2011 IL App (2d) 091093-U
No. 2-09-1093
Order filed September 8, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-3830
JESSIE J. JONES, JR.,	)	Honorable John R. Truitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: There was sufficient evidence to prove defendant guilty of home invasion and residential burglary beyond a reasonable doubt; although the trial court did not fully comply with Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) in questioning potential jurors, the error did not rise to the level of plain error; and the trial court did not err in its responses to jury questions.

¶ 1 Following a jury trial, defendant, Jessie J. Jones, Jr., was found guilty of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and residential burglary (720 ILCS 5/19-3 (West 2008)). Defendant was sentenced to 35 years' imprisonment on the home invasion conviction. On appeal, defendant argues that: (1) he was not proven guilty of the crimes beyond a reasonable doubt,

because there was insufficient evidence of identity; (2) we must reverse his conviction for home invasion because the State did not prove that the victim suffered physical, emotional, or psychological injury, or that he intentionally inflicted any such injury; (3) he is entitled to a new trial because the trial court violated Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) in questioning the venire; and (4) he is entitled to a new trial because the trial court improperly responded to jury questions. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On October 22, 2008, defendant was charged by indictment with the aforementioned crimes. The State subsequently filed a superceding information. The home invasion charge alleged that on September 19, 2008, defendant, who was not a peace officer acting in the line of duty, knowingly and without authority entered the home of Marjorie Morrow, who was over 60. It further alleged that defendant knew or had reason to know that someone was inside; that he intentionally injured Morrow "in that a blanket was placed over [her and] she was held down"; and Morrow suffered psychological or emotional trauma. The residential burglary charge alleged that defendant entered Morrow's home intending to commit a theft. After a preliminary hearing, the trial court found that there was probable cause to believe that defendant had committed a crime.

¶ 4 Defendant's jury trial began on April 6, 2009. Marjorie Morrow testified as follows. She was 83 years old and lived alone at 3134 Talbot Trail in Rockford. On September 19, 2008, she was sleeping when she was awakened around 11 p.m. by the light turning on. Two men came into her bedroom and "put a blanket over [her] head." She saw the men only briefly and without her glasses on. All she remembered about their appearance was that they were two black men. She also thought they were in their late teens or 20s. One of the men "held [her] down with a blanket on [her] head"

and the other man looked through her jewelry boxes. Morrow was frightened and said, " 'Get out of here, you creeps." She knew that the men had left when it got very quiet. She then called 911. Morrow estimated that she was under the blanket for 10 to 20 minutes.

¶ 5 Morrow walked around the house and saw that lights were on and drawers were open. She discovered that a lot of jewelry, including her engagement and wedding rings, were missing, as well as blank checks. Morrow identified a photograph showing her bedroom dresser with a check box on top; Morrow testified that she always kept the checks in a drawer and would not have left them out. After the police arrived, they told her to call her son, who "insisted that [she] go home with" him. She spent the night at her son's house. Morrow did not know defendant and there was no reason for him to have ever been in her house.

¶ 6 Officer Andrew Perino testified that he responded to a call from Morrow's residence at about 11:04 p.m. on September 19, 2008. He observed that the rear sliding glass door was open and the screen had been cut. Once inside the house, he spoke to Morrow, who was "visibly upset and shaken. Her voice was raised and her hands were shaking." Morrow calmed down after "[a] few moments." She described one of the men as black, about 16 to 19 years old, five feet nine inches, 140 to 150 pounds, and wearing a black stocking cap. She described the other person as a younger black male. Morrow went with Perino throughout the house and showed him what appeared to be missing or out of place.

¶ 7 Detective David Cone testified that he processed the scene at Morrow's house. The rear sliding glass door had been lifted up within its track, and the screen door was cut. After being shown items that the suspects were believed to have handled, Cone checked for latent fingerprints, which are not necessarily visible to the human eye. Cone recovered a latent print, sufficient to make a

comparison, from the top of the checkbook box in the bedroom. He identified the latent impression as People's Exhibit 19A. Cone opined that the fingerprint was not of sufficient qualify to be used in the Automated Fingerprint Identification System (AFIS), which is a computer database of fingerprints used to generate a list of potential suspects. Even with the AFIS, a detective trained in fingerprint analysis would still have to manually compare the latent print with each suspect's print. The computer system would not specifically indicate who the print matched.

¶ 8 Officer Michael Clark testified that on September 24, 2008 (several days after the robbery), at about 12:55 p.m., he was dispatched to 4019 Eaton. There, he spoke to defendant and another black man. Defendant said that he lived in the area, at 3313 Pecan. Clark "generate[d] a report" after speaking to the men.

