

NOTICE
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2016 IL App (5th) 130559-U

NO. 5-13-0559

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Union County.
)	
v.)	No. 12-CF-81
)	
JOHN GLEGHORN,)	Honorable
)	Mark M. Boie,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The order of the circuit court is affirmed where it did not abuse its discretion where it refused to provide supplemental information to the jury during deliberations. However, the order is vacated where it ordered reimbursement for court-appointed fees without conducting a hearing to determine the defendant's ability to pay.

¶ 2 After trial by jury, the defendant, John Gleghorn, was found guilty of the offense of unlawful participation in methamphetamine (meth) production. 720 ILCS 646/15(a)(2)(E) (West 2012). The defendant was sentenced to a 20 year term of imprisonment. On appeal, the defendant contends that it was prejudicial error when the

circuit court failed to provide supplemental information to the jury following the submission of two questions by the jury. We affirm in part and vacate in part.

¶ 3 On April 22, 2013, the circuit court held a jury trial. The facts adduced from trial are as follows. The defendant owned a property in Union County, Illinois, with a cabin located behind his home. Billy Finney (Finney) rented this cabin from the defendant. This case began when the Murphysboro, Illinois, police attempted to issue Finney a traffic citation. However, in the process of doing so, Finney fled on his motorcycle. Following this incident, police forces from both Murphysboro and Union County visited the defendant's property to serve search and arrest warrants upon Finney. While arresting Finney and searching his motorcycle, the police found evidence of the manufacturing of meth in and near Finney's cabin, for which the police requested the defendant's permission to search the property. The defendant provided the police with both his verbal and written consent to search.

¶ 4 After receiving the defendant's consent, Detective Laughland testified that based on his training and experience, the items found in and near Finney's cabin gave the indication that the cabin was being used as a possible meth lab. Laughland testified to having found the following items upon searching: a pickle jar containing 1,409.6 grams of a liquid containing meth; starter fluid; a coffee grinder with a white powder residue from pseudoephedrine pills; salt containers inside the cabinet; plastic tubing; a burn pile east of the cabin containing a piece of tin foil with burnt residue; and a propane tank with anhydrous ammonia located on the property. Moreover, several surveillance cameras

were located throughout the defendant's property and were wired to a television inside Finney's cabin.

¶ 5 Agent Busby testified that she spoke with the defendant on May 17, 2012, and that the defendant admitted that he heard the propane tank make a loud popping sound, and then observed the emission of white smoke with an ammonia smell in the wooded area behind his home. Agent Busby testified that the defendant admitted that on two separate occasions he saw Finney manufacturing meth. Agent Busby testified that the defendant confessed to smoking meth with Finney, as well as another individual, Rob Thomas (Thomas), in Finney's cabin. Moreover, Agent Busby testified that at the conclusion of the interview, the defendant stated, "Asa, you got me; I knew it was illegal; I needed the money."

¶ 6 During closing argument, the State argued that the defendant was guilty by accountability, arguing that both the defendant and Finney acted in concert to produce meth. Additionally, the State contended that the defendant aided Finney by providing him with a location to cook meth on his property, as well as the key ingredients. The State argued the following:

"Now there are two key concepts that the Judge will instruct you on when we are done here that relate to the two of them working together. They are accountability and participation. Accountability is a legal concept the Judge will instruct you on. It deals with whose actions one is responsible for. Of course, the Defendant is responsible for his own actions and what he did, but, under the law, as the Judge will instruct you, he is also legally accountable for Finney's actions if he aided Finney in any way.

* * *

The second concept is participation. The charge in this case is unlawful participation in methamphetamine manufacturing. The Defendant isn't charged with being responsible for the entire meth cook. He is charged with participating, along with Billy Finney.

The jury instructions that the Judge will read to you will tell you that participation includes assisting in the actions that produced the methamphetamine.

Again, how did the Defendant assist? Just as he aided. He had property that was available. He made that available. He let the meth cooking continue on his property. He provided ingredients; pills, coffee grinder, salt, lithium batteries, anhydrous ammonia."

