences in lieu of section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4 (a) (West 2002)). The State maintains that the concurrent sentences imposed by the trial court were not statutorily authorized because the

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defendant, who was convicted of a Class X felony (home invasion), inflicted "severe bodily injury" on Lydia. See 730 ILCS 5/5-8-4 (a) (West 2002) ("Consecutive terms; mandatory. The court shall impose consecutive sentences in each of the following circumstances: (1) One of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury.") The State points out that the evidence presented at trial established that during the defendant's attack on Lydia, Lydia's hand and fingers were cut with a serrated kitchen knife, requiring 27 stitches. In addition, Lydia testified that during her struggle with the defendant, a TV fell on her and she hit her head on a window ledge. The State concludes that based on these facts and pursuant to section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4 (a) (West 2002)), the trial court was required to impose consecutive rather than concurrent sentences.

¶ 78 The State is correct in asserting that where the trial court finds that the defendant inflicted severe bodily injury on the victim, the imposition of concurrent sentences renders those sentences void because it is not authorized under section 5-8-4(a) of the Uniform Code of Corrections (730 ILCS 5/5-8-4 (a) (West 2002)). *C.f.*, *People v. Johnson*, 2011 IL App (1st) 093817 ¶¶ 89-91 (holding that where the trial court found that there was no severe bodily injury the imposition of consecutive sentences was void). However, our supreme court has repeatedly made clear that the question of whether there was severe bodily injury for purposes of consecutive sentencing is a question for the trier of fact, and may not be usurped by the reviewing court. See *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 79 After a review of the record, we believe that in sentencing the defendant, the trial court

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considered whether the defendant had inflicted great bodily injury on Lydia and determined that he had not. First, the record reveals that in charging the defendant with aggravated battery (which was later merged by the trial court into the home invasion count), the State premised the charge on the defendant causing "bodily harm," rather than "great bodily harm," even though it had the discretion to choose the latter. See 720 ILCS 5/12-4(a) (West 2002). Moreover, the transcript of the sentencing hearing reveals that in mitigation, defense counsel specifically argued that the injuries did not rise to the level of "great" or "severe" bodily harm. As defense counsel argued:

"any injuries that resulted to [Lydia] were brought on by her pulling the knife out, and when my client chased after her. As far as the injuries she did suffer, they are not something that rises to great bodily harm, a cut on her hand. It's clearly from her taking the knife out and attacking my client. He didn't allege self-defense because he chased her into her house. But, clearly, based upon the record and base upon his testimony, this is just a drug deal gone bad."

After defense counsel's arguments in mitigation, the following colloquy took place between the court and the ASA:

"The Court: Okay. Are you suggesting that there's great bodily harm?"

Ms. Petrone [ASA]: No, Judge, I don't believe it's charged aggravated battery, it's charged with a deadly weapon, which a knife was. You saw the knife during the trial, the size of it, and the evidence did show it had the blood of both the defendant and the victim on it."

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The trial court subsequently merged the aggravated battery conviction into the home invasion conviction and sentenced the defendant to concurrent terms of 22 years' imprisonment for home invasion, 10 years' imprisonment for residential burglary, and 1 year imprisonment for failure to report a change of address as required under the SORA (730 ILCS 150/3 (West 2000)).

¶ 80 Even though the trial court gave no explicit reasons for imposing concurrent sentences, based upon the aforementioned record, we believe that the court was keenly aware of the significance of the extent of Lydia's injuries, and that the sentences it imposed reflect its finding that Lydia did not suffer severe bodily injury. See *People v. Eubanks*, 283 Ill. App. 3d 12, 25 (1996). Accordingly, since the trial court found no infliction of "great bodily injury," it acted well-within its authority when it imposed concurrent rather than consecutive sentences on the defendant. Any attempt by the State to argue that the imposition of concurrent sentences is not supported by the evidence, and was thus, in error, is in vain, since any error in the factual determination made by the court would render the judgment voidable, and not void. See *People v. Welch*, 392 Ill. App. 3d 984, 954 (2009).

¶ 81 In reaching this decision, we have considered the case of *People v. Arna*, 168 Ill. 2d 107 (1995), cited to by the State, and find it distinguishable. In *Arna*, the trial court imposed concurrent sentences, and the supreme court briefly held that where "[e]ach of the requirements for mandatory consecutive sentenc[ing] was met," the imposition of concurrent, rather than consecutive sentences was void. *Arna*, 168 Ill.2d at 112-13. *Arna*, however, did not delve into the issue the defendant has presented to this court on appeal, namely, whether the facts supported the court's imposition of consecutive sentences based on severe bodily injury (730 ILCS

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5/5-8-4(a) (West 1996)). Accordingly, for all of the reasons articulated above, we conclude that the defendant's sentences are not void. Since the trial judge had the power and authority to impose those sentences, we will not send the case back for resentencing.

¶ 82

III. CONCLUSION

¶ 83 For all of the aforementioned reasons, we affirm in part and reverse in part. We further order the defendant's *mittimus* corrected to reflect a single conviction for home invasion.

¶ 84 Affirmed in part; reversed in part; *mittimus* corrected.