¶ 9 Lieutenant David Huff testified that he had taken defendant's fingerprints on one occasion, and he identified People's Exhibit 20 as defendant's fingerprint card.

¶ 10 Detective Duane Hackbarth provided the following testimony. He was assigned to Morrow's case on September 22, 2008. Two days later, he was talking to other detectives in the burglary unit, and one of them mentioned Officer Clark's report. After Hackbarth read the report, defendant became a suspect in the case. Hackbarth was aware of the latent fingerprint taken from Morrow's residence, and he asked Detective Shimaitis to compare the latent print with defendant's fingerprint card. Later that afternoon, Shimaitis told him that the prints matched. Hackbarth identified an aerial map showing defendant's residence, Morrow's house, and 4019 Eaton Drive, where Officer Clark was dispatched.[1]

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[1]The map shows that the three homes are within a short distance of each other.

¶ 11 Hackbarth obtained an arrest warrant for defendant, and on September 25, 2008, he went to 3313 Pecan Street with other officers to execute the warrant. Two officers went to the back of the residence while Hackbarth and the others knocked on the door and announced their presence. There was no response, and the officers in back entered the house through an open window and then opened the front door. The officers continued announcing their presence and ordered anyone inside to come out with their hands up. Officer Clark found defendant in a closet underneath a stairwell, hiding under pillows and blankets. Defendant was arrested without a struggle.

¶ 12 Detective Brian Shimaitis testified as follows. He had been employed with the Rockford Police Department for over 15 years. He had been a crime scene detective assigned to the "Identification Unit" since 2005, and he had also been "working with fingerprints" since that time. His education and training in the area of fingerprints consisted of: basic training at the police training institute; training by the State of Illinois for basic crime scene processing, which involved some fingerprint work; a class at Northwestern University in crime scene processing and fingerprint comparison analysis; and a class on complex latent print comparisons and identifications. During his career he had examined tens of thousands of fingerprints, and he had compared latent prints to known inked prints of individuals over 100 times. The trial court qualified Shimaitis as an expert in the field of fingerprints, without objection.

¶ 13 Shimaitis explained that fingerprints are compared on three different levels. The first level is the pattern type, which can be loops, whirls, and arches. If the pattern type is the same, the examiner looks at the ridge lines, checking flow, spaces, and thickness. If those are the same, the examiner looks at "Galton details, also known as minutia or *** points." The Galton details can be a ridge line that: abruptly stops; bifurcates, making a Y-like shape and becoming two ridge lines;

or forms a small dot. For two prints to match, the Galton details "have to be in exactly the same spacial relationship between both." No two fingerprints have ever been found to be the same from two different people, even identical twins.

¶ 14 Shimaitis testified that, at Detective Hackbarth's request, he checked the latent print in People Exhibit 19A against defendant's fingerprint card. He determined that the latent print matched defendant's left thumb print. Shimaitis reached his conclusion by looking through a "loop," which magnifies a print to four times its size, at both the latent and inked prints. Shimaitis identified People's Exhibit 22 as an enlarged copy of defendant's left thumb print from the fingerprint card, which he had marked with lines to show various Galton details. People's Exhibit 23 was an enlarged copy of the latent impression which he had also marked to show the points of comparison. Shimaitis had labeled only 13 Galton details in the enlarged copies so as not to clutter the exhibits, but he had found even more than that. The International Association of Identification (IAI) did not have a minimum number of Galton details it required to reach a conclusion that prints matched, but Shimaitis tried not to work below eight. He knew of matches that were done with as few as five Galton details. Shimaitis opined that defendant made the latent print shown in People's Exhibit 19A. After Shimaitis had concluded his analysis of the prints, he had another fingerprint examiner, Detective Voyles, also look at them.

¶ 15 Shimaitis testified that the latent print was of "fairly good quality" in the top section, but the bottom was partially obscured. It was not of sufficient quality to use the AFIS system; if it had been, Shimaitis would have used the system. The AFIS system was only a search tool, and it still required human examiners to compare prints. Shimaitis did not try to match the latent print to any other

individual. If there were any unexplainable inconsistencies between the two prints, it would not have been a match.

