

No. 1-09-0515

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FIFTH DIVISION
April 22, 2011

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. 06 CR 19448
)	
ANDRE ARMSTRONG,)	Honorable
)	Thomas V. Gainer, Jr.
Defendant-Appellant.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

Held: Defendant's conviction for delivery of a controlled substance within 1,000 feet of a public park affirmed where identification evidence was reliable and evidence was sufficient to prove defendant guilty beyond a reasonable doubt; defendant forfeited review of prosecutor's comments in closing argument; defendant forfeited review of trial court's noncompliance with Supreme Court Rule 431(b); and mittimus corrected to reflect conviction on one count only.

After a jury trial, defendant, Andre Armstrong, was convicted of delivery of a controlled substance within 1,000 feet of a public park and was sentenced to 10 years in prison. He filed the instant appeal. For the reasons stated below, we affirm the conviction as modified.

BACKGROUND

The Narcotics and Gang Investigation Section (NAGIS) of the Chicago Police Department (CPD), based on its own surveillance, information received from CPD's 15th district, and citizen complaints, located an open-air drug market in the area of Adams Street and Lavergne Avenue in Chicago. During the spring and summer of 2006, NAGIS surveilled this open-air drug market, as part of an investigation called Operation Borrowed Time. As a result, defendant was arrested on August 2, 2006 and subsequently indicted. Defendant was originally charged with two counts of delivery of a controlled substance, but the State proceeded on only Count I, which alleged that defendant delivered less than one gram of heroin within 1000 feet of a public park, in violation of section 407(b)(2) of the Illinois Controlled Substances Act. (720 ILCS 570/407(b)(2) (West 2000).

Mr. Armstrong's jury trial began on January 9, 2008. Lieutenant Eric Washington testified that he was the supervisor of a NAGIS street conspiracy team in Operation Borrowed Time (the Operation). After locating the open-air drug market, the team planned to use an undercover officer to make a "controlled" purchase of drugs using pre-recorded funds that could be tracked. The Operation's goal was not to make an arrest at the scene but, instead, to document the individuals who were selling the drugs in order to build the case against them. The Operation set up video and audio surveillance equipment.

Officer Mark Smith testified that, on April 12, 2006, he was the designated undercover buy officer for the Operation. He was working with approximately eight other officers on the team, including surveillance and enforcement officers. Officer Smith stated that, while driving

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his unmarked vehicle, he saw a group of men on the corner of Adams Street and Lavergne Avenue. One of the men approached his car and asked for a cigarette. Officer Smith told him “sorry” and then asked if the men on the corner were selling “blows” (a street term for white heroin). After the man told him they were, Officer Smith parked his car, and went to talk to the group of men. After the conversation, Officer Smith waited for approximately ten minutes until the men let him know it was okay for him to walk down Adams Street to purchase the drugs. Officer Smith walked in an easterly direction past approximately five houses when he saw a lone individual, whom he identified in court as defendant. Officer Smith testified that he was holding his money out as he approached defendant. As he got closer, defendant asked, “How many do you want?” Officer Smith replied, “I need two blows.” Defendant had “numerous” blows in the palms of his hands. He handed two to Officer Smith who then handed defendant a \$20 bill.

Officer Smith testified that the surveillance officer who was taping him was stationed on Lavergne Avenue, south of Adams Street, and that the purchase location was not within the video camera’s range. The corner of Adams Street and Lavergne Avenue was within the camera’s range, but Officer Smith did not ask defendant or the other men on the corner if he could move the purchase to that location because he wanted to maintain his cover.

Officer Mary Haynes, a roving surveillance officer with the Operation, was watching Officer Smith through binoculars from her parked car on Adams Street, east of Lavergne Avenue. Officer Haynes testified that, just prior to Mr. Armstrong’s interaction with Officer Smith, she saw Mr. Armstrong exit a building on Adams Street. She testified that she watched the hand-to-hand transaction occur but could not see what was exchanged.

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After making the purchase, Officer Smith walked back to the corner of Adams Street and Lavergne Avenue. When he arrived, he saw a marked Chicago police squad car that was not manned by any members of his team, so he kept walking westbound across the street to maintain his cover. After the squad car left, he returned to his vehicle and “did a small dance” before entering to let the surveillance officer know that everything was okay.

