SIXTH DIVISION
May 23, 2014

No. 1-12-2035

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. 09 C6 61271
	)	
ERICA McGREW,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE delivered the judgment of the court.
Justice Hall and Reyes concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Where defendant agreed with the trial judge's responses to jury's questions during deliberations and made no objection, and failed to raise the issue in her posttrial motion, the issue is forfeited for appellate review and will not be considered as plain error.

¶ 2 Following a jury trial, defendant Erica McGrew was convicted of forgery and sentenced to two years' probation. On appeal, defendant's sole contention is the trial judge coerced a guilty verdict by repeatedly instructing the jurors to continue their deliberations, despite notes from the jurors which indicated they were deadlocked. We affirm.

¶ 3 The evidence at trial was as follows. Elvia Rubio is employed as a cashier and an assistant manager at the 147th and Cicero Currency Exchange in Midlothian, Illinois (currency exchange). Ms. Rubio testified that around noon on January 21, 2009, defendant came into the currency exchange to cash a check for $1,218.79. Defendant endorsed the check in front of Ms. Rubio and handed it to her. Ms. Rubio recognized defendant because defendant had worked at a nearby dry cleaning store, and defendant had cashed her paychecks at the currency exchange in the past. Ms. Rubio stated she entered defendant's name into the currency exchange database and accessed defendant's customer profile. A digital image of defendant's state identification card appeared on the computer screen, and Ms. Rubio verified that defendant's name and face matched the profile. The check was issued by Berry Plastics Corporation and was drawn on Fifth Third Bank. Ms. Rubio entered the amount of the check and scanned both sides of the check into the database, thereby creating an image of defendant's signature. Ms. Rubio then gave defendant money, which was the amount of the check, minus the currency exchange check-cashing fee of 2.2%.

¶ 4 On January 30, 2009, the currency exchange received a fax from their bank, Coris Bank, which showed an image of a returned check which had been cashed by defendant. Patty Sommers, manager of the currency exchange, called Brad Grodsky, the regional manager of the currency exchange, and gave Mr. Grodsky the check information, defendant's name, and the name of Fifth Third Bank.

¶ 5 Brad Grodsky testified that on January 30, 2009, Ms. Sommers notified him that she had received a fax from Coris Bank which indicated a check had been returned as fraudulent. The next day, Coris Bank sent a digital copy of the fraudulent check to the currency exchange. Mr.

Grodsky took the returned check and defendant's customer profile to the Midlothian police department and filed a police report.

¶ 6 Detective Daniel Delaney of the Midlothian police department testified that he investigated the fraudulent check which had been returned to the currency exchange. He learned that defendant had presented identification, which included her address, when she cashed the check. Detective Delaney went to that address and spoke to defendant's mother, but defendant was not there. The detective created a photo array, and arranged to meet with Ms. Rubio. Ms. Rubio identified defendant when she viewed the photo array. After a few unsuccessful attempts to locate defendant, a warrant was issued for defendant's arrest.

¶ 7 Detective Delaney testified that defendant was apprehended in June 2009 and he interviewed defendant regarding the January 21, 2009, incident at the currency exchange. The detective advised defendant of her *Miranda* rights and explained to her that he would take her statement and put it into writing. Defendant agreed to this and, after her statement was written, defendant was given the opportunity to read it and was encouraged to make corrections to the statement. Defendant made no corrections to the statement and signed each page of the written statement. Detective Delaney signed the statement as well. The statement was as follows:

> "In early January of 2009 me and a friend were putting in employment applications at Walmart in Country Club Hills. We were talking about needing money. A female approached us and stated she had some checks that we could cash and we would split the money. I said no but my friend took down the girl's number. A few weeks later my friend told me she cashed a check and she did not get into trouble. At that time I really needed money to take care of my kids. So, I called the girl. The girl requested my name and address, which I gave her. She said she would call me back after

my check was made. A few days later the girl called me and told me my check was ready. The girl asked me where I could cash a check. And, I told her I cash my checks at the currency exchange at 147th Street and Cicero Avenue in Midlothian next to where I used to work C.D. One Price Cleaners. The girl met me at the hardware store at 147th Street.

She gave me a check from Berry Plastics in my name in the amount of $1,218.79, check number 2474900. I have never worked for Berry Plastics; and, I knew the check was fake. I went to the currency exchange at 147th Street and Cicero Avenue. I met with a female teller. I was able to cash the check from Berry Plastics in the amount of $1,218.79. I went back to the parking lot of the hardware store and gave her the money. She gave me $400 for cashing the check.

I am sorry for what I have done. And, I am willing to pay back the currency exchange for their loss. Detective Delaney has not promised me anything in return for giving this statement. I am giving this statement of my own free will. Detective Delaney has treated me well while at the Midlothian Police Department."

Defendant's statement was published to the jury. Defendant's motion for a directed finding was denied.

¶ 8 Defendant testified that in January 2009, she was staying with her friend Latoya for a few days and Latoya asked defendant to cash her paycheck for her. Latoya told defendant the check was from Latoya's father's company, and that she was unable to cash the check because she had no identification. Defendant saw that her name, not Latoya's name, had been printed on the check. Defendant did not recall the name of the company printed on the check. Defendant and Latoya then drove to the currency exchange and defendant went inside and cashed the check.

