THIRD DIVISION
June 29, 2011

2011 IL App (1st) 090675-U
No. 1-09-0675

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
	)	Cook County, Illinois.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 03 CR 16804
	)	
QUENTIN JONES,	)	Honorable Michael Brown,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE MURPHY delivered the judgment of the court.
Quinn, P.J., and Neville, J., concurred in the judgment.

O R D E R

HELD: Where a jury informed the trial court three times in eight hours of deliberation on a charge of first degree murder that one juror was dissenting from a guilty verdict, the court did not err by instructing the jury to continue deliberating or by preparing to sequester the jury, as there was insufficient evidence that those instructions and decisions coerced the jury into a guilty verdict. The court did not err in questioning potential jurors as required by Supreme Court Rule 431(b); also, defendant forfeited any such error and failed to show plain error. Where the jury found defendant guilty of first degree murder on a felony-murder theory based on attempted armed robbery, and the court did not sentence defendant for the latter offense, there is no reason for this court to vacate the latter count as a lesser-included offense.

¶ 1 Following a jury trial, defendant Quentin Jones was convicted of first degree murder and sentenced to 49 years' imprisonment. On appeal, defendant contends that he was deprived of a

fair trial when the court ordered the jury to continue deliberating despite three notes informing the court that there was a lone dissenting juror and a defense motion for a mistrial. Defendant also contends that the court failed to comply with Supreme Court Rule 431(b) (eff. May 1, 2007), requiring that the court ascertain whether each potential juror understands and accepts certain principles regarding the presumption of innocence and the burden of proof. Lastly, defendant contends that his conviction for attempted armed robbery should be vacated as a lesser included offense of his first degree murder conviction under the felony murder rule. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 Defendant and codefendant Anthony Dow were charged with first degree murder and attempted armed robbery in the shooting death of Jose Gonzalez on June 21, 2003. They were tried simultaneously by two juries, with defendant tried on a felony-murder theory for killing Gonzalez while committing attempted armed robbery and while armed with a firearm. All further references to the venire or jury are to defendant's jury.

¶ 3 During *voir dire*, the court asked the venire members to stand if they "have any problems" with the concepts of presumption of innocence, the State's burden of proof beyond a reasonable doubt, or that a defendant is not required to present evidence. Three members stood and were questioned in more detail by the court. The court also told the venire that the defendant did not have to testify and asked the members to stand if any of them "will hold that decision against the defendant" if he decided not to testify. Nobody stood. The case proceeded through *voir dire* to the empaneling of a jury.

¶ 4 At trial, Jose Gomez, Gonzalez' son-in-law and co-worker, testified that he and Gonzalez each owned and operated an ice cream truck. From April through September, Gonzalez would drive his truck through the Roseland neighborhood on the south side of Chicago from 11 a.m. to 9 p.m. Gomez saw Gonzalez leave for his route at 11 a.m. on June 21, 2003, and they spoke by telephone at about 2 p.m. When Gonzalez was not home by 9:30 p.m., Gomez traveled

Gonzalez' route in search of him. Gomez found police and firefighters around Gonzalez' ice cream truck at 122nd Street and Eggleston Avenue and were told that Gonzalez was dead.

¶ 5 Paramedic Dwayne Redmond testified that he found Gonzalez's body inside an ice cream truck at 122nd and Eggleston shortly before 9:30 p.m. on June 21, 2003. Responding to a telephone report of a gunshot victim, he followed a trail of blood on the pavement leading to the passenger side of the locked truck. Firefighters forced it open and Redmond found the body with a gunshot wound to the head. The body was bare-headed, and Redmond did not find a hat or cap inside the truck.

¶ 6 Police forensic investigator Carl Brasic testified that he examined, photographed, and videotaped the area in and around the ice cream truck on the evening in question. Upon his arrival at about 11 p.m., the truck's engine was still running and the fuel gauge was at the "full" mark. There was $26, all singles, on a shelf in the truck. Also on a shelf, he found a baseball cap with a hole in it and blood on the inside. He put the cap in a bag and placed it with Gonzalez' body for the medical examiner. Investigator Brasic also found a bullet hole in the roof of the truck above Gonzalez' body, and upon cutting away the damaged part of the inner roof found a spent bullet and an outward dent in the outer roof. He bagged and inventoried the bullet and the excised portion of the roof. Investigator Brasic found nine fingerprints on the exterior of the truck, on and around a window and near the passenger-side door. He did not take a sample of the blood in or around the truck.