¶ 16 Detective Bruce Voyles testified as follows. He had been employed by the Rockford Police Department for about 16 years. He had been a detective for nine years and had been doing fingerprint work for about that long as well. He was part of the "Identification Unit," and his duties included processing latent evidence and identification of fingerprints. He was a member of the IAI and had attended an IAI seminar in fingerprint identification, as well as a couple of different crime scene-related classes. He had attended classes through "Northwestern Institute" and had also been trained by other fingerprint examiners in the police department. Voyles had examined over 5,000 fingerprints and had compared latent fingerprints with inked fingerprints 200 to 300 times. He had testified as an expert regarding identification of persons through fingerprint analysis about five times. The trial court qualified Voyles as an expert in fingerprint analysis, without objection.

¶ 17 Voyles testified that fingerprints have individual characteristics such as ridge flow, broken ridge lines, and individual minutia or points. No two people have ever been found to have the same fingerprint. Unknown and known prints are compared by looking for similar characteristics. On September 24, 2008, Shimaitis told him that he had compared the latent print in People's Exhibit 19A and defendant's fingerprint card, and he asked Voyles to do the same. Voyles opined that, based on the fingerprints' characteristics, they were both made by defendant. There were not inconsistencies between the two prints "that would dispel it from being an identification." He would describe the prints as being a 100% match. He testified that any inconsistencies in the two prints were caused by a different pressure, because a rolled print is made under perfect circumstances, unlike a latent print. Voyles did not consider running the latent print through the AFIS because he

had already determined that they found a match. The AFIS was used to help narrow down the field of suspects, and not for identification.

¶ 18 The defense rested without presenting evidence.

¶ 19 The jury was provided with People's Exhibits 22 and 23, the enlarged versions of the latent print and the inked print of defendant's thumb that Shimaitis discussed in his testimony. The jury did not initially receive the original latent print or defendant's fingerprint identification card. The jury sent several notes during its deliberations. The first note, sent at 10:30 a.m., asked, "May we please have the fingerprint card[?]" The trial court provided the jury with a redacted version of the fingerprint card, which had the back and dates on the front covered up. At 1:50 p.m. the jury sent another note, asking: "Would we be allowed to have the same type of loop that the detectives used, 4X power optical[?]" The parties agreed with the trial court to answer that question in the negative. The trial court stated in its answer, "No. Rely upon the testimony & evidence presented." At 3:10 p.m., the jury sent a note asking, "What happens with a hung jury and we can't agree[?]" With the parties' agreement, the trial court responded: "You are not to concern yourselves with what happens with a hung jury. You should continue to deliberate."

¶ 20 At 5:10 p.m., the jury sent notes with two questions. The first question asked:

> "Your Honor, Some of the Jurors are basing their decision on the fact that the two detectives were deemed expert and *their opinion* is so because they are experts. That is why we are hung. Even though I have stated it[,] is our decision to make the decision beyond a reasonable doubt[?] Please help." (Emphasis added.)

The trial court opined that "their opinion" referred to the jurors' opinion. The trial court stated that it believed that the jurors were asking if they were required to believe the experts' testimony because they were declared experts. With the parties' agreement, the trial court responded:

> "The 2 detectives were declared experts to testify in the area of fingerprint analysis and comparison. Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case."

¶ 21 The jury's second question asked: "Should we as Jurors be [r]eading the fingerprints and drawing a conclusion of our own interpretation if they are a match[?]" With the parties' agreement, the trial court responded:

> "You may examine all exhibits, including the fingerprint exhibits. You are not experts in the area of fingerprint analysis and comparison and therefore you are not to draw your own conclusion based upon your own interpretation if they are a match. You have heard all the testimony and evidence. Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case."

¶ 22 The jury did not reach a verdict that day and was sent home for the night. The next morning, the jury found defendant guilty of home invasion and residential burglary, and it also found that defendant committed the offenses against someone who was at least 60 years old.

¶ 23 Defendant filed a motion for a new trial on May 11, 2009, and he filed an amended motion for a new trial on August 5, 2009. The trial court denied the motion on September 2, 2009, and proceeded to sentencing. The trial court found that the residential burglary conviction merged into the home invasion conviction, and it entered judgment on the latter.

¶ 24 Defendant filed a motion to reconsider his sentence on September 30, 2009, and the trial court denied the motion on October 14, 2009. Defendant timely appealed.

¶ 25 II. ANALYSIS

¶ 26 A. Sufficiency of the Evidence regarding Identity

¶ 27 Defendant first argues that the State did not prove beyond a reasonable doubt that he was the person who broke into Morrow's house. Defendant states that as to the issue of identity, the State's case against him boiled down to expert testimony that he made the latent fingerprint recovered from the checkbook box found on top of the victim's dresser. Defendant maintains that dubious expert fingerprint testimony left a reasonable doubt as to his guilt.

