

No. 1-10-2774

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C6 61436
)	
LEVESTER GATES,)	Honorable
)	Michele M. Simmons,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Harris, P.J., and Quinn, J., concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant acquiesced in the trial court's answer to the jury's questions and failed to preserve any objection in a posttrial motion, the issue is forfeited for appellate review and will not be considered as plain error. The \$200 DNA assessment, \$5 Court System fee, \$30 Children's Advocacy Center assessment, and \$500 Sex Offense fine are vacated.

¶ 2 Following a jury trial, defendant Levester Gates was convicted of violating the Sex Offender Registration Act (Act) (730 ILCS 150/3 (West 2010)) and was sentenced to two years of probation. On appeal, defendant contends that the trial court coerced a verdict by writing the jury a note stating, "Please continue to deliberate until you've reached an unanimous verdict," thus foreclosing the possibility of a hung jury. Defendant further challenges the imposition of

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various fines and fees. For the reasons that follow, we affirm defendant's conviction and sentence and vacate \$735 of the assessed fines and fees.

¶ 3 At trial, the parties stipulated that defendant had been convicted of an offense which required him to register under the Act.

¶ 4 Julia Scruggs, the records supervisor for the Robbins Police Department, testified that her job duties included registering sex offenders pursuant to the Act. She explained that she would register individuals by filling out a form in the person's presence, and then would enter the collected information into a computer database. Scruggs testified that on November 12, 2007, defendant came into the police department to register. Scruggs asked defendant questions and recorded his answers on the registration form. In answer to her request for his address, defendant told her he was living at 13823 Ridgeway. Scruggs asked defendant to review the back side of the form and had him initial each paragraph listed there. Among the paragraphs was one explaining what a registrant could do if he lacked a fixed residence. Scruggs dated the form and defendant signed both sides.

¶ 5 Scruggs testified that the registration form defendant was the same as the one he had filled out every other time he had come in to register. In particular, defendant had registered in November 2006 by filling out the same form and using the 13823 Ridgeway address. Scruggs identified the 2006 and 2007 forms for the record.

¶ 6 Illinois state police investigator Michael Minniear testified that one of his job duties was to conduct annual compliance checks with registered sex offenders. He explained that sex offenders who do not have a permanent residence can register as homeless on a weekly basis until they establish an address, at which point they must register on a yearly basis.

¶ 7 Investigator Minniear testified that on March 26, 2007, he conducted a compliance check on defendant by going to the address listed on his registration form, 13823 Ridgeway. There, he spoke with a woman named Gail Wilkinson and showed her defendant's photograph. He did not

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find defendant living at that address. Accordingly, he reported defendant as noncompliant with the Act.

¶ 8 Gail Wilkinson testified that on March 26, 2007, she and her daughter were living at 13823 Ridgeway. On that date, a "sheriff" came to her home, looking for defendant. She did not recognize the name the sheriff gave her or the photograph he showed her. In court, after having her attention directed to defendant, Wilkinson testified that she did not know defendant and that he had never lived with her at 13823 Ridgeway.

¶ 9 Illinois state police sergeant Matt Gainer testified that on August 14, 2008, he arrested defendant at his workplace. He thereafter interviewed defendant at the police station. In his statement, which was reduced to writing by Sergeant Gainer, defendant related that at that time, he was living at two different locations: his sister's house in Chicago and his girlfriend's residence in South Holland, Illinois. He stated that for the past two years, he had registered his address as 13823 South Ridgeway even though he was not living there. Defendant stated that his grandmother used to live at that address, and admitted that he continued to use his grandmother's address as a registered residence because he did not have any other place to register. According to defendant's statement, he could not list his sister's house because it was close to a school. He stated that he could "try to register at my girlfriend's house, but I have to ask first."

¶ 10 Defendant testified that in 1991, he was convicted of a crime and as a result, was required to register as a sex offender upon his release from prison. At some point after his release, defendant moved in with his grandmother and uncle at 13823 Ridgeway in Robbins. For the next six to seven years, he registered with Julia Scruggs at the Robbins Police Department, using the 13823 Ridgeway address. Defendant testified that each time he registered, he signed a form indicating that he understood the rules of registration. According to defendant, while he read the front of the form, he did not read the back because he felt that he was in compliance and as long as he "wasn't in any more trouble," he would "be okay." Defendant stated that he did not know

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he could have registered as a homeless person, and asserted that he would have done so if he had been aware of the option.

¶ 11 Defendant testified that his grandmother moved out of the house at 13823 Ridgeway in 2006. Defendant had trouble locating housing after she moved, since his family members lived near schools. When he registered in 2006, he did not read the registration form, but signed it and initialed each section because "[i]t was a requirement." He admitted that he never told Scruggs that he did not have a stable address, and acknowledged that for two years, he gave Scruggs the 13823 Ridgeway address even though he did not live there. However, defendant maintained that he did not believe he was lying to the police.

¶ 12 Following closing arguments, the trial court instructed the jury. At 3:53 p.m., the jury retired to deliberate. At 4:45 p.m., the jury sent the following note to the trial court: "We've had 3 polls no decision – no one is changing. What to do." When the trial court asked the attorneys for suggestions as to how to answer the jury's question, defense counsel stated, "I would suggest that the court send back a note saying 'keep deliberating until there's a unanimous verdict.'" The State agreed with the suggestion, and at 4:56 p.m., the trial court sent the following answer to the jury: "Your verdict must be unanimous. Please continue to deliberate."

