

No. 1-11-1345

**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. 08 CR 5781
	)	
TYRESE CRAWFORD,	)	Honorable
	)	Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's first degree murder and armed robbery convictions were affirmed over his contentions that the trial court's comments during jury deliberations coerced the jury.

¶ 2 Following simultaneous but separate jury trials, defendant, Tyrese Crawford, and codefendant, Tony Benson<sup>1</sup>, were convicted of first degree murder and armed robbery. Defendant was sentenced to consecutive terms of 40 years' imprisonment on his murder conviction, and 6 years' imprisonment on his armed robbery conviction. On appeal, defendant argues the trial court's comments during jury deliberations coerced the jury into rendering its guilty verdicts. We affirm.

¶ 3 The charges against defendant and codefendant stem from the November 4, 2007, shooting death of Johnny Frazier. At trial, Raven Bender, codefendant's girlfriend at the time of the incident,

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<sup>1</sup> Tony Benson's appeal is pending before this court in appeal number 1-11-0974.

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testified that she, Mr. Frazier, defendant, and codefendant had been driving around in a minivan (hereinafter van) during the night of November 4, 2007. Mr. Frazier was the driver. At one point, while Mr. Frazier was not in the van, Ms. Bender heard defendant say to codefendant: "Don't leave no evidence behind. This \*\*\* dead." Ms. Raven saw a black and silver handgun on defendant's lap. After Mr. Frazier returned to the van, defendant asked Mr. Frazier to take him to a friend's home. Mr. Frazier was in the driver's seat, Ms. Bender was in the front passenger seat, defendant was in the backseat behind Mr. Frazier, and codefendant was in the backseat behind Ms. Bender. Defendant directed Mr. Frazier to park the van near 126th Street and Winchester Avenue in Calumet Park. Ms. Bender then left the van. As she walked away, she looked back to the van which had its interior lights on and observed defendant shoot Mr. Frazier in the back of the head. Defendant then ran away. After rummaging through Mr. Frazier's pockets, codefendant left the van and ran in the same direction as defendant.

¶ 4 Marcus Clemons, who knew Mr. Frazier for years, testified that he observed Mr. Frazier driving his van in Calumet Park between 10:00 and 10:30 p.m. on November 4, 2007. He confirmed that defendant, codefendant, and Ms. Benson were seated in the van as described by Ms. Benson.

¶ 5 Police officer Bryant Brooks discovered Mr. Frazier slumped over the wheel of the van at about 11:12 p.m. Medical personnel confirmed Mr. Frazier was dead. A police investigator photographed the scene and discovered Mr. Frazier's pants pockets had been turned inside out and a \$100 bill was on the floor of the van near the driver's seat. The parties stipulated that a forensic pathologist found Mr. Frazier's death was caused by a gunshot wound.

¶ 6 During the police investigation, Detective Anthony Beattie took defendant's videotaped statement which was presented to the jury. Defendant stated that Mr. Frazier drove him, Ms. Bender, and codefendant around Calumet Park and Chicago on the date in question. As defendant was getting ready to leave the van, codefendant pulled up his shirt and showed defendant the handle of a gun. While defendant was opening the door of the van, he heard a shot and ran away.

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¶ 7 Following evidence and closing arguments, the jury received instructions, including an instruction on accountability. The jury was given four verdict forms—a guilty and not guilty verdict as to each of the two charges against defendant—murder and armed robbery. The jury retired to deliberate at 4:43 p.m. on Friday, October 29, 2010. The jury deliberated for over six hours. During its deliberations, the jury forwarded several notes to the trial court.

¶ 8 At 5:34 p.m., the jury in its first note asked the court: "Are they, the defendants, equally guilty of first degree murder if it cannot be 100 percent certain which one pulled the trigger?" In discussing the note, defense counsel requested that the court tell the jury: "You have the instructions. Please continue to deliberate." The court agreed, and told the jury that it had the necessary instructions and to continue deliberating.

¶ 9 The jury, at 6:15 p.m., requested the transcript of Ms. Bender's testimony. The parties agreed to the jury receiving the transcript and the court ordered that it be prepared.

¶ 10 At about 8:15 p.m., the court received a note from the jury stating: "If we do not come to a decision tonight, can we continue on Monday?" At the suggestion of defense counsel and with the agreement of the State, the court responded: "No, you must remain a collective unit until you reach a unanimous verdict."

¶ 11 The jury asked for a smoke break at 8:55 p.m. The court, after consultation with counsel for both sides, allowed the jury to take a recess.

¶ 12 At 9:35 p.m., the jury sent another note to the court stating: "What if we have medication at home that we must take?" As the court was considering that note with the parties, the court was notified the jury reached a verdict on one of the charges. With the agreement of both sides, the court brought the jurors back into the courtroom and told them:

"I sent you back with four forms of verdict. It is a "guilty" and "not guilty" with regard to each of the offenses for which the defendant has been tried.