¶ 7 Forensic scientist Caryn Tucker testified that the spent bullet was a 9-millimeter or .38 caliber bullet more likely to be the former, so that the weapon was more likely a semiautomatic pistol rather than a revolver. Forensic scientist Anastasia Petruncio testified that the fingerprints from the truck did not match defendant or codefendant.

¶ 8 Assistant medical examiner Dr. Mitra Kalelkar testified that she examined Gonzalez's body. He had a gunshot wound to the head just behind his right ear, with an exit wound on the top of his head. The entry wound showed no signs of close-range firing and there were no

wounds, burns, or gunshot residue on his hands. The cap that came with Gonzalez's body had a hole consistent with him wearing the cap when he was shot: the cap hole corresponded to the hole in the top of his head, and there was blood around the cap hole and fabric inside the head wound. While Gonzalez died very quickly from his wound and resulting brain damage, Dr. Kalelkar could not determine the time of death.

¶ 9 Police officers Scott Freeman and Dereck Miller testified that defendant was arrested at midday on July 7, 2003, near 123rd and Perry Avenue for selling Officer Miller narcotics. Perry Avenue is several blocks east of Eggleston Avenue. Officers on narcotics duty focused on that area at the behest of detectives investigating the Gonzalez killing so they could question people who lived in the area and may know something about the crime.

¶ 10 At the police station, Officer Freeman asked defendant if he had information about unsolved homicides and aggravated batteries "that would give [him] consideration in relation to [his] narcotics case." When defendant indicated that he did, Officer Freeman informed defendant of his *Miranda* rights, and defendant indicated that he understood them. Defendant discussed two unrelated crimes, and Officer Freeman learned from homicide detectives that his information was correct though not of particular use to police. Defendant then told Officer Freeman that he was present for the "ice cream truck murder" and that "Anthony shot the ice cream truck driver." Officer Freeman handed the case, and defendant, over to homicide detectives. While defendant was in custody for several hours before Officer Freeman handed over the case -- he was arrested after noon, and Officer Freeman left the station at about 10 p.m. -- he was being questioned for only a portion of the time, was fed, and was not handcuffed while at the police station.

¶ 11 Sergeant Jose Ramirez testified that he was Officer Freeman's supervisor in 2003. When Officer Freeman told him that defendant had admitted to having knowledge of the Gonzalez murder, Sergeant Ramirez offered defendant a confidentiality arrangement whereby he would not be charged that day with his narcotics offense if he provided useful information on another crime. Sergeant Ramirez explained that the Chicago police routinely offer such an arrangement, which

is a deferral of prosecution rather than immunity: the suspect can be charged up to two years later if he became uncooperative and would not be immune if he implicated himself in his statement on the arrested offense or another offense. Sergeant Ramirez denied telling defendant that he could "cut him a deal" but could not recall if he mentioned extending "consideration" to defendant.

¶ 12 Police detective Sylvia VanWitzenburg testified that she investigated the Gonzalez homicide and interviewed defendant after being told by Sergeant Ramirez that defendant had information on the case. Defendant was informed of his rights and stated that he understood them. He then stated that he was with codefendant Dow at a friend's home on June 21, 2003, when Dow asked him to join in robbing an ice cream truck driver. Dow armed himself and defendant with guns before they went out to do so. However, when they found an ice cream truck, they recognized the driver and believed that he could recognize them so they unsuccessfully searched for another truck. When defendant parted from Dow, he gave the gun he was carrying back to Dow. Detective VanWitzenburg and other officers went to arrest Dow based on this information.

¶ 13 Detective Michael Baker testified that he investigated the Gonzalez homicide. On the day of the murder, he briefly examined the inside of the ice cream truck; he saw the cap on the shelf and did not move or remove anything before forensic investigators performed their duties. Detective Baker and other officers arrested codefendant Dow at the home of his girlfriend Nikeisha Short near 123rd Street and Perry Avenue on July 8, 2003.

¶ 14 Nikeisha Short, codefendant Dow's girlfriend in 2003 and friend of defendant and Dow, testified that defendant and Dow were at her home on the afternoon of June 21, 2003, although she was not certain of the date. Short overheard defendant tell Dow "Let's hit a lick on the ice cream truck driver." Short understood "lick" to mean a robbery. She walked away before she could hear Dow's response, but a short time later slapped Dow in the face and tried to dissuade him from the robbery. Several days later, after defendant and Dow were arrested, Short gave a

statement to police to the effect that the conversation in question occurred on the afternoon of June 21, 2003. Short denied that Dow acknowledged that he intended to commit a robbery and denied that she gave a statement to that effect.