¶ 28 When faced with a challenge to the sufficiency of the evidence, we must determine 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v.*

Sutherland, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 29 Proof of an offense requires proof that: (1) a crime occurred (the *corpus deliciti*), and (2) it was committed by the person charged. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). Fingerprint evidence is circumstantial evidence that can connect a defendant to the charged offense. *People v. White*, 241 Ill. App. 3d 291, 296 (1993). Where a conviction is based solely on fingerprint evidence, it must satisfy physical and temporal proximity criteria in that the fingerprints must have been found in the immediate vicinity of the crime and under circumstances such that they could have been made only at the time the crime occurred. *People v. Zizzo*, 301 Ill. App. 3d 481, 490 (1998).

¶ 30 Defendant recognizes that the physical and temporal proximity criteria for fingerprint evidence was satisfied here through Morrow's testimony that she did not know him, he had not previously been in her house, and she did not leave the checkbook box on the dresser. However, he argues that the fingerprint science linking him to the latent print remains at issue. Defendant states that he is not challenging the trial court's decision to qualify the State's witnesses as experts, but rather he is arguing that the witnesses' limited expertise in interpreting the smeared, partial print from the crime scene did not rise to the level of proof beyond a reasonable doubt, particularly because one of the experts provided no scientific basis for his opinion.

¶ 31 Defendant first argues that the identification testimony of Detectives Shimaitis and Voyles was weakened by their limited credentials. Defendant argues that Detective Shimaitis had taken only two classes in fingerprint comparison and analysis, aside from basic training in crime scene training. Defendant argues that Detective Voyles had taken unspecified classes at the Northwestern Institute

and had learned from other fingerprint examiners in the department. We note that contrary to defendant's current argument, defense counsel referred to Detective Voyles as having "had lots of training." In any event, the "indicia of expertise is not measured by a given level of academic qualifications, but whether the expert has knowledge and experience beyond the average citizen which would assist the jury in evaluating the evidence." *People v. Petitt*, 245 Ill. App. 3d 132, 145 (1993). The credentials of the fingerprint experts here were not so limited as to automatically call into doubt any conclusions that they reached, as they had each taken several courses involving fingerprint analysis and had examined thousands of fingerprints, including comparing latent prints to known prints more than 100 times.

¶ 32 Defendant further argues that the latent print was of poor quality because the lower portion of it was smeared and it was not of sufficient quality to be submitted to the AFIS, which is designed to generate a list of potential suspects. Defendant argues that by comparing the latent print to only his fingerprint, there was also a psychological incentive to find a match. This argument is not persuasive. All of the witnesses who testified about the AFIS testified that it is used only to create a list of potential suspects, and that a match is then made only by a trained individual comparing the latent print with a suspect's print. Although the latent print recovered here was not of a high enough quality to be run through the automated system, Detective Cone testified that it was sufficient to make a comparison, and Shimaitis testified that it was of "fairly good quality" in the top section. Shimaitis and Voyles also testified that any unexplainable inconsistencies between two fingerprints would cause them to conclude that the prints did not match, which did not occur here.

¶ 33 Defendant additionally challenges the basis for the experts' conclusions. He argues that although Shimaitis testified that he found more than 13 points of comparison between the two prints,

he acknowledged that some prints have over 100 points, and he agreed that his conclusion was based on his "interpretation" of the prints in question. Still, Shimaitis also testified that prints had been labeled as a match with only five points or Galton details, and that he had found more than 13 points but only labeled 13 so as not to clutter the exhibits. Further, case law does not require a minimum number of points of similarity. See *People v. Cambpell*, 146 Ill. 2d 363, 384 (1992) (stating that cases have found fingerprint evidence of identity to be admissible where the expert found only four or five points of similarity; the cases stated that the lack of points of similarity went to the weight of the evidence). The defense may challenge the sufficiency or reliability of the expert's opinion and point out the fallibility of such evidence, and it is up to the trier of fact to weigh the evidence and judge its credibility. *People v. Eiskant*, 253 Ill. App. 3d 773, 776-77 (1993). Here, a rational jury could conclude that Shimaitis's testimony alone showed that the fingerprints matched beyond a reasonable doubt.