Meanwhile, Officer Haynes continued watching defendant. She testified that she saw defendant walk north and enter a nearby gangway. After approximately four minutes, she saw him exit the gangway and walk to the corner of Lavergne Avenue and Adams Street.

After determining that the narcotics he had received from defendant were real, Officer Smith drove away from the scene and radioed his team that he had a positive narcotics purchase. Officer Smith gave the team a location and a physical description of Mr. Armstrong, so that the officers could detain him.

Officer Fred Snyder testified that, on April 12, 2006, he was working as an enforcement officer for the Operation, with his partner Officer Jimmie Davoren. They were in plain clothes and driving an unmarked vehicle. After they learned that a positive buy had been made by Officer Smith, they waited for an order to approach. Officer Snyder stated that the orders do not come immediately after the buy because they wait for a few additional buys to take place in order to maintain the cover of their buy officer. Approximately 40 minutes after Officer Smith’s call, Lieutenant Washington ordered Officer Snyder to approach defendant, providing them with defendant’s approximate location and clothing description which was the same as Officer Smith’s description. Officer Snyder testified that he and Officer Davoren drove to the northwest

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corner of Lavergne Avenue and Adams Street. Although other individuals were present on the corner, the officers saw a person who matched the description that had been given by both Officer Smith and Lieutenant Washington. Officer Snyder stated that defendant was wearing jeans and a red and white baseball cap. Officer Snyder identified defendant in court. Officer Snyder testified that he asked defendant for identification. Defendant produced an Illinois state identification card containing his picture and the name Andre Armstrong. Officer Snyder copied the information and asked Mr. Armstrong if he had tattoos, whether he was still living at the address listed on the card, and his telephone number. Officer Snyder wrote down all of this information on a contact card, including a complete clothing description.

Officer Smith, maintaining his cover, returned to the scene to positively identify defendant. He testified that he saw Mr. Armstrong with the officers and let them know, via radio, that the person with them was the individual who had sold him the heroin. Officer Haynes, the roving surveillance officer, also drove past and identified defendant as the individual that she had watched sell narcotics to Officer Smith.

Later, at the police station, Officer Snyder inventoried the narcotics that Officer Smith had purchased. Officer Snyder also generated a photo array of six individuals. He showed the photo array to Officer Smith who identified defendant's photo as that of the individual who sold him the narcotics.

On August 1, 2006, a warrant was issued for defendant's arrest. The next day, defendant was arrested along with several other individuals. After a jury trial, Mr. Armstrong was convicted of delivery of a controlled substance within 1,000 feet of a public park and sentenced

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to 10 years in prison. He now appeals.

ANALYSIS

Defendant argues: (1) the State failed to prove him guilty beyond a reasonable doubt because the officers' identifications of him were unreliable; (2) he was denied a fair trial because during rebuttal closing argument the prosecutor misstated the evidence and improperly referred to defendant's decision not to testify; (3) he is entitled to a new trial because the trial court failed to comply with Supreme Court Rule 431(b); and (4) the mittimus should be corrected.

I. Sufficiency of the Identification Evidence

A criminal conviction will not be set aside on review for lack of evidence unless the evidence is "so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). When considering a challenge to the sufficiency of the evidence, the question for a reviewing court is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 2788-89, 61 L. Ed. 2d 560, 573 (1979); *People v. Phelps*, 211 Ill. 2d 1, 7, (2004). It is not the function of a reviewing court to retry a defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Witness credibility, the weight to be given the testimony, and the reasonable inferences to be drawn from the evidence is the responsibility of the trier of fact, and not this reviewing court. See, e.g., *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

Defendant challenges only the sufficiency of the State's evidence regarding Officers

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Smith and Haynes's identification of defendant as the individual who sold the narcotics. In evaluating the reliability of an identification, courts look to a number of factors, including: (1) the opportunity the witness had to view the suspect at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions of the suspect by the witness; (4) the level of certainty demonstrated by the witness at the time of the identification; and (5) the length of time between the crime and the identification. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989), citing *Neil v. Biggers*, 409 U.S. 188, 199-200, 93 S. Ct. 375, 382, 34 L. Ed. 2d 401, 411 (1972). Defendant contends that every factor weighs in favor of finding that both Officers Smith and Haynes's identifications of defendant as the offender were unreliable. We shall consider each factor in turn.