¶ 15 Assistant State's Attorney (ASA) Luann Snow testified that Short testified before a grand jury in July of 2003. In that testimony, Short stated that she overheard defendant and codefendant Dow after 4 p.m. on June 21, 2003, and that, when she confronted Dow with what she overheard, Dow dismissed the robbery discussion as a joke. Short told the grand jury that she did not see Dow again that day until after 10 p.m.

¶ 16 Detective John Otto testified that he attended to defendant twice on July 8, 2003, in the morning and midday. Defendant was not handcuffed, was allowed to use the washroom each time, and was given a drink in the morning and a meal in the midday. Detective Otto and another officer brought defendant to another police station in the afternoon, where another officer interviewed defendant out of Detective Otto's presence for about 45 minutes. Up to this time, Detective Otto did not question defendant about the Gonzalez homicide. Detective Otto was then brought into the interview room, informed defendant of his *Miranda* rights, and defendant admitted that his earlier statement to Detective VanWitzenburg was not wholly true.

¶ 17 Defendant had correctly stated that he and codefendant Dow followed an ice cream truck but decided not to rob its driver because he could recognize them. However, defendant had omitted that he and Dow then changed cars and drove around again in search of another ice cream truck. When they found one, defendant, armed with a gun, stood nearby as lookout while Dow robbed the driver. Defendant heard a gunshot and a curse from Dow, then Dow ran to the car. When defendant returned to the car, Dow told him to "go go go" without further explanation and they drove to Short's home. Defendant never said that he or Dow planned or intended to kill the ice cream truck driver.

¶ 18 Detective Otto took defendant to another police station, where that evening he gave substantially the same account to Detective Otto and other detectives before eating dinner. At

about midnight between July 8 and 9, ASA James Murphy interviewed defendant after telling him that he was a prosecutor and reading him the *Miranda* warnings. Defendant then chose to give a videotaped statement, and ASA Murphy spoke with him out of Detective Otto's presence.

¶ 19 ASA James Murphy testified that, after he told defendant that he was a prosecutor and gave him *Miranda* warnings, defendant gave a statement admitting to his participation in the Gonzalez homicide. Defendant and codefendant Dow armed themselves with guns and went out to find an ice cream truck to rob. When they found one, defendant was the lookout and Dow robbed the truck. Defendant heard a gunshot and a curse by Dow and then he and Dow fled the scene. Defendant agreed to give his statement again on video. ASA Murphy then asked defendant, when they were alone in the room, if he had any complaints about his treatment by the police; he did not. Defendant signed a form consenting to a video statement and then gave a statement on video that was substantially similar to his earlier account.

¶ 20 The State rested its case, and defendant's motion for a directed verdict was denied without argument by the parties or findings by the court.

¶ 21 Bernadine Shavonne Skillom (Shavonne) testified for the defense that defendant is her first cousin and that she saw defendant on June 21, 2003, at her grandparents' home at 121st Street and Wentworth Avenue in Chicago. That morning, Shavonne borrowed her grandmother's car and, accompanied by defendant, ran several errands and visited various friends and relatives throughout the south side of Chicago as well as at her Matteson home. Shavonne had to borrow the car at about 10:30 or 11:30 a.m. because her own car had been borrowed by Tim Skillom, her uncle and defendant's father, earlier that morning. Defendant was with Shavonne until shortly before 9:30 p.m., when she dropped off defendant on Perry Avenue near 122nd Street to go back to her grandparent's home as Tim had recently returned with her car. As she drove away, Shavonne saw the police and paramedics at 121st and Eggleston. On cross-examination, Shavonne testified that defendant left her at about 2:30 p.m. for about a half-hour at about 57th and Wood Streets in Chicago.

¶ 22 Bernadine Skillom (Bernadine), grandmother of defendant and Shavonne, testified that, at about 1 p.m. on the day in question, Shavonne borrowed her car and defendant accompanied Shavonne. Bernadine did not see defendant again until the next day. Markie Skillom, defendant's grandfather, testified that Tim did not borrow Shavonne's car until "early in the evening." Tim Skillom, defendant's father, testified that he borrowed Shavonne's car at about 2 or 3 p.m. and returned it at about 8:30 p.m. when it "wasn't quite dark."

