

No. 1-13-1378

**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. 12 MC 2002399
	)	
LEWIS BOND,	)	Honorable
	)	Callie Baird,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Simon and Justice Liu concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Conviction of domestic battery affirmed over defendant's contentions that the complaint and arrest warrant were deficient in violation of his due process rights, and that he received ineffective assistance of counsel.

¶ 2 Following a bench trial, defendant Lewis Bond was convicted of domestic battery and sentenced to 275 days' incarceration. He appeals, *pro se*, claiming, *inter alia*, that his right to due process was violated by the deficient complaint and arrest warrant, and that he received ineffective assistance of counsel.

¶ 3 Defendant was charged with the domestic battery of a female member of his household, for grabbing her by the neck and striking her in the face with a fist causing bruising, in violation of section 12-3.2(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-3.2(a)(1) (West 2012)). The alleged offense took place on August 5, 2012.

¶ 4 Thereafter, the victim requested an emergency order of protection, and at the hearing held on August 22, 2012, the victim testified that she had been in a relationship with defendant for eight years and was requesting an order of protection against him based on the incident of August 5, 2012, in which he struck her. She also requested that her children be named as protected parties in the order. The victim testified that she had moved out of the residence, and was fearful of defendant. The court granted the emergency order of protection finding that defendant could likely cause future abuse if it was not entered. Following that ruling, attorney Bruce Cowan appeared on defendant's behalf, and apologized for being late. The court then explained to defendant that there was to be no contact by any means.

¶ 5 The order of protection was initially extended to September 4, 2012, and then to September 6, 2012. The record further shows that the order of protection was extended numerous times throughout the trial court proceedings, the majority of which were agreed to by defendant.

¶ 6 In October 2012, Herschel Rush, appeared on defendant's behalf, but subsequently withdrew. In November, 2012, Bruce Cowan, and Jameika Mangum, who also appeared on

defendant's behalf, were allowed to withdraw, and Blair Dalton entered an appearance on behalf of defendant. On February 1, 2013, Dalton withdrew and Steven Goldman filed an appearance.

¶ 7 A bench trial ensued on February 27, 2013, and Goldman appeared on defendant's behalf. In that proceeding, the victim testified that on August 5, 2012, she resided at 1190 Terrace Court in Glencoe, Illinois, with her then boyfriend, defendant, and her two children, whose paternity is unknown. That morning, she looked at defendant's phone and found naked photographs of another woman. She was not upset by the photographs, but was concerned for her health, and confronted defendant in their bedroom about the pictures, without yelling at him. Defendant was upset that she had looked at his phone, so the victim left the room and went into the hallway and saw her children standing in the doorway of their bedroom. Defendant then grabbed the back of her neck, dragged her into the bedroom, pushed her on the floor, grabbed her hair, and smashed her head into the floor. Defendant closed the bedroom door, and the victim got on the bed. Defendant threatened to knock her out, and punched her in the face, then complained to her that she was not sexual enough with him. The victim offered to have sex with him in order to get him to stop hurting her, and he agreed. The victim testified that she did not scream, and denied stabbing, striking or threatening defendant. While defendant was in the bedroom, she went downstairs and hid her phone and car keys because he had hidden these items during previous violent encounters. She then asked defendant to run an errand for her in Evanston, and he left.

¶ 8 The victim waited five minutes, then grabbed what she could from the house and drove with her children to Glenbrook Hospital in Glenview. There, she spoke with Detective Perley, but could not recall exactly what she told him. She testified that she had swelling to her face, pain in her neck and upper body and bruising around her eye from the incident with defendant.

The victim stated that defendant left her several messages while she was at the hospital, telling her not to do anything crazy, or she would make him lose it, and he would ruin her job.

¶ 9 The victim further testified that defendant had struck her prior to August 5, 2012. She stated that in June 2011, she went to a family graduation party and afterwards, defendant "attacked" her, grabbing her neck and slapping her because he believed that her mother tried to set her up with someone. In August 2011, she confronted defendant about the behavior of one of his children from a previous relationship, and he responded by grabbing her neck and hitting her. Then, on July 14, 2012, defendant held her down and hit her until she agreed to have sex with him. The victim explained that she did not call police after these prior incidents because when she tried to leave, defendant would knock her head into the ground, and threaten to kill her and mutilate her face, and she was trying to find a safe way to leave with her children.