Opportunity to View the Suspect at the Time of the Crime

Officers Smith and Haynes had ample opportunity to view defendant. Officer Smith engaged in a hand-to-hand transaction with defendant, during which he had face-to-face contact, a conversation, and the ability to view defendant for a full minute to a minute-and-a-half. This provided ample time for Officer Smith to memorize defendant's features.

Officer Haynes also had ample opportunity to view defendant at the time of the crime because she watched him, in full view, for approximately ten minutes. More importantly, using binoculars, she could see defendant clearly as he engaged in the transaction with Officer Smith. Although, from her vantage point, she could not see the tiny packets that were exchanged, she saw defendant.

Witness's Degree of Attention

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We have noted that, in all likelihood, a police officer who responds to a call in his official capacity has a high degree of attention that is greater than that of an average citizen witnessing a crime or being victimized by a crime. *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009). That principle is especially applicable here where the goal of the Operation was to identify individuals selling narcotics so as to later effect their arrests.

Officer Smith was extremely focused on defendant during their encounter because his assignment was to complete a successful narcotics purchase. As the surveillance officer, Officer Haynes's role was to observe defendant closely, including his position. Her testimony detailing defendant's movements showed that she was highly focused on Mr. Armstrong. Although defendant asserts that Officer Haynes was distracted by her responsibility for monitoring Officer Smith's safety, this factor only weighs in favor of her increased scrutiny of defendant's every move.

Accuracy of Any Prior Descriptions of the Suspect by the Witness

This factor weighs in favor of a reliable identification. After the successful purchase, Officer Smith broadcast defendant's description and location to Lieutenant Washington. Officer Smith described defendant as wearing jeans and a red and white or red and blue baseball cap. This description, combined with defendant's precise location, was sufficient to enable the enforcement officers to detain defendant on the street.

As the State notes, despite the fact that there were numerous other individuals present on the street corner, the enforcement officers did not detain any of them but, instead specifically detained defendant. Had Officer Smith's description been incorrect, it would not have matched

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that of any of the individuals. Additionally, had the description been too vague, it may have matched the other individuals and multiple persons, instead of defendant alone, would have been detained.

Level of Certainty Demonstrated by the Witness at the Time of Identification

Defendant concedes that Officers Smith and Haynes identified him with certainty. As the State notes, this certainty was present during each identification confrontation. Officer Smith returned to the scene and radioed the enforcement officers that the individual they detained was the same individual that had sold him the narcotics. Officer Smith later identified defendant from a photo array with certainty and without hesitation. Again, Officer Smith positively identified defendant in court.

Officer Haynes also drove by defendant when he was detained by the enforcement officers and confirmed that he was the person she observed for over ten minutes and whom she watched sell the narcotics to Officer Smith.

Length of Time Between the Crime and Identification

This factor also weighs in favor of the State. Officers Smith and Haynes identified defendant within 30-40 minutes of the hand-to-hand drug transaction. Thus, not only was defendant identified on the same day, he was identified within the same hour.

Considering all of the above factors, Officers Smith and Haynes's identifications of defendant were reliable and sufficient to prove him guilty beyond a reasonable doubt. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find the essential element of identification of defendant beyond a reasonable doubt.

II. The Prosecutor's Comments During Closing Argument Were Not Improper

Defendant next argues that he was denied a fair trial because during rebuttal closing argument the prosecutor misstated the evidence contained on the surveillance video, and improperly referred to defendant's decision not to testify.

The State correctly notes that defendant has forfeited his objection to the prosecutor's remarks because he did not raise these issues in either of his post-trial motions. See, e.g., *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (where a defendant fails to object to an error at trial *and* include the error in a post-trial motion, he forfeits appellate review of that error.) Nonetheless, where a defendant forfeits review, the reviewing court can consider an issue under the doctrine of plain-error. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Plain-error applies only

“when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone 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 is 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. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

Under both prongs of the plain-error doctrine, “ ‘the burden of persuasion remains with the defendant.’ ” *Id.*, quoting *People v. Herron*, 215 Ill. 2d at 187.

Before a defendant is entitled to application of the plain-error doctrine, the court must consider whether any error occurred at all. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008).