¶ 7 At the close of the evidence, jury instructions were provided, which had been jointly agreed and submitted by both parties. The instructions provided the jury with the statutory definition of "participate":

" 'Participate' or 'participation' in the manufacture of methamphetamine means to produce, prepare, compound, convert, process, synthesize, concentrate, purify, separate, extract, or package any methamphetamine ***, or any substance containing any of the foregoing, or to assist in any of these actions, or to attempt to take any of these actions, regardless of whether this action or these actions result in the production of finished methamphetamine." 720 ILCS 646/10 (West 2012).

¶ 8 Additionally, the jury instructions contained a non-Illinois Pattern Instruction and non-statutory jury instruction for accountability, which appeared as follows:

"A person is legally responsible for the conduct of another person when, either before or during the commission of the offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense."

¶ 9 The jury instruction for the crime of participation in meth manufacturing included language for accountability, as follows:

"To sustain the charge of Participation in Methamphetamine Manufacturing when the substance containing the methamphetamine weighed 900 grams or more, the State must prove the following propositions:

That the defendant or one for whose conduct he is legally responsible knowingly participated in the manufacture of methamphetamine or a substance containing methamphetamine; and

That the weight of the substance containing the methamphetamine was 900 grams or more.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 10 After the jury instructions were delivered, the jury deliberated. However, during deliberations, the jury sent the following two questions to the circuit court:

"Does your knowledge of what is going on in your property make you responsible or a participant in the eyes of the law?"

"Does knowing but not reporting illegal activity make you a participant?"

The circuit court responded: "Please refer to the jury instructions provided to you, including the definitions of participation and accountability." The jury subsequently returned a verdict of guilty, the defendant was sentenced to 20 years of imprisonment, and he now appeals.

¶ 11 The issue before this court is to determine whether the circuit court abused its discretion in choosing not to provide the jury with supplemental information. The jury

considered one charge—participation in the manufacturing of meth. As stated above, the jury sent two questions to the circuit court. The trial judge, with the defendant and both parties present, concluded that it was unnecessary to supplement the jury instructions.

¶ 12 The defendant argues that the State has the burden of persuasion and cannot show beyond a reasonable doubt that the circuit court's error in refusing to answer the jury's questions was harmless. In particular, the defendant argues that the jury's questions imply that the jury was unconvinced whether the defendant had actively supplied Finney with the meth manufacturing supplies, and confused as to whether knowledge of meth manufacturing was enough to convict. The defendant asserts that the issue on appeal does not concern the adequacy of the instructions. Rather, the issue here concerns the court's refusal to answer the jury's questions, which the defendant argues, constituted specific questions that demonstrate juror confusion on a substantive issue, and it was prejudicial error not to provide additional information.

¶ 13 The State argues that the circuit court's response was proper and that any potential error did not contribute to the jury's verdict because the jury instructions were sufficient. The State contends that the evidence against the defendant was overwhelming, which included his own admission that he knew Finney had made meth on this property; that he purchased cold pills with the intention for Finney and Thomas to produce meth; that he supplied Finney with pseudoephedrine pills to produce meth; and that he smoked meth with Finney on his property.

¶ 14 Moreover, the State contends that significant circumstantial evidence was presented, such as the defendant's knowledge of a propane tank located on his property.

Evidence at trial demonstrated that the defendant admitted to Agent Busby that the tank was emitting white smoke, which is significant for anhydrous ammonia storage. Additionally, after the defendant provided officers with verbal and written permission to search the property, the officers found numerous items, when used in combination, to manufacture meth.

¶ 15 Jurors are entitled to have their questions answered. *People v. Reid*, 136 Ill. 2d 27, 39 (1990). Where a jury has raised an explicit question on a point of law arising from the facts over which there is doubt or confusion, the court should attempt to clarify the question. *People v. Jackson*, 89 Ill. App. 3d 461, 479 (1980). Nevertheless, under the appropriate circumstances, a circuit court may exercise its discretion and refrain from answering a jury's inquiries where: (1) the jury instructions are readily understandable and sufficiently explain the law, (2) further instruction would serve no useful purpose and could potentially mislead the jury, (3) the inquiry involves a question of fact, or (4) the question is ambiguous and an answer or explanation would cause the court to express an opinion which would likely direct a verdict one way or the other. *Reid*, 136 Ill. 2d at 39; *People v. Oden*, 261 Ill. App. 3d 41, 46 (1994). We will review the circuit court's response for an abuse of discretion. *Reid*, 136 Ill. 2d at 38-39; *People v. Leach*, 2011 IL App (1st) 090339, ¶ 16 (a reviewing court must determine whether the circuit court should have answered the jury's question under an abuse of discretion standard).