¶ 10 The victim also testified that she worked for Merrill Lynch which has a "hardship program," and she applied for benefits under that program. She, however, was unaware of this program at the time of the incident on August 5, 2012.

¶ 11 Glencoe police detective Andrew Perley testified that he was assigned to investigate the incident in question. He met the victim at the hospital, and noted that she had a bruise on her left eye. The victim told him that she had an altercation with defendant, after she had confronted him about pictures of a naked woman she found on his phone. Defendant responded by grabbing her by the neck, dragging her into the bedroom with her kicking and screaming, then threw her on the bed, and began punching her several times in the face. The victim told the detective that she was upset over the photographs, and did not tell him that defendant threw her on the floor and slammed her head into the floor. While at the hospital, the victim received phone calls from

defendant, but she did not answer them.

¶ 12 Detective Perley testified that when he went to defendant's home in Glencoe, and knocked on his door, no one answered. The next day he called defendant on the phone. Defendant answered, and told the detective that the victim attacked him and cut him, and that the incident occurred in Chicago, and was being investigated by Chicago police. Defendant asked the detective if the victim filed a police report or complaints against him, and asked to see a copy of the report. The detective told defendant that he would not discuss the matter over the phone, and that they needed to meet in person, and ended the conversation. Defendant called him the following day, demanding to see the police report, and told him that the victim "stabbed" him. The detective again told him that they needed to meet in person.

¶ 13 On August 7, 2012, Glencoe patrol officer Kulinski saw defendant walking on the street, conducted a field interview with him, then called detective Perley, who came over and placed defendant under arrest. Defendant told the detective that the victim cut him in Chicago around 80th Street and Ellis Avenue, showed him scratches on his arms, and told him that several of his associates witnessed it, but would not give him their names. Defendant filed a police report in Chicago, but the matter was closed because he did not want to pursue criminal charges.

¶ 14 Defendant testified that on August 5, 2012, he was in Chicago, coming back from a strip club with his friends where he only drank fruit punch, and at 8 a.m. he dropped off a female friend, Kim, at 80th Street and Ellis Avenue in Chicago. While there, he ran into a few associates, and when the victim drove up, she shouted and screamed at him about the naked woman on his phone. Defendant told her to calm down, but she swore at him, then stabbed him three times with a knife. Fearing for his life, he hit her, and fled. Later that day, he filed a police

report against the victim. Defendant denied leaving the victim threatening messages.

¶ 15 At the close of evidence, the trial court noted that the photographs taken of the victim showed bruising, marks and abrasions to her face. The court noted that there were some inconsistencies in the victim's testimony such as whether she screamed and yelled when being dragged into the bedroom or was immediately thrown on the floor or bed, but that these inconsistencies were collateral matters. The court noted that the victim did not waiver on whether she was abused, she answered forthright, and her demeanor was very credible. The court found that defendant was argumentative, evasive, sarcastic, obstreperous and unbelievable. Defendant was unwilling to say who he was with during the incident, and was unreliable. The court found that the impeachment of the victim was on collateral matters and not on the substantive elements of the offense, and concluded that defendant was guilty of domestic battery.

¶ 16 The State then sought an order of protection. The court found that the testimony regarding the events on the date of the incident, as well as the prior instances of abuse, proved beyond a preponderance of the evidence that an order of protection was needed to prevent future abuse. The court, therefore, granted the victim's request for a two-year no contact order of protection, and found that the protected parties would include the victim's two children. Defendant's counsel objected to the children being covered, however, when the court asked the victim if paternity had been established, and she responded "no," the court found that defendant had no standing to object to the children being listed as protected parties.

¶ 17 On appeal, defendant first contends that the complaint was deficient because it was not filed by the victim, and failed to describe defendant, and state whether the victim was sexually, financially, or physically abused. He also asserts that although it is not illegal for an officer to

file a complaint based on statements of the victim, the officer has to certify and swear to those statements in an affidavit, and must have observed the commission of the misdemeanor.