¶ 34 Defendant argues that Voyles offered no evidentiary basis for his conclusion and did not even testify which of defendant's inked fingerprints matched the latent print, let alone identify any points of comparison. Defendant analogizes this case to *People v. Safford*, 392 Ill. App. 3d 212 (2009). There, the fingerprint expert did not testify regarding how he arrived at his conclusion that a latent print matched the defendant's fingerprint. On cross-examination, the expert testified that he took no notes as to the number of points of comparison between the prints. *Id.* at 221. The appellate court held that there was no legal foundation explaining how the expert reached his ultimate opinion, so the trial court erred in allowing his opinion into evidence. *Id.* at 228. Defendant argues that, like the expert in *Safford*, Voyles did not explain the process behind his conclusion, and therefore his conclusion should not be accorded any evidentiary value.

¶ 35 Defendant argues that this case is distinguishable from *People v. Ford*, 239 Ill. App. 3d 314 (1992). There, the expert testified that a latent print from the crime scene matched the defendant's left index finger. He testified that no set number of characteristics was required for him to conclude that a lifted print was made by the person who made the inked standard, and that it was not his practice to note the number of corresponding characteristics he found in two prints. *Id.* at 316. On appeal, the defendant attacked the sufficiency of the evidence against him on the basis that, among other things, the expert did not state the number of similar characteristics between the two prints. *Id.* at 317. The appellate court rejected this argument, reasoning the expert's failure to describe the points of similarity went to the weight of the evidence, and the jury decided any doubts raised by the defendant against him. *Id.* at 319. Defendant argues that his case is distinguishable from *Ford* because the latent print here was partial, smeared, and unsuitable for use in the AFIS; the expert in *Ford* was a forensic scientist as opposed to the crime scene detectives here; and the jury in *Ford* did not struggle in reaching a verdict whereas the jury here questioned whether to accept the experts' conclusions about the fingerprint evidence.

¶ 36 We have already discussed the quality of the latent fingerprint and the experts' credentials, and we do not address those points further. We note that even *Safford* distinguished *Ford* on the basis that *Ford* dealt with the sufficiency of the evidence rather than the admissibility of the expert's testimony. Here, as in *Ford*, defendant is also challenging the sufficiency of the evidence, and under *Ford*, this challenge fails. The expert testimony here was actually much stronger than in *Ford* because Shimaitis clearly testified about 13 comparison points he used in determining that the latent print matched defendant's print, and he identified the points in enlarged, labeled copies of the prints, which were subsequently provided to the jury. When determining whether a defendant was proven

guilty beyond a reasonable doubt, we must look at *all* of the evidence in the light most favorable to the State. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). Here, Shimaitis provided a detailed explanation regarding his conclusion that the latent print belonged to defendant, and a rational jury could have relied on his testimony to determine identity beyond a reasonable doubt. This is especially true when Shimaitis's testimony is combined with testimony that defendant hid from the police when they attempted to execute the arrest warrant, which is evidence of defendant's consciousness of guilt. See *People v. Pursley*, 284 Ill. App. 3d 597, 606 (1996) (testimony that the defendant was hiding at a time that he knew police were looking for him was relevant to show the defendant's consciousness of guilt).

¶ 37 Defendant alternatively argues that even if we determine that he was proven guilty beyond a reasonable doubt, we should remand the case for a new trial in which the State is required to lay a proper foundation for any expert testimony offered by Voyles. Defendant argues that although Shimaitis explained his reasons for concluding that the latent print belonged to him, the jury did not consider that conclusion to be overwhelming evidence of his guilt, as they spent several hours of deliberations "hung" over the question of whether to accept it. Defendant argues that in light of the close nature of the evidence, there is a reasonable probability that the erroneous admission of Voyles's testimony tipped the scales of justice against him. Defendant recognizes that he did not object to the admission of Voyles's testimony at trial, but he argues that we should review this issue as plain error.

¶ 38 The plain error doctrine allows a reviewing court to consider an unpreserved error where either (1) a clear error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) a clear error occurs that is so serious that it

affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). In applying the plain error test, the first step is to determine whether error occurred at all. See *id.*, 225 Ill. 2d at 565. We conclude that no clear error occurred here. The *Safford* court emphasized that the defendant there objected to the expert's testimony before he took the stand, and the expert was asked by the defense to explain how he reached his ultimate opinion in the case but responded that he did not take notes as to his visual examination of prints. *Safford*, 392 Ill. App. 3d at 220, 228. The *Safford* court stated that meaningful cross-examination is crucial to our adversarial system of justice, but the expert's failure to explain the basis for his opinion that the prints in question matched gave the defendant no real opportunity to challenge the expert's testimony. *Id.* at 224. Here, in contrast, the defense did not object to Voyles's testimony, and it was not hindered in its cross-examination of him; unlike *Safford*, Voyles did not deflect any questioning by the defense as to how he reached his conclusion. Further, Shimaitis's detailed testimony about the same prints provided defendant with a means to also challenge Voyles's testimony during cross-examination. Accordingly, we find no error, and defendant's attempt to obtain a new trial pursuant to *Safford* fails.