¶ 16 Before we reach the merits of this issue, we must first determine whether the issue has been waived. It is well settled that to preserve an issue for appeal, a defendant must object at trial and must include the issue in a posttrial motion. See *Reid*, 136 Ill. 2d at 38;

People v. Enoch, 122 Ill. 2d 176, 185-86 (1988). The State argues that although the defendant raised the issue in the posttrial motion, the issue was not properly preserved at trial. We disagree. Although the record supports the State's argument that both parties jointly agreed upon the written jury instructions before they were given, the argument before this court does not concern whether the initial instructions were proper. Instead, for forfeiture to apply here, as the State argues, the defendant would have had to fail to object to the circuit court's answer to the jury's questions and fail to raise the issue in the posttrial motion. Where a defendant acquiesces in the circuit court's answer to the jury's questions, the defendant cannot later complain that the court abused its discretion. *Reid*, 136 Ill. 2d at 38.

¶ 17 In the case at hand, we cannot find that the defendant acquiesced in the court's response to the jury, as the State contends. Rather, we find on numerous occasions that defense counsel, first, expressed concern with the court instructing the jury to look over the original instructions. It is clear that defense counsel was fearful that this response might make the jury believe that mere knowledge was enough to convict. Second, after the State suggested that the court specifically direct the jury to the definitions of participation and accountability, defense counsel stated, "I disagree with that. And I think, really, the simple answer to both of their questions is 'no'." Thus, as evidenced by the dialogue between the parties regarding the appropriate response to the jury's questions, we find that the defense counsel did object to the court's ruling on the subject inquiries, and therefore, the issue is not forfeited. See e.g., *Reid*, 136 Ill. 2d at 38.

¶ 18 We next address whether the circuit court abused its discretion in not answering the jury's questions. During its deliberations, the jury made the following written inquires:

"Does your knowledge of what is going on in your property make you responsible or a participant in the eyes of the law?"

"Does knowing but not reporting illegal activity make you a participant?"

¶ 19 We conclude that the circuit court properly declined to answer the jury's questions, directing the jury to focus on the definitions of participation and accountability. In order to obtain a conviction, the State was required to prove that the defendant knowingly aided or abetted Finney or assisted Finney in the production or preparation of meth. First, we find that the language contained in the instructions sufficiently defined the terms participation and accountability and was readily understandable as written. Second, we find that the court's redirection to the jury to both definitions was proper, given that it was clear that assistance in one of the required actions, per the participation statute, as well as an overt act, such as aiding, abetting, or attempting to do so, per the accountability instruction, was required to convict the defendant of participation in the manufacturing of meth. Thus, given that the elements of each definition were sufficiently defined, the court did not abuse its discretion in failing to provide supplemental information to the jury based on their questions that were focused on knowledge.

¶ 20 Next, the defendant argues that the circuit court erred when it ordered reimbursement for court-appointed fees without conducting a hearing to determine the defendant's ability to pay. In response, the State concedes, and we agree, that the court-

appointed fee must be vacated. A court must give the defendant notice that it is considering the imposition of a fee, and the defendant must be given the opportunity to present evidence regarding his ability to pay and other relevant circumstances. 725 ILCS 5/113-3.1(a) (West 2014); see *People v. Somers*, 2013 IL 114054, ¶ 14. The record establishes that the defendant received no such notice nor did the circuit court question the defendant regarding his financial ability to pay prior to imposing the fee. Thus, the court's order should be vacated where it ordered the defendant to pay a \$100 public defender fee.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Union County finding that the court did not abuse its discretion in failing to provide supplemental information to the jury's questions during deliberation. However, we vacate the court's order directing the defendant to pay the \$100 public defender fee.

¶ 22 Affirmed in part and vacated in part.