Any Error in the Prosecutor's Comments Regarding the Surveillance Video Were Cured

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The State's Exhibit Number Five, a videotape of the activity that took place on April 12, 2006 on the corner of Lavergne Avenue and Adams Street, was admitted into evidence without objection. During rebuttal argument the prosecutor stated:

“[PROSECUTOR]: I invite you to look at that entire tape when you go back to the jury room, you will receive the tape, and see what kind of activity is happening out at that street, what kind of suspicious hand-to-hand transactions you do see on Lavergne Street...

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: The objection is overruled. Ladies and gentleman, any statements made by the lawyers that's not based on the evidence should be disregarded by you. You should use your own recollection of the evidence. I remind you again what the lawyers say during argument is not evidence.

[PROSECUTOR]: In the video tape is evidence, what is going on out there on Lavergne [S]treet, and look at what's going on out there on that certain street, and look at what the officers might see what's going on out there, but they don't blow their cover. They never come out of the van to stop any of the suspicious activities because their buy officer is out there, and they're not going to compromise his identity. That is his role as an undercover buy officer.”

Defendant contends that the prosecutor misstated the evidence by telling the jurors that the surveillance video showed “suspicious hand-to-hand transactions” and other “suspicious activities” taking place. Defendant also asserts that, even if the State's inference that drug

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transactions were being conducted is correct, he was not involved in the transactions that were videotaped, so the activities on the videotape are not relevant to proving his guilt.

The State asserts that the prosecutor did not misstate the evidence and the comments that there were “suspicious hand-to-hand transactions” and other “suspicious activities” taking place were reasonable inferences drawn from the videotape footage.

“It is well established that a prosecutor is given great latitude in closing argument and the propriety of his comments are within the trial court’s discretion.” *People v. Graca*, 220 Ill. App. 3d 214, 221 (1991). The prosecutor may base his argument “on the evidence presented or reasonable inferences therefrom.” *Id.* “A statement made during closing argument constituting alleged prejudice to the defendant will be cured when the trial court subsequently instructs the jury that closing arguments are not evidence and that they should disregard any argument not based on the evidence.” *Id.*

Here, defense counsel immediately objected to the prosecutor’s remark. The court promptly admonished the jurors that they should disregard any statements made by the lawyers that were not based on the evidence and use their own recollection of the evidence, and that what the lawyers say during argument is not evidence. Thus, any error was cured.

The Prosecutor Did Not Improperly Refer to Defendant’s Decision Not to Testify

Defendant also argues that the prosecutor’s remarks that the jury did not know what defendant’s voice sounded like called attention to his constitutional right not to testify. Taken in context, the prosecutor’s remarks were invited and defendant was not prejudiced because the prosecutor never stated that defendant did not testify.

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The prosecution is forbidden to comment, even indirectly, on the accused's exercise of his constitutional right not to testify as a witness in his own behalf. *People v. Arman*, 131 Ill.2d 115, 125 (1989), citing *Griffin v. California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965).

The test for determining whether the State has made an improper comment on a defendant's decision not to testify is whether the prosecutor's statement was " 'intended or calculated to direct the attention of the jury'[citation] " to the fact that the defendant did not testify. *Arman*, 131 Ill. 2d at 125. To make that determination, a reviewing court should examine the challenged comments in the context of the entire proceeding. *Id.* "[A] defendant cannot claim error where the prosecutor's remarks are in reply to and were invited by defense counsel's argument." *People v. McDaniel*, 249 Ill. App. 3d 621, 640 (1993), citing *People v. Dixon*, 91 Ill. 2d 346, 350-51 (1982).

In *Dixon*, during closing argument, defense counsel said "keep in mind what is going on in [defendant's] mind." *Dixon*, 91 Ill. 2d at 350. In rebuttal, the prosecutor remarked: "Do you know what was happening in [defendant's] mind? Did you hear any testimony whatsoever of what was going on in [defendant's] mind?" *Id.* Our supreme court held that the prosecutor's comment, in the context in which it was made, was invited by defense counsel's argument, was proper rebuttal, and was not made for the purpose of calling attention to the defendant's decision not to testify. *Dixon*, 91 Ill. 2d at 351.