¶ 39 These same considerations lead to the conclusion that any error in allowing Voyles's testimony without a detailed foundation regarding what comparison points he observed in the fingerprints was harmless. An evidentiary error is harmless beyond a reasonable doubt if there is no reasonable probability that the jury would have acquitted the defendant without the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). Given Shimaitis's detailed fingerprint testimony, the jury's ability to examine enlarged versions of the two prints, and the evidence of defendant's consciousness of guilt, it is not reasonably probable that the jury would have acquitted defendant if Voyles had provided

more details about the points of comparison he used and the defense had further cross-examined Voyles about those details.

¶ 40 B. Proof of Injury to Victim

¶ 41 Defendant next argues that the State failed to prove beyond a reasonable doubt that he committed home invasion, because it did not prove that Morrow was injured. For defendant's charge of home invasion, the State had to prove that defendant: was not a police officer acting in the line of duty; knowingly entered the dwelling place of another without authority; knew or had reason to know that someone was inside; and "[i]ntentionally cause[d] any injury" to a person inside the dwelling. 720 ILCS 5/12-11(a)(2) (West 2008). Defendant argues that the evidence did not show that the victim suffered physical, emotional, or psychological injury, much less that he intentionally inflicted any such injury. We note that the State charged defendant with causing psychological or emotional trauma, and the State does not dispute that there was no evidence of physical injury to Morrow. The jury was instructed on the injury element pursuant to Illinois Pattern Jury Instructions, Criminal, No. 11.53B (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 11.53B), which states: "The term 'injury' in the definition of home invasion may include physical injury. It also includes psychological or emotional trauma if that trauma was the result of some physical contact."

¶ 42 The State argues that defendant has forfeited this argument by failing to timely object at trial or raise the issue in a posttrial motion. However, a challenge to the sufficiency of the evidence is not subject to forfeiture, and a defendant may raise the issue for the first time on direct appeal. *People v. Woods*, 214 Ill. 2d 455, 470 (2005).

¶ 43 Defendant argues that we should review this issue *de novo* because he is not questioning the credibility of the witnesses and is questioning only whether the uncontested facts were sufficient to

prove that he intentionally caused injury to Morrow, as required by the home invasion statute. Defendant cites *People v. Smith*, 191 Ill. 2d 408, 411 (2000), and *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004), where our supreme court applied such a standard to claims of insufficiency of the evidence. See also *People v. Lucas*, 231 Ill. 2d 169, 174 (2008). However, those cases are distinguishable because they were construing the meaning of statutory terms as applied to facts, whereas here the dispute does not center on the term "injury" but rather whether the State proved the element of injury beyond a reasonable doubt. See *People v. Jones*, 376 Ill. App. 3d 372, 382 (2007) (distinguishing cases); *People v. Rizzo*, 362 Ill. App. 3d 444, 449 (2005) (same). Accordingly, we will apply the traditional standard for challenges to the sufficiency of the evidence, which we set forth earlier in our disposition.

¶ 44 Our supreme court discussed whether psychological injury satisfies the injury element in home invasion in *People v. Hudson*, 228 Ill. 2d 181 (2008). There, the half-naked defendant tried to drag the teenage victim out of her house by her hair. *Id.* at 183. There was lay testimony that the victim thereafter suffered from sleep deprivation, tended to isolate herself from the rest of her family, was afraid to go into the room where the offense took place, did not eat well, and continued to be very emotional. *Id.* at 195-96. Our supreme court stated that the term "any injury" in the statute referred to both physical and psychological injury or harm, and the jury was properly instructed on the injury element pursuant to IPI Criminal 4th No. 11.53B. *Id.* at 195.

¶ 45 In discussing the sufficiency of the evidence on the element of injury, our supreme court held that under the facts of the case, expert testimony was not necessary because the circumstances of the offense were such that the victim could certainly suffer psychological trauma, and the uncontradicted evidence indicated that she did. *Id.* at 196. Our supreme court stated:

> "In this case, jurors could reasonably find, without the assistance of expert testimony, that the circumstances of the offense were such as to cause psychological injury to a 16-year-old girl. Moreover, the testimony of the victim and her mother described symptoms and changed behavior following the offense, indicating that the victim *had* suffered psychological trauma. Although expert testimony may be required in some cases to prove psychological injury, we find it was not necessary given the facts of *this* case." (Emphases in original.) *Id.* at 199.