¶ 23 Defendant rested his case. His renewed motion for a directed verdict was denied without argument or findings.

¶ 24 After closing arguments and jury instructions, the jury retired to deliberate at about 1:55 p.m. The jury sent a notice at 2:45 p.m. asking for Gonzalez's hat and a copy of Officer Otto's testimony. The court provided the jurors with the transcript and allowed them to each briefly examine the hat in open court before returning to the jury room. At about 3:53 p.m., the jury sent a note asking if *Miranda* rights given by memory prior to a videotaped confession are valid. The court responded that they were and instructed the jury to continue deliberating. At 4:43 p.m., the jury asked for a transcript of Short's police interview on the evening of codefendant's arrest. The court told the jury that they had the evidence and instructed them to continue deliberating.

¶ 25 At 6:02 p.m., the jury sent a note reading:

> "After two rounds of voting, we have not come to a unanimous decision on the case. With the first round of votes, we came to a 10-2 decision for 'Guilty' of first degree murder. With the second round of voting, we have come to an 11-1 decision for 'Guilty' of first degree murder. After extensive discussion, it is felt by all members of the panel that their respective votes will not change."

Over a defense objection that the jury should be simply instructed to continue deliberating, the court instructed the jury as provided in *Prim* and the Pattern Jury Instructions. *People v. Prim*,

53 Ill. 2d 62 (1972); Illinois Pattern Jury Instructions, Criminal, No. 26.07 (4th ed. 2000)("IPI 26.07").

¶ 26 At 7:27 p.m., the jury sent another note: "Upon further deliberation of the facts, we are still unchanged in our overall vote of 11-1 for 'Guilty'. We have re-examined the salient facts and our honest convictions based solely on the facts are unchanged." (Emphasis in original.) Over a defense objection that the court should discharge the jury as deadlocked, the court instructed the jury to continue deliberating.

¶ 27 At 8:51 p.m., the jury sent another note:

> "Upon further consideration of the evidence, we are still conflicted. Both sides are very adamant of their interpretation of the facts and it does not appear that the dissenting view can change his/her opinion without surrendering his/her honest conviction. We feel that further deliberation at this point would not alter the vote. We are still at 11-1 in favor of 'Guilty'." (Emphasis in original.)

Over a defense objection that the jury should be discharged as deadlocked, the court instructed the jury to continue deliberating, observing to counsel that there was no indication in the note that the jurors were not communicating with each other and thus discharge "would be premature." Over a defense objection that there was no particular reason to sequester the jury, the court ordered the sheriff's deputies to prepare for sequestration.

¶ 28 At 9:56 p.m., as the court was asking one of the deputies if they were preparing to sequester the jury, the jury returned with a verdict. The jury found defendant guilty of first degree murder and attempted armed robbery, also finding that he committed his offenses while armed with a firearm.

¶ 29 In his post-trial motion, defendant raised various issues related to jury selection, but none involving the questions to the venire mentioned above. The motion also raised various

challenges to the court's post-instruction management of the jury, including giving the *Prim* instruction twice [*sic*] and failing to discharge the "hung" or deadlocked jury while giving "coercive" instructions preparing for sequestration.

¶ 30 The court denied the post-trial motion. The court found that it "used what I thought to be *** accepted law in Illinois in instructing the jury" by using "approved I.P.I. instructions" to instruct the jury to keep deliberating "until I tell them not to deliberate." The court also found that the preparations of the sheriff's deputies for jury sequestration did not violate defendant's due process rights and that it was speculative whether defendant was prejudiced thereby.

¶ 31 Following evidence and arguments in aggravation and mitigation, the court sentenced defendant to 49 years' imprisonment for first degree murder. The court denied defendant's motion to reconsider his sentence, and this appeal timely followed.

¶ 32 On appeal, defendant contends that he was deprived of a fair trial when the court ordered the jury to continue deliberating despite three notes informing the court that there was a lone dissenting juror, with the final note indicating that the jury could not reach unanimity without the dissenting juror surrendering her honest conviction, and where the court ordered the sheriff's deputies to prepare to sequester the jury shortly before it returned its verdict.