You will have to return a unanimous verdict with regard to both of those offenses.

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I will keep this one verdict that you have sent out. I have not indicated to any of the parties what your verdict is on this one particular charge.

However, you will have to return a verdict with regard to the offense that you have not sent a verdict, unanimous verdict out. I will need a verdict on that one. So I am going to return you back to the jury room at this time."

With regard to the medication request—again with the parties' agreement—the court stated: "It is my understanding that a family member will have to bring it here for you prior to you being removed to a hotel for the night. If not, then you will have to go with the deputy sheriff home to get your medication, come back here and then you will go to the hotel for the night."

¶ 13 The jury continued to deliberate and, at 10:13 p.m., the jury forwarded its final note to the court asking: "Can we get a more direct clarification of the phrase, 'one for whose conduct he is legally responsible,' please?" The note also asked, "medication calls?" Over the defense counsel's objection that one instruction should not be highlighted over the other instructions, the court brought the jury back to the courtroom and said:

"Ladies and gentlemen, I did instruct you with regard to the law as it applies in this case. I have your complete set of instructions here to make sure that you have all of the instructions.

There is an instruction in this packet that you have concerning legal responsibility. I read it to you. I will read it to you again. It states: 'A person is legally responsible for the conduct of another person when, either before or during this commission of the offense, and with the intent to promote or facilitate the commission of the offense, he knowingly solicits, aids, abets, agree to aid, or attempts to aid the other person in the planning or commission of the offense.'

The question that you have asked me, can I give you a more direct clarification, I am informing you that you have the law as it applies in this case. I just read to you the direction

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that you have concerning as it states legal responsibility or when a person is legally responsible for another.

Ladies and gentlemen, I do believe that you do have the tools that you need to reach a verdict one way or another in this case, so I am going to allow you to go back to the jury room.

I hope that clarified things for you, if any, and go back to the jury room. And if you can reach a unanimous verdict for us, please let us know.

If you need to call and have medication brought, just let the deputy sheriff know, and we will let you call your family members and bring some medication for you. Okay.

Tendering to the -- the instructions back to the deputy sheriff. Ladies and gentlemen, let us know when you have a verdict."

At approximately 11:05 p.m., the jury returned verdicts finding defendant guilty of first degree murder and armed robbery.

¶ 14 Defense counsel filed a motion for a new trial. During the hearing on defendant's motion, defense counsel addressed an issue which was not included in defendant's written motion. Counsel noted that the jury's notes revealed it was having trouble reaching verdicts, and that the jury reached it's decision just "as the bus was pulling up to take them to the hotel." In denying the motion for new trial, the court stated in pertinent part:

"There was no indication that the jury was going to be sequestered. I had not Primmed them; I had not informed them that they were going to be sequester[ed]. What the court was doing at this time, which counsel may be commenting on, is I was talking to the Cook County Sheriff's Department here \*\*\* [and] was considering sequestering [the jury], and I was certainly speaking to the lieutenants that were on duty that night. However, I had not Primmed the jury; I and not brought them out and informed them of any type of sequestering for the night. At 11:00 p.m., counsel's

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right, they did return a first degree murder verdict. However, it was certainly not after they were threatened with any type of sequestering, they were totally unaware of what I was doing. The attorneys were certainly, but the jury was not aware of what I was doing in preparing for sequestering."

¶ 15 On appeal, defendant argues the trial court's comments to the jury were coercive where the jurors' had concerns about being sequestered over the weekend without medication, and had difficulty applying the accountability instruction.

¶ 16 Defendant concedes that this issue was not properly preserved for appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both a trial objection and a written posttrial motion raising the issue are required for alleged errors that could have been raised at trial).

¶ 17 Furthermore, defense counsel either suggested or agreed to most of the comments of the trial court. Defendant also has forfeited any issue as to comments made by the court to which he had acquiesced at trial. See *People v. Woods*, 214 Ill. 2d 455, 475 (2005).

¶ 18 Defendant, however, seeks review of his claim of jury coercion as plain error. See *People v. Herron*, 215 Ill. 2d 167, 178 (2005). Plain error exists when " '(1) a clear or obvious error occurred and the evidence [was] so closely balanced that the error 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 [was] 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. Borys*, 2013 IL App (1st) 111629, ¶ 21 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)). A defendant has the burden of persuasion under both prongs of plain error. *Herron*, 215 Ill. 2d at 187. Our first step in a plain-error analysis is to determine whether a clear or obvious error occurred. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009).