See also *Thornton v. Garcini*, 237 Ill. 2d 100, 109-10 (2010) (stating that as in *Hudson*, the jury could have reasonably found that the circumstances of the case caused the plaintiff emotional distress, and there was testimony about the plaintiff's behavior and emotional state following the event).

¶ 46 To review, here the evidence showed that Morrow was over 80 years old and living alone. On the night in question, she was awakened around 11 p.m. by the light turning on. Two men came into her bedroom and "put a blanket over [her] head." One of the men "held [her] down with a blanket on [her] head" and the other man looked through her jewelry boxes. Morrow was "frightened" and said, " 'Get out of here, you creeps." She estimated that she was under the blanket for 10 to 20 minutes. Morrow discovered that a lot of jewelry, including her engagement and wedding rings, was missing, as well as blank checks. After the police arrived, they told her to call her son, who "insisted that [she] go home with" him. She spent the night at her son's house. Officer Andrew Perino testified that he responded to a call from Morrow's residence at about 11:04 p.m. He spoke to Morrow, whom he described as "visibly upset and shaken. Her voice was raised and her hands were shaking." Morrow calmed down after "[a] few moments," and she walked with him

through the house and showed him what was missing or out of place.

¶ 47 Defendant argues that the above-mentioned facts do not establish proof beyond a reasonable doubt of psychological injury or trauma. He argues that it was not clear from Morrow's testimony how she was held under the blanket or for how long, but she testified that she knew that the men had left when she no longer heard them, indicating that she was not held down for the duration of the burglary. Defendant maintains that although "Morrow was undoubtedly upset about the intrusion, there was no evidence that she suffered unusual distress or lasting effects as a result of the incident." Defendant argues that other cases finding psychological injury have involved more disturbing facts and more compelling circumstantial evidence of actual trauma. He cites the following cases: *Hudson*, 228 Ill. 2d at 195-97; *People v. Woods*, 373 Ill. App. 3d 171, 174, 179 (2007) (testimony that the victim had a tender and sore wrist for a couple of days as a result of the defendant applying pressure to it was sufficient to satisfy injury element of home invasion); *People v. Ehrich*, 165 Ill. App. 3d 1060, 1064 (1988) (the defendant held seven-year old victim in his lap with his hand over her mouth, and she remained frightened for days after the offense, spent nights in her parents' bedroom for several months afterwards, and underwent extensive counseling; psychologist also testified that victim suffered from severe post-traumatic stress disorder as a result of the physical contact); *People v. Geitz*, 138 Ill. App. 3d 670, 679 (1985) (sufficient evidence of injury shown where the defendant put his penis in the teenage victim's mouth and forced her to drink urine and molest a child); *People v. Rachel*, 123 Ill. App. 3d 600 , 603-04 (1984) (the defendant's conduct in putting a pillow over a child's face, preventing her from breathing properly, was sufficient to satisfy the injury requirement of the home invasion statute; the lack of visible evidence of the victim's injury did not negate the injury); *People v. Foster*, 103 Ill. App. 3d 372, 377 (1982) (element of

injury satisfied by evidence that the defendant pushed 15-year-old girl down into a chair and had his hand around her throat while she struggled with him).

¶ 48 We conclude that, viewing the evidence in the light most favorable to the State, there was sufficient evidence for a rational jury to conclude beyond a reasonable doubt that defendant caused Morrow psychological injury. Morrow testified that one of the offenders "held [her] down with a blanket on [her] head," and the jury was instructed on accountability, thereby satisfying the physical contact requirement in IPI Criminal 4th No. 11.53B. As in *Hudson*, the circumstances were also such that a jury could find, without expert testimony, that Morrow suffered from psychological trauma. Morrow was an elderly woman who was awoken at about 11 p.m. and was held down under a blanket for 10 to 20 minutes by one offender while the other offender went through her belongings. Although defendant argues that the length of time she was actually held down under the blanket is unclear, defense counsel specifically asked on cross-examination, "You were being *held down* for twenty minutes?" (Emphasis added.) Morrow replied, "In the bedroom," indicating an affirmative response. Morrow further testified she was "frightened." Personal property, including her wedding ring and other jewelry, was stolen from her home. There was also uncontradicted evidence showing a physical manifestation of the psychological trauma, as Officer Perino testified that Morrow was "visibly upset and shaken. Her voice was raised and her hands were shaking."

