

No. 1-08-1451

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).

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. 05 CR 6211
)	
KENT JOHNSON,)	Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Gallagher and Justice Lavin concurred in the judgment.

ORDER

HELD: Where defendant failed to object to the trial court's questioning of the venire at trial or in a posttrial motion, and he presented no evidence of jury bias, review of the issue was forfeited and the judgment of the trial court was affirmed.

After a jury trial, defendant Kent Johnson was convicted of robbery and sentenced to seven years in prison. On appeal, defendant contends that the trial court failed to comply with

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Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). We find that the issue has been forfeited and affirm the judgment of the trial court.

In April 2008, just before jury selection began, defendant's attorney asked the court to cover the four Rule 431(b) principles with each prospective juror individually. The trial court explained it usually questioned the jurors as a group, but agreed to defendant's request.

In front of the entire venire, the trial court generally explained that defendant was presumed innocent, the State had the burden of proving defendant guilty beyond a reasonable doubt, that defendant was not required to testify on his own behalf or to call any witnesses in his defense, and that defendant choosing not to testify could not be held against him. The court then questioned each prospective juror about the same principles individually, asking, for example, if they had "any quarrel" with the principles and whether they would "abide by" them. When Juror Guillermo Rivera was questioned, the trial court asked him if he understood and would abide by the principles that defendant is presumed innocent and the State must prove him guilty beyond a reasonable doubt. Rivera answered affirmatively to both questions. The court then asked:

"Q: The defendant need not offer any evidence on his own behalf and need not testify. And if he does

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not testify you may not consider that fact as evidence against him?

A: Yes, I understand."

Later, in separate exchanges, the trial court asked whether Jurors Ann Kominski and Patricia Clancy had a "quarrel with" the four principles. Both said they did not. The court then asked whether they would "abide by" the principles, and both jurors said they would.

After the jury was empaneled, the trial evidence showed that on the night of February 7, 2005, defendant asked Shawanna Leasure to accompany him to his apartment, and when she refused, he told her that his cousin had a gun and would shoot her if she did not obey. Once at defendant's apartment, Leasure attempted to run. When defendant caught her, he demanded money. At first Leasure refused, but eventually she gave defendant \$40, and later reported the incident to the police.

The jury found defendant guilty of robbery, and the trial court sentenced him to a seven-year prison term.

On appeal, defendant asserts that the trial court violated Rule 431(b) in its questioning of just three of the jurors: Rivera, Kominski and Clancy.

As a threshold matter, the State contends that defendant has forfeited review of this issue by failing to both enter a contemporaneous objection and raise it in a posttrial motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant argues

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that he has not forfeited review of this issue because it is an issue that invokes his constitutional right to a fair and impartial jury that was "litigated at trial" and because requiring counsel to object to the trial court's Rule 431(b) questioning is contrary to the purpose of the Rule. However, the Illinois Supreme Court rejected both of these arguments in *People v. Thompson*, 238 Ill. 2d 598, 611-612 (2010), and therefore defendant has forfeited review of this issue.

To bypass forfeiture, a defendant has the burden of showing that the trial court committed plain error. *Thompson*, 238 Ill. 2d at 613. Here, defendant contends that the issue may be considered under the second prong of the plain error doctrine, which applies when an error is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *E.g.*, *Thompson*, 238 Ill. 2d at 613.

The first question for plain error review is whether an error has occurred. *Id.* Here, we find no error in the trial court's Rule 431(b) questioning of the jurors.

Rule 431(b) requires that the trial court ask each juror, either individually or in a group, whether they understand and accept the four following principles: (1) a defendant is presumed innocent; (2) a defendant must be proved guilty beyond a reasonable doubt; (3) a defendant is not required to present evidence on his own behalf; and (4) if a defendant chooses not to testify, that cannot be held against him. In addition, the

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"court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

Defendant first argues that the court violated Rule 431(b) by failing to specifically ask Clancy and Kominski if they understood the four principles. For both jurors, the court asked if they had "any quarrel" with the principles, and then whether they would "abide by" them. We agree with the second district's finding in *People v. Blankenship*, No. 2-08-1012, slip op. at 5 (Ill. App. Nov. 15, 2010), that "acceptance implies understanding" and therefore find no error in the court's questioning of Clancy or Kominski. See also *People v. Digby*, No. 1-09-0902, slip op. at 7-8 (Ill. App. Nov. 24, 2010) (the trial court did not err when asking the venire whether they "had a problem" with or "disagreed" with or had "difficulty with" the principles); *People v. Davis*, No. 1-08-2895, slip op. at 4 (Ill. App. Nov. 12, 2010) (finding the court's question of whether anyone had "a problem" with a principle was sufficiently broad to incorporate understanding and acceptance); *contra, People v. White*, No. 1-08-3090, slip op. at 8-9 (Ill. App. Jan. 7, 2011) (the trial court did not comply with Rule 431(b) when it did not specifically ask whether jurors understood the fourth principle.)

Defendant next argues that the trial court erred when it did not specifically ask Rivera if he accepted the last two

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principles. For these principles, the trial court asked, "The defendant need not offer any evidence on his own behalf and need not testify. And if he does not testify you may not consider that fact as evidence against him?" Rivera replied that he understood. Here, we find that the trial court did not violate Rule 431(b). Rivera was the fourteenth prospective juror questioned. He was privy to the trial court's questioning of the thirteen prospective jurors before him, which remained consistent, thorough, and individualized at defendant's request. Under these circumstances, we cannot find that the trial court erred in his Rule 431(b) questioning of Rivera. See *Digby*, No. 1-09-0902, slip op. at 7-8 (there is no particular method by which Rule 431(b) dictates that the court establish the venire's understanding and acceptance of the principles).

However, even assuming this exchange could be deemed error (see *White*, No. 1-08-3090, slip op. at 8 (the trial court erred when it did not determine whether the jurors understood one principle)), it would still not rise to the level of plain error. The court in *Thompson* held that a Rule 431(b) violation would only satisfy the second prong of the plain error doctrine if the defendant was able to show evidence of a biased jury. *Thompson*, 238 Ill. 2d at 613-614. Here, as in *Thompson*, defendant has presented us with no evidence that his jury was biased, and therefore he has forfeited review of the issue.

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For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.