¶ 13 At 6:15 p.m., the jury sent another note, asking, "Can we see the November 2006 Illinois Sex Offender Registration Act to confirm if the 2007 form is a carbon copy. Exhib # 3 + 5." With the agreement of the parties, the trial court responded, "Are you asking for People's Exhibits #3 and #5? If so, for what purpose?" A few minutes later, the jury sent a note responding, "To compare 2006 + 2007 reg forms."

¶ 14 The trial court and the attorneys discussed an appropriate answer to the jury's question. One of the prosecutors suggested telling the jurors they had all the evidence they would receive, and requested that the court's answer indicate that the 2007 form was a photocopy of the original document. The trial court confirmed that language with the prosecutor and then asked the parties for approval of additional language as follows:

"THE COURT: 'You have all the evidence that you're going to receive at this time. You have all the evidence that you're going to receive. Please continue to deliberate until you reach a unanimous verdict'?"

[DEFENSE COUNSEL]: Yes.

[THE STATE]: Yes, Judge.

THE COURT: All right. It's 6:31 p.m., and my note responds: 'The 2007 registration form is a photocopy of the original exhibit. You have all of the evidence that you will receive. Please continue to deliberate.'

* * *

THE COURT: 'You have all the evidence that you will receive. Please continue to deliberate.'

You want me to put 'until you've reached a unanimous verdict'?"

[THE STATE]: Yes, Judge.

[DEFENSE COUNSEL]: Please."

¶ 15 At 6:31 p.m., the trial court sent the jury the following answer: "The 2007 registration form is a photo copy of the original 2007 registration form. You have all of the evidence that you will receive. Please continue to deliberate until you've reached an unanimous verdict." At 7:09 p.m., the jury returned a verdict finding defendant guilty of violating the Act.

¶ 16 The trial court entered judgment on the verdict. Subsequently, the trial court sentenced defendant to two years of probation, with the first year spent on intensive probation supervision. The trial court assessed \$1060 in fines, fees, and costs, but credited defendant with 44 days' worth of \$5-per-day presentence custody credit toward his fines, reducing the total amount due to \$840.

¶ 17 On appeal, defendant's first contention is that the trial court coerced a verdict by telling the jury, "Please continue to deliberate until you've reached an unanimous verdict," thus foreclosing the possibility of a hung jury. Defendant argues that the trial court erred in not

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explaining to the jurors that they need not return a verdict at all if no consensus could be reached, and in implying that the minority must yield and join the majority's opinion. In addition, defendant asserts that the coerciveness of the language was enhanced by the fact that it was already 6:30 p.m. when the jury received the court's answer to its question.

¶ 18 Defendant acknowledges that the issue is unpreserved, and urges this court to consider it under the plain error doctrine. However, defendant has not merely forfeited any error by failing to object and include the issue in a posttrial motion. Here, defense counsel actively participated in crafting the language of the message to which defendant now objects. When the jury first asked for guidance as to "[w]hat to do," defense counsel stated, "I would suggest that the court send back a note saying 'keep deliberating until there's a unanimous verdict.'" Later, after the jury sent out questions about the exhibits, the trial court asked the parties for their opinions on an answer that included the language, "Please continue to deliberate until you reach a unanimous verdict." At that time, defense counsel stated her agreement with the court's language. When the trial court double-checked, asking, "You want me to put 'until you've reached a unanimous verdict'?" defense counsel answered, "Please."

¶ 19 In situations where a defendant acquiesces in the trial court's answer to a jury's question, the defendant cannot later complain that the circuit court erred in giving that answer. *People v. Reid*, 136 Ill. 2d 27, 38 (1990). Where, as here, a defendant either invites or agrees with a procedure at trial and then later challenges that procedure on appeal, our supreme court "has determined that the circumstance exceeds the bounds of waiver and has considered it an issue of estoppel." *People v. Flores*, 381 Ill. App. 3d 782, 784 (2008), citing *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). In the instant case, defendant not only agreed with the suggested response to the jury question, but was the party to initially propose it. Given these circumstances, the issue is forfeited for review. *Flores*, 381 Ill. App. 3d at 784-85. Moreover, because defendant invited any error that may have occurred, we decline to address the issue under the plain error doctrine. *People v. Patrick*, 233 Ill. 2d 62, 77 (2009).

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¶ 20 Defendant's second contention on appeal is that he is entitled to a \$735 reduction in the fines and fees assessed against him. Specifically, defendant challenges the imposition of a \$200 DNA assessment (730 ILCS 5/5-4-3(j) (West 2010)); a \$5 Court System fee (55 ILCS 5/5-1101(a) (West 2010)); a \$30 Children's Advocacy Center assessment (55 ILCS 5/5-1101(f-5) (West 2010)); and a \$500 Sex Offense fine (730 ILCS 5/5-9-1.15 (West 2010)). The State concedes that these assessments were improperly imposed. We accept the State's concession and accordingly vacate the specified charges. The clerk of the circuit court is ordered to enter a modified fines, fees, and costs order consistent with our decision.

¶ 21 For the reasons explained above, we affirm defendant's conviction and sentence and order the clerk of the circuit court to modify the fines, fees, and costs order.

¶ 22 Affirmed as modified.