¶ 19 In determining whether a trial court's comments to a jury were improper, a reviewing court must consider whether, under the totality of the circumstances, the words actually interfered with the

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jury's deliberations and coerced a guilty verdict. *People v. Wilcox*, 407 Ill. App. 3d 151, 163 (2010). We have held that informing a jury that it will be sequestered is not necessarily coercive. *People v. Defyn*, 222 Ill. App. 3d 504, 516 (1991). "Extremely brief deliberations after a reference to sequestration may, however, invite an inference that the reference to sequestration coerced the jury into rendering a verdict." *Id.*

¶ 20 After reviewing the trial court's comments in response to the jury's notes, under the totality of the circumstances, we find no evidence that the jury was coerced during its deliberations to reach its guilty verdicts. The trial court carefully considered each note from the jury and responded to the jury only after consultation with the parties. None of the responses can be viewed as coercive in nature. The trial court instructed the jury to continue deliberating after it sent a note asking whether both defendant, and codefendant could be found "equally guilty" of murder if it could not determine who pulled the trigger. In response to the jury's inquiry if it could continue deliberating on Monday if a decision had not been reached, the court stated that it must remain a collective unit until unanimous verdicts were reached. After being sent notes by the jurors asking for medication, the court assured them—on two separate occasions—that they would be able to obtain their medication. In addition, the court told the jurors they would have to reach unanimous verdicts on both counts after the jurors returned with a verdict on one charge. Finally, after the inquired if it could get a clarification of the phrase "one for whose conduct he is legally responsible," the court reread the accountability instruction to the jury, told the jury it had the necessary tools to reach a verdict "one way or another," and requested the jury to let the court know if it reached a unanimous verdict. Throughout the process, the jury never indicated it was deadlocked, and never demonstrated they could not reach a verdict. The trial court was acting reasonably and cannot be seen to have coerced "minority jurors \*\*\* to defer to the conclusions of the majority for the purpose of reaching a verdict." *Wilcox*, 407 Ill. App. 3d at 163. The trial court's comments during jury deliberations did not amount to clear or obvious error. The plain-error doctrine does not apply in this case.

¶ 21 Nonetheless, defendant argues the court, by its comments, coerced a guilty verdict after being informed the jury had reached a verdict as to one charge by instructing the jury that the court needed a second unanimous verdict. Defendant maintains the court "could have accepted one of the verdicts and excused the jury for the weekend." On learning the jury had reached a verdict on one charge, the trial court instructed the jury to reach a unanimous verdict "one way or another" on the remaining charge, and to use one of the verdict forms—guilty or not guilty—which had been provided. The trial court did not coerce the jury to reach a guilty verdict on the remaining charge, and was not obligated to end the jury's deliberations. However, even if the jury had indicated it was conflicted and unable to reach a verdict on the remaining charge—which it never did—the trial court would not have been required to discharge the jury. See *People v. Cowan*, 105 Ill. 2d 324, 328 (1985) ("The trial court has discretion to have the jury continue its deliberation even though the jury has reported that it is deadlocked and will be unable to reach a verdict.").

¶ 22 Furthermore, we reject defendant's argument that the jurors' verdicts were coerced because they believed they would be sequestered. The trial court correctly stated during the posttrial hearing that the jurors were never specifically informed they would be sequestered. The trial court's reference to a "hotel" in discussing the juror's medication concerns could, at most, be viewed as notifying the jury as to the *possibility* of a sequester. The trial court's comments as to a "hotel" cannot be viewed, under the circumstances, as coercive. In fact, it is recognized that informing a jury as to preparations for sequestration tends to remove, rather than create pressure to reach a verdict. *People v. McCoy*, 405 Ill. App. 3d 269, 276 (2010) (citing *People v. Steidl*, 142 Ill. 2d 204, 231-32 (1991)); see also *People v. Fields*, 285 Ill. App. 3d 1020, 1029-30 (1996) and *People v. Nemecek*, 277 Ill. App. 3d 243, 249 (1995) (no coercion existed where the jurors returned guilty verdicts minutes after the jurors were informed that they would be sequestered for the night).

¶ 23 Defendant claims the jurors were pressured to return a verdict because they were having difficulty understanding the accountability instruction. Defendant argues before us that the trial court

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should have done more to clarify the accountability instruction for the jury. However, each time the jury had a question regarding the definition of accountability, defense counsel below maintained that the trial court should simply inform the jury to continue deliberating, and that no further guidance was needed. After the first note requesting clarification regarding the meaning of accountability, the court agreed with defense counsel and instructed the jurors to continue deliberating. After the second note, the court reread the definition of accountability found in the instructions which had been given to the jury. The trial court then assured the jurors they had "the tools you need to reach a verdict one way or another," and asked them to continue their deliberations. The court was well within its discretion to instruct the jury as it did. The record does not indicate that the jury reached its verdicts without understanding the definition of accountability, or because of pressure.

¶ 24 We also find *People v. Ferro*, 195 Ill. App. 3d 282 (1980), which is cited by defendant, distinguishable from the case at bar. In *Ferro*, the defendant challenged responses by the trial court to jury questions after the jury reached a standstill in the deliberation process. *Id.* at 292-93. Here, however, there was no indication in the record that the jury was deadlocked. Moreover, unlike in *Ferro* (*id.* at 291-92), the trial court in this case never submitted to the jurors a deadline by which a verdict must be reached.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.