¶ 33 A trial court's comments to the jury are improper where, under the totality of the circumstances, the comments actually interfered with the jury's deliberations and coerced a guilty verdict. *People v. Wilcox*, 407 Ill. App. 3d 151, 163 (2010). Coercion is a highly subjective concept not susceptible to precise definition, and thus a reviewing court's decision often turns on the difficult task of determining whether the comments at issue imposed such pressure on the minority jurors as to cause them to defer to the majority in order to reach a verdict. *Wilcox*, 407 Ill. App. 3d at 163. While the length of deliberations following the court's comments is, by itself, insufficient to determine whether those comments were the primary factor in procuring a verdict, brief deliberations invite an inference of coercion. *Wilcox*, 407 Ill. App. 3d at 163.

¶ 34 In *Prim*, our supreme court noted that supplemental instructions given to juries unable to reach a verdict were commonly referred to as "dynamite charges" or "*Allen* charges," from *Allen v. United States*, 164 U.S. 492 (1896). Though the United States Supreme Court approved such instructions in *Allen*, they were highly controversial in the courts of appeal because of "the coercive nature of the charge which contains the language, the effect of which is to urge those in the minority on the jury to re-evaluate their positions giving consideration to the fact that the majority of the jury who heard the same evidence have taken a different position." *Prim*, 53 Ill. 2d at 73. The *Prim* court thus held that juries should be instructed:

> "The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous. It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case." *Prim*, 53 Ill. 2d at 75-76.

This instruction was codified as IPI 26.07 without change. The failure to give a *Prim* instruction is not *per se* reversible error. *Wilcox*, 407 Ill. App. 3d at 164.

¶ 35 Sequestering a jury is not necessarily coercive, and while notably brief deliberations after a reference to sequestration may invite an inference that the reference coerced the jury's verdict, the subsequent time of deliberation is not by itself a conclusive indication of coercion. *People v. McCoy*, 405 Ill. App. 3d 269, 275-76 (2010). Indeed, our supreme court has recognized that informing a jury that preparations for sequestration would soon be made tends to remove, rather than create, pressure to reach a verdict because the jurors need not reach an immediate decision. *McCoy*, 405 Ill. App. 3d at 276, citing *People v. Steidl*, 142 Ill. 2d 204, 231-32 (1991). We review on an abuse-of-discretion basis a claim that the trial court coerced a guilty verdict from the jury by allowing deliberations to continue after the jury learned that it would be sequestered. *McCoy*, 405 Ill. App. 3d at 275.

¶ 36 Here, after four hours of deliberation on a charge of first degree murder, following a trial with multiple witnesses over several days, the jury informed the court that it was divided 11-1 in favor of guilt. The court gave the instruction approved by our supreme court in *Prim* and codified as IPI 26.07. Twice again in the next three hours, the jury informed the court that it was still thus divided, and twice the court instructed the jury to continue deliberating. We find no error in the court deciding to instruct the jury to continue rather than discharging the jury after such relatively brief deliberations.

¶ 37 Defendant cites *People v. Danielly*, 274 Ill. App. 3d 358, 366 (1995), and *People v. Santiago*, 108 Ill. App. 3d 787, 807 (1982), for the proposition that giving a *Prim* instruction when the court knows that the jury is leaning towards conviction puts pressure on the holdout juror or jurors to convict. In light of our supreme court's effort in *Prim* to craft an instruction that is not coercive towards the minority in divided juries, we are highly reluctant to hold that giving a *Prim* instruction has precisely the effect that the supreme court was trying to avoid. "Although the language of the *Prim* instruction does encourage jurors to reevaluate their

positions, it does not necessarily imply that any one juror should change his or her opinion. Indeed, '[a] judge's instruction[ ] to continue deliberations after an unsolicited disclosure does not imply approval, disapproval or anything else, nor does it suggest that minority jurors change their stance.' " *People v. Eppinger*, 293 Ill. App. 3d 306, 311-12 (1997), quoting *People v. Farella*, 79 Ill. App. 3d 440, 446 (1979).

¶ 38 Furthermore, *Danielly* and *Santiago* do not support the weight defendant places on them. In *Danielly*, the trial court erred by engaging in *ex parte* communication with the jury, constituting reversible error unless harmless beyond a reasonable doubt. *Danielly*, 274 Ill. App. 3d at 365-66. *Danielly* cited *Santiago* to the effect that giving the *Prim* instruction to a jury favoring conviction could possibly prejudice a defendant and thus the *ex parte* communication error was not harmless beyond a reasonable doubt. *Danielly*, 274 Ill. App. 3d at 366.