Defendant then returned to the car, gave the money to Latoya, and Latoya gave defendant $230. Defendant stated she was not aware that the check she had just cashed was fraudulent.

¶ 9 After her arrest at the Midlothian police station, Detective Delaney told her that if she told him what happened, he would release her. Defendant denied telling the detective most of the information set forth in her written statement. Defendant never examined the statement prior to signing it, but admitted to signing the statement.

¶ 10 In rebuttal, Detective Delaney testified that he never made any promises to defendant for her release in exchange for her statement.

¶ 11 Following closing arguments and jury instructions, the jury began deliberating at 6:55 p.m. At 8:20 p.m., and 8:27 p.m., the jury sent notes to the trial judge. As to these notes, the transcript of proceedings provides:

> "THE COURT: All right. First note at 8:20. Can we get a copy of the defendant's testimony on paper[?] In other words, they want a transcript. No. You have all the evidence. Keep deliberating. Okay. Second note just got at 8:27. Says they are [deadlocked], 11 to 1. So, I'll tell them please advise keep deliberating. All right?"

Both the prosecutor and defense counsel responded: "Yes Judge."

¶ 12 At 9 p.m. the jury sent a third note to the trial court which, according to the transcript, stated: "We are hopelessly deadlock[ed]. Some of us wish to be done to be with family and work." The trial judge stated: "So, I'm going to suggest giv[ing] phone numbers to the deputies and make the call to the families or work. Advise them that their jury duty is to deliberate and continue to deliberate." The trial judge then said: "My plan is 10:00 o'clock they haven't reached [sic] come back tomorrow. Okay." Defense counsel agreed to the suggestion. The trial judge

then stated: "Okay, it's too early to [give the jury a Prim instruction]." Defense counsel replied: "Got you." The trial judge's written responses to the jury are not contained in the record.

¶ 13 At 9:43 p.m., the jury returned a verdict which found defendant guilty of Class 3 forgery. At defense counsel's request, the trial judge polled the jury where each juror was asked, "was this your verdict then and now," and each juror confirmed it was. Defendant was subsequently sentenced to two years' probation and was ordered to make restitution to the currency exchange in the amount of $1,218.79.

¶ 14 Defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. In her motion, defendant did not raise any issue regarding the jury's notes, nor the trial judge's responses to those notes. The trial court denied defendant's motion for judgment notwithstanding the verdict or, in the alternative, a new trial. Defendant now appeals.

¶ 15 On appeal, defendant's sole contention is the trial judge coerced a guilty verdict by repeatedly instructing the jury to continue deliberating despite two notes from the jury indicating it was hopelessly deadlocked. Defendant argues the trial judge's instructions gave the jurors the impression they were required to reach a verdict, and that being deadlocked was not an option.

¶ 16 Defendant acknowledges she failed to properly preserve this issue for appeal because she did not object at trial and did not raise the issue in her posttrial motion. However, defendant argues that the issue is reviewable under the second prong of the plain-error doctrine because the error affected her right to a fair trial.

¶ 17 The State argues defendant has forfeited the claim of coercion because the plain-error doctrine does not apply in this case as there was no error, and the trial judge's responses were proper and not coercive. Additionally, the State notes defense counsel agreed with the trial court's responses.

¶ 18 It is uncontested that defendant did not object to the trial court's responses to the jury's notes, did not offer alternative instructions, and did not raise the issue in her posttrial motion. Consequently, defendant has forfeited this issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 185-86 (1988). Moreover, it would not be appropriate for this court to consider the issue as plain error when the record shows defense counsel expressly agreed with the trial judge's responses to the jury's notes.

¶ 19 Our supreme court has stated that a defendant's agreement to a procedure, which is later challenged on appeal, goes beyond mere waiver, and is sometimes referred to as estoppel. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004)). It is well settled that " 'under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' " *Id*. (quoting *People v. Carter*, 208 Ill. 2d 309, 319 (2003)). "To permit a defendant to use the exact ruling or action procured in the trial court as a vehicle for reversal on appeal 'would offend all notions of fair play' ***, and 'encourage defendants to become duplicitous' ***." *Harvey*, 211 Ill. 2d at 385 (quoting *People v. Villareal*, 198 Ill. 2d 209, 227 (2001)), and *People v. Sparks*, 314 Ill. App. 3d 268, 272 (2000). See also *People v. Flores*, 381 Ill. App. 3d 782, 784-85 (2008) (where the defendant agreed to trial court's suggested response to a jury question and failed to raise a challenge in his posttrial motion, the issue was forfeited on appeal).

¶ 20 Accordingly, because defendant expressly agreed with the trial court's suggested responses to the jury's notes, she is precluded from challenging those responses on appeal. In addition, because defendant invited any error she now alleges may have occurred, we decline to address the issue under the plain-error doctrine. *People v. Patrick*, 233 Ill. 2d 62, 76-77 (2009).

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.