In the present case, during closing argument, defense counsel stated:

"Everything [the police] did was designed to give you all the best evidence

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possible, concrete, physical, and scientific evidence of what they said that this man sold drugs, but there is none, and they wanted to do that because they didn't want to have you rely on the word of just the police officer, just the word of an identification because they know that sometimes people can make a mistake or they could lie. But physical evidence doesn't lie, scientific evidence doesn't lie, and those video tapes do not lie, and you have none.

* * *

But [the State] get[s] something else, they get the resources of the Chicago Police Department and the Chicago Police Department in this case have every reasonable resource available to try to prove to you what happened, and all they have is the word of a police officer. They set out to get an audiotape, a videotape, the money. There are cameras all over the city. That police department has cameras, [with] which they could have taken a picture. Almost everybody's cell phone today has a camera, something to prove to you physically in a concrete fashion about what took place on Lavergne and Adams.

* * *

They set out with all those resources to prove [Mr. Armstrong] guilty. Well, they fell short, they don't have an audiotape, they don't have a videotape, and everything they are missing can give you reasonable doubt *** the no audiotape could be a reasonable doubt, the no videotape, the no still camera, no nothing, each and every one of those things can give you a reason to pause.”

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In response, the prosecutor argued:

“Now, the defendant talks about missing pieces, the audiotape, let’s take that for example. We know that Undercover Officer Smith was wired up that day. Everyone on the team assumed if it was working, there was no problems hearing what was going on. Why would anyone think it wasn’t working? They find out later on, it wasn’t working, but, ladies and gentlemen, that doesn’t make a difference in this case because even if you did hear an audiotape, you heard a voice, Mr. Smith - Undercover Officer Smith selling to someone, the guy says, hey, I have this many blows. How is that going to help you find Mr. Armstrong guilty? You don’t know his voice, you don’t know what he sounds like, it could be anyone on the voice. So, the fact that there’s no audiotape in this case makes no difference whatsoever because we don’t know the voice of Mr. Andre Armstrong, it doesn’t make a difference ... and even in this case, even if we had it, it wouldn’t matter in this case because you have all the evidence in this case.”

These brief comments made by the State were made solely in reply to defense counsel’s argument that the missing audiotape “could be a reasonable doubt.” Moreover, the comments were made in the context of the prosecution addressing defense counsel’s arguments as to why there was no other recorded evidence of defendant’s guilt. After explaining why the missing audiotape was of no import, the prosecutor next commented on why the video camera was not moved to show the hand-to-hand transaction between defendant and Officer Smith, why prerecorded funds would not necessarily be recovered in this case, and why no fingerprints were recovered on the narcotics. When viewed in context, the prosecutor’s comments were not made for the purpose of calling attention to the fact that defendant did not testify, were proper rebuttal

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invited by defense counsel's argument, and were not error.

In sum, defendant has forfeited review of the alleged errors regarding the prosecutor's comments during closing argument. Plain-error review is unwarranted because no error occurred.

III. Defendant Forfeited His Supreme Court Rule 431(b) Claim

Defendant next argues that his conviction must be reversed because the trial court failed to properly question potential jurors pursuant to Supreme Court Rule 431(b). Defendant concedes the issue is forfeited but requests we review the issue for plain-error. As noted earlier, we first consider whether any error occurred at all. *People v. Hudson*, 228 Ill. 2d 181, 191.

Rule 431(b) provides as follows:

“(b) The court shall ask each potential juror, individually or in a group, whether that juror *understands and accepts* the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify *cannot be held against him* or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section.” Supreme Court Rule 431(b), eff. May 1, 2007 (Emphasis added.)

In the instant case, the trial court instructed the jurors on each principle enumerated in

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Rule 431(b) as follows:

“Mr. Armstrong, as with other persons charged with crimes, is presumed to be innocent of the charges against him. The presumption cloaks him now at the onset of trial and will continue to cloak him throughout the course of the proceedings; that is, during jury selection, during opening statements that the lawyers may make, during the presentation of the evidence, during the closing arguments that the attorneys may give, and during instructions on the law that I will read and provide to you, and on into your deliberations, unless and until you individually and collectively are convinced beyond a reasonable doubt that he is guilty.

It is absolutely essential as we select this jury that each of you understand and embrace these fundamental principles of law. That is, that all persons charged with a crime are presumed to be innocent and that it is the burden of the State, who brought the charges, to prove the defendant guilty beyond a reasonable doubt.