¶ 39 In *Santiago*, the jury told the court that it was divided 8-4 for conviction and the court gave a *Prim* instruction. *Santiago*, 108 Ill. App. 3d at 804. However, there is much more to *Santiago*: the next day, the court asked the jury three times how deliberations were proceeding and was told that the jury was divided 11-1 and that further deliberation may not be productive; the jury reached a verdict the following day. *Santiago*, 108 Ill. App. 3d at 804-05. The issue before this court was whether "the actions of the trial court in repeatedly calling the jury into open court, asking the numerical division of the jury and ordering them to continue deliberations after the court became aware that the majority of the jurors was in favor of a verdict of guilty and after the foreman indicated that he did not know whether further deliberations would help, coerced the minority into returning a verdict of guilty." *Santiago*, 108 Ill. App. 3d at 805. This court found that these factors "taken together" indicated that the verdict was reached by "improper prodding" by the court. *Santiago*, 108 Ill. App. 3d at 806-07. In *Eppinger*, we held that the "facts in *Santiago* indicate that the trial judge's knowledge of the numerical division of the jury combined with his *Prim* instruction did not constitute 'improper prodding' alone. Rather, the judge's repeated attempts over three days to coerce the jury into reaching a verdict *combined*

with his knowledge of the numerical division is what constituted the improper coercion." (Emphasis in original.) *Eppinger*, 293 Ill. App. 3d at 312-13. We agree and note that the trial court here did not inquire of the jury how its deliberations were proceeding but in all instances was responding to notes from the jury voluntarily disclosing the extent of its division.

¶ 40 Moreover, while the court did not give the carefully-balanced *Prim* instruction on the latter occasions, neither did it give an instruction similar to the *Allen* "dynamite" instructions condemned in *Prim*. The court never instructed the jury to reach a verdict or precluded the option of not reaching a verdict. Cf. *Wilcox*, 407 Ill. App. 3d at 164-65 (erroneous to tell jurors that they were "pledged to obtain a verdict" and instruct them to "continue to deliberate *and* obtain a verdict" so that this court concluded that "being deadlocked was not an option")(Emphasis in appellate opinion).

¶ 41 Lastly, while the court decided to sequester the jury and the jury presumably learned of this decision from the deputies' preparations, the jury did not return a verdict until an hour later, indicating substantial deliberation rather than a rush to reach a verdict. Cf. *Steidl*, 142 Ill. 2d at 232 (no coercion when 45 minutes of deliberation followed sequestration notice); *People v. Branch*, 123 Ill. App. 3d 245 (1984)(coercion found where jury sent note that it was divided 11-1, court told jury that "you are faced with a dilemma. The person on your jury indicated in this note evidently should not have received jury service" and that it would be sequestered in an hour, and verdict was returned 10 minutes after the court's comments and notice of sequestration). In sum, we find an insufficient basis for concluding that the court's comments and decisions coerced the jury's guilty verdict.

¶ 42 Defendant also contends that the court failed to comply with Supreme Court Rule 431(b), requiring that it ascertain whether each potential juror understands and accepts certain principles regarding the presumption of innocence and the burden of proof.

¶ 43 Supreme Court Rule 431(b) requires in jury trials in criminal cases that:

> "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. *** 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." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

Under the Rule, "trial courts may not simply give 'a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law.' " *People v. Thompson*, 238 Ill. 2d 598, 606 (2010), quoting Ill. S. Ct. R. 431, Committee Comments. Instead, the Rule requires a court to:

> "ask each potential juror whether he or she understands and accepts each of the principles in the rule. The questioning may be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010).

¶ 44 In *Thompson*, the supreme court found that the trial court failed to comply with Rule 431(b) when it "did not question any of the prospective jurors on the third principle, whether they understood and accepted that defendant was not required to produce any evidence on his own

behalf." *Thompson*, 238 Ill. 2d at 607. "Additionally, while the trial court asked the prospective jurors if they understood the presumption of innocence, the court did not ask whether they accepted that principle. The rule requires questioning on whether the potential jurors both understand and accept each of the enumerated principles." *Thompson*, 238 Ill. 2d at 607.

¶ 45 Since *Thompson*, this court has held that the trial court complies with Rule 431(b) by asking the venire after each of the principles in the Rule if the members "have any difficulty with the principle" because the "language used by the trial court encompasses both understanding and acceptance; an individual who did not understand the principle or did not accept the principle would 'have *** difficulty' with the principle." *People v. Ware*, 407 Ill. App. 3d 315, 356 (2011).