¶ 18 The State responds that defendant waived his allegation of a deficient complaint because he did not raise it below. We agree. The record shows that defendant raised no objection to the complaint at any time during or after the trial. By failing to raise this issue at trial or in a post-trial motion, defendant has forfeited the issue for review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 19 Defendant next contends that his due process rights were violated because the arrest warrant issued without an accompanying affidavit, which was a mandatory component of the warrant pursuant to section 107-9(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-9(a) (West 2012)), and because there was no probable cause for the issuance of the arrest warrant. He further contends that the court "passed a restraining order" without defendant or his counsel present, and that this deficiency along with the lack of probable cause were sufficient grounds for the dismissal of the complaint.

¶ 20 Once again, and as noted by the State, defendant has forfeited these arguments as he did not raise them below. *Enoch*, 122 Ill. 2d at 186. In his reply brief, defendant contends that these issues should be reviewed for plain error. However, defendant has failed to present argument on how either of the two prongs of the plain error doctrine is satisfied, and he has thus forfeited plain error review. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 21 In reaching this conclusion, we observe that the plethora of cases cited by defendant to show that the issues are not forfeited, are not on point. For example, he cites a guilty plea case regarding post-plea counsel's compliance with Rule 604(d) (eff. Feb. 6, 2013). Defendant also

cites to cases involving exceptions to the waiver rule listed in *Enoch*, 122 Ill. 2d at 190, namely, 1) constitutional issues properly raised at trial and cognizable in a post-conviction petition, 2) sufficiency of the evidence challenges, and 3) plain errors. None of these exceptions, however, apply to the issues he seeks to raise for the first time on appeal.

¶ 22 Defendant also maintains that he received inadequate legal representation during trial. He maintains that counsel was not present during the hearing for the order of protection, and, instead, was in the hallway when the order was entered against him.

¶ 23 Under the two prong test for examining a claim of ineffective assistance of counsel, defendant must establish that his attorney's performance fell below an objective standard of reasonableness, and that but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail, defendant must satisfy both prongs of the *Strickland* test, and if this court concludes that defendant did not suffer prejudice, we need not decide whether counsel's performance was deficient. *People v. Harris*, 206 Ill. 2d 293, 304 (2002).

¶ 24 Here, defendant has not indicated which of his five private attorneys provided inadequate representation, nor has he identified the specific errors made by a particular counsel, or explained how counsel prejudiced him which is a necessary component to establish ineffective assistance of counsel. *Harris*, 206 Ill. 2d at 304. He does note that his initial counsel was not present for the hearing on the emergency order of protection, but we observe that an emergency order of protection need not be entered with defendant or his counsel present, as it can be entered *ex parte* without prior service of process or of notice upon defendant. 750 ILCS 60/217(a)(3) (West 2012); *People v. Whitten*, 292 Ill. App. 3d 780, 786 (1997). Accordingly, counsel's failure to

timely appear at that proceeding, is insufficient to establish the prejudice prong of the ineffective assistance of counsel test. *Strickland*, 466 U.S. 668.

¶ 25 Notwithstanding, defendant further claims, within the context of his ineffective of assistance argument, that "although [the State] failed to submit any evidence that would establish beyond a reasonable doubt [his] actions, the counsel failed to represent [him] adequately."

Defendant, however, does not articulate which counsel failed to represent him and how counsel was inadequate other than claiming that he should not have been convicted. Defendant's failure to properly articulate an argument violates Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013)), and, as a result, he has forfeited this issue for review (*People v. Agnew-Downs*, 404 Ill. App. 3d 218, 231 (2010)).

¶ 26 In any event, we observe that defendant has not shown any prejudice where the evidence was more than sufficient to prove him guilty of the offense. *People v. Kuhns*, 372 Ill. App. 3d 829, 835-37 (2007). Although there was conflicting testimony at trial, the court found the victim credible and her testimony was corroborated by the photographs taken of her shortly after the incident and the detective's testimony regarding the bruises and swelling to her face. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009).

¶ 27 Defendant also claims that trial counsel "failed on many occasions, yet the trial court refused to substitute attorney." He, therefore, maintains that his Sixth Amendment right was "modified."

¶ 28 Once again, defendant has failed to develop his argument detailing which of the five attorneys he hired failed to represent him and how, as required by Rule 341(h)(7), and has thus forfeited the issue. *Agnew-Downs*, 404 Ill. App. 3d at 231. In addition, we observe that the court

allowed defendant to substitute his counsel numerous times, and, accordingly, his claim that the court refused to do so is belied by the record. *People v. Rogers*, 408 Ill. App. 3d 873, 878 (2011).

¶ 29 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.