What this means is that the defendant has no obligation to testify in his own behalf or call witnesses on his own behalf. He may simply sit here and rely upon what he and his attorneys perceive to be the inability of the State to present sufficient evidence to meet their burden.

Should that happen, you will have to decide this case on the basis of the evidence presented by the prosecution. *The fact that the defendant chooses not to*

testify must not be considered by you in any way in arriving at your verdict.

* * *

The bottom line, however, is that there is no burden upon the defendant to prove his innocence. It is the State's burden to prove him guilty beyond a reasonable doubt." (Emphasis added.)

The court then reiterated all four principles set forth in Rule 431(b). Notably, the court stated:

"Because the defendant is presumed to be innocent, he does not have to present any evidence in this case at all. He does not have to testify. He can simply rely on his presumption of innocence.

Is there anyone *** who disagree[s] with that fundamental principle of law. If so, please raise your hand."

Seeing no response, the court stated: "No hands are raised."

Defendant contends the trial court's approach was insufficient because it did not ask the prospective jurors if they "understood and accepted" all four principles, particularly the principle that the defendant's decision not to testify "cannot be held against him." We agree.

As our supreme court has explained, Rule 431(b) "mandates a specific question and response process." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). "The rule requires questioning on whether the potential jurors *both* understand and accept each of the enumerated principles." (Emphasis added). *Id.* Here, the trial court did not ask the prospective jurors if they "understood" the principles. This constituted a violation of Rule 431(b) and, therefore, error.

Having determined that an error occurred, we next consider whether the trial court's

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noncompliance with Rule 431(b) constituted reversible error under the plain-error doctrine.

Review under the first-prong of the plain-error doctrine is unwarranted because the evidence here was not closely balanced. As to the second-prong of the analysis, defendant has the burden of showing that the trial court's error affected the fairness of his trial and challenged the integrity of the judicial process. Although defendant contends that “the trial court’s failure to strictly comply with Rule 431(b) denied [him] a fair trial before an impartial jury,” our supreme court has recently explained that a court “cannot presume the jury was biased simply because the trial court erred in conducting the Rule 431(b) questioning.” *Thompson*, 238 Ill. 2d at 614.

As the *Thompson* court further explained:

“Our amendment to Rule 431(b) does not indicate that compliance with the rule is now indispensable to a fair trial. As we have explained, the failure to conduct Rule 431(b) questioning does not necessarily result in a biased jury, regardless of whether that questioning is mandatory or permissive under our rule. Although the amendment to the rule serves to promote the selection of an impartial jury by making questioning mandatory, Rule 431(b) questioning is only one method of helping to ensure the selection of an impartial jury. [Citation.] It is not the only means of achieving that objective. A violation of Rule 431(b) does not implicate a fundamental right or constitutional protection, but only involves a violation of this court's rules. [Citation.] Despite our amendment to the rule, we cannot conclude that Rule 431(b) questioning is indispensable to the selection of an impartial jury.” *Id.*

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In the instant case, as in *Thompson*, the venire was admonished and instructed on Rule 431(b) principles. Although the trial court here did not strictly comply with Rule 431(b), the record shows that the trial court carefully explained each principle and stressed the importance that the prospective jurors “understand and embrace” these principles. The court also ensured that none of the jurors disagreed with any of these principles. Because defendant has not presented any evidence that the jury was biased, he has failed to meet his burden under the second prong of the plain-error doctrine. Defendant has forfeited his Rule 431(b) claim.

IV. The Mittimus Must Be Corrected

Defendant next argues, and the State concedes, that his mittimus should be corrected. Defendant was found guilty of delivery of a controlled substance within 1,000 feet of a public park (Count 1). Although the State did not proceed at trial on Count II, the mittimus incorrectly reflects that defendant was convicted on both counts. Remandment is unnecessary since this court, pursuant to Supreme Court Rule 615(b)(1) has authority to directly order the clerk of the circuit court to make the necessary corrections. See, e.g., *People v. Calhoun*, 404 Ill. App. 3d 362, 391 (2010). Accordingly, we order the mittimus be corrected to reflect a single conviction for delivery of a controlled substance within 1,000 feet of a public park. (720 ILCS 570/407(b)(2) (West 2000)) (Count 1).

CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and the mittimus is corrected as ordered.

Affirmed and mittimus corrected.