¶ 46 Failure to comply with Rule 431(b) "does not necessarily render a trial fundamentally unfair or unreliable in determining guilt or innocence." *Thompson*, 238 Ill. 2d at 611. Thus, non-compliance with Rule 431(b) is not a structural error necessarily requiring reversal. *Thompson*, 238 Ill. 2d at 611. The usual rule that a defendant forfeits a claim or objection not raised in the trial court applies to a court's failure to comply with Rule 431(b). *Thompson*, 238 Ill. 2d at 611-12. Moreover, when this court is applying plain-error analysis to determine whether to set aside forfeiture, we will not presume that violation of Rule 431(b) resulted in a biased jury and thus an unfair trial, but instead a defendant must show either that he actually had a biased jury or that the trial evidence was so closely balanced that the guilty verdict may have resulted from the Rule violation. *Thompson*, 238 Ill. 2d at 613-15.

¶ 47 Here, the court asked the venire if any of the members "had a problem" with the concepts of presumption of innocence, the State's burden of proof beyond a reasonable doubt, or that a defendant is not required to present evidence. The court also told the venire that a defendant does not have to testify and asked the members if any of them would hold it against defendant if he decided not to testify. Defendant contends that the court erred by not ascertaining from the potential jurors whether they both understood and accepted the principles, while the State responds that the court's questions did precisely that. We find that asking the venire members if

they had a problem with the principles adequately ascertains whether they understood and accepted the principles: if they either did not understand them or did not accept them, they would have a problem with them. It had the intended effect of prompting venire members who had an issue with the principles to tell the court so that they could be further questioned, as three members did so. The only possible error was in not ascertaining the venire members' understanding and acceptance of each of the four principles separately.

¶ 48 Moreover, any error in the court's application of Rule 431(b) did not rise to the level of plain error, a necessity here as defendant did not preserve this alleged error in the trial court and thus forfeited it otherwise. While defendant argues that the trial evidence was closely balanced, we find that it was not. After being repeatedly informed of his *Miranda* rights, and with no evidence of coercion, defendant gave a videotaped statement admitting to his participation with codefendant Dow in the attempted armed robbery of Gonzalez's ice cream truck that led to Gonzalez' death. Dow's girlfriend Short also implicated defendant and Dow in the robbery attempt; she consistently stated that defendant had a conversation with Dow about robbing an ice cream truck, and though she professed uncertainty at trial over the date of that conversation, her earlier statements and testimony placed the conversation on the afternoon of the murder. The physical evidence corroborated defendant's statement admitting to a horribly failed robbery attempt: the truck was still locked, there was still money inside, and the gunshot damage to the roof is consistent with Dow firing into the truck through the sales window. Lastly, while defendant's cousin provided alibi testimony, her account of the whereabouts of herself and defendant on the day of the murder was contradicted by defendant's father and grandparents as well as by Short's testimony and statement regarding the conversation between defendant and Dow on the afternoon of the murder.

¶ 49 Defendant's final contention is that his conviction for attempted armed robbery should be vacated as a lesser included offense of his first degree murder conviction under the felony-murder rule. However, defendant was not sentenced upon the attempted armed robbery verdict

but only the first degree murder verdict. It is axiomatic that there is no final judgment on a criminal conviction until a sentence is imposed. *People v. Johnson*, 392 Ill. App. 3d 127, 132 (2009).

¶ 50 Defendant cites *People v. Cunningham*, 365 Ill. App. 3d 991, 994 (2006), and *People v. Cooper*, 283 Ill. App. 3d 86, 93 (1996), for the proposition that we have the power to vacate an unsentenced verdict or finding where the case is properly before us on another count. Though we may have the power to vacate the attempted armed robbery verdict here as a lesser-included offense, as in *Cunningham* and *Cooper*, we see no reason to do so. As the record shows and both parties acknowledge, that verdict is the basis for defendant's first degree murder conviction on a felony-murder theory; that is, attempted armed robbery is the predicate felony here. Thus, there is no redundant or extraneous verdict where vacatur would clarify the record. Indeed, vacating the predicate felony could muddy the waters if and when this case is again before the courts. The trial court correctly addressed the lesser-included status of the attempted armed robbery verdict by not sentencing defendant for it.

¶ 51 Accordingly, the judgment of the circuit court is affirmed.

¶ 52 Affirmed.