¶ 49 Although defendant emphasizes the lack of evidence of a long-term emotional trauma, the statute does not require any particular duration of injury. This is particularly apparent when comparing cases involving physical injury. In *Foster*, the court found sufficient evidence of injury where the victim was pushed down into a chair and the defendant had his hand around her throat, even though the victim did not testify about feeling any pain at that time or subsequently. *Foster*,

103 Ill. App. 3d at 377. In *Rachel*, the court found sufficient evidence of injury where the victim testified that she was trying to get a pillow that the defendant put on her face off so that she could breathe, even though the victim did not testify that she had any breathing problem or other injury after she was able to move the pillow. *Rachel*, 123 Ill. App. 3d at 602-04. In *People v. Shelby*, 123 Ill. App. 3d 153, 163 (1984), the court held that the injury element was satisfied where the defendant was swinging at the victim and trying to grab her hands for 1½ to 2 minutes; the court stated that the jury could infer that the victim suffered physical pain during her struggle. Similarly, here the State was required to prove only that Morrow suffered psychological trauma, and not that it lasted a particular length of time. Even if, *arguendo*, proof of psychological trauma required something of a longer duration, as in *Shelby* the jury could reasonably infer under the facts of this case that Morrow's psychological trauma did not immediately end even though she was able to tell police what items were missing.

¶ 50 Defendant alternatively argues that even if there was sufficient evidence that he caused Morrow's psychological injury, there was no evidence that he did so intentionally. Defendant argues that it is not clear that the natural tendency of putting a blanket over someone's head at the outset of a burglary is to injure someone. Defendant argues that it was most likely done here to prevent Morrow from making an identification or interfering with the burglary without having to injure her.

¶ 51 Intent can rarely be proven by direct evidence because it is a mental state. *People v. Witherspoon*, 379 Ill. App. 3d 298, 307 (2008). Rather, it may be proven by circumstantial evidence, in that it may be inferred from surrounding circumstances (*Witherspoon*, 379 Ill. App. 3d at 307) and the character of the defendant's acts (*People v. Foster*, 168 Ill. 2d 465, 484 (1995)). "The defendant is presumed to intend the natural and probable consequences of his acts." *People v. Terrell*, 132 Ill.

2d 178, 204 (1989). Here, there was evidence that one of the offenders held down Morrow, an elderly woman, under a blanket for 10 to 20 minutes, while the other offender went through her personal belongings. Given this context, the jury could reasonably infer that the natural and probable consequence of trapping someone under a blanket while burglarizing that person's home is to cause some degree of psychological harm. Therefore, there was sufficient evidence of intent to injure Morrow.

¶ 52 C. Questioning of Venire

¶ 53 Defendant next argues that he is entitled to a new trial because the trial court violated Supreme Court Rule 431(b) in questioning the venire. Rule 431(b) requires that the trial court ask each potential juror, individually or in a group, whether he understands and accepts the following four principles: (1) the defendant is presumed innocent of the charges; (2) the State must prove the defendant's guilt beyond a reasonable doubt; (3) the defendant is not required to present any evidence in his defense; and (4) the defendant's failure to testify may not be held against him. Ill. S. Ct. R. 431(b) (eff. May 1, 2007); see also *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). Rule 431(b) "requires questioning on whether the potential jurors both understand and accept each of the enumerated principles." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010).

¶ 54 Defendant argues that although the trial court informed the venire of the principles and asked them if they understood and agreed with the State's burden of proof and that a defendant's choice to not testify may not be held against him, it did not ask the potential jurors if they accepted the presumption of innocence or if they understood and accepted a defendant's right not to present evidence. Defendant recognizes that he forfeited this argument by not objecting at trial or raising the issue in a posttrial motion, but he asks that we review the issue under plain error. As stated, plain

error occurs where either (1) a clear error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) a clear error occurs that is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *Piatkowski*, 225 Ill. 2d at 564-65. In applying the plain error test, the first step is to determine whether any error occurred. *Thompson*, 238 Ill. 2d at 613. We review *de novo* the interpretation of supreme court rules. *Id.* at 606. Here, we agree with defendant that although the trial court informed the venire of the four *Zehr* principles, it did not strictly comply with Rule 431(b) because it did not ask potential jurors if they accepted the presumption of innocence and understood and accepted a defendant's right not to present evidence. *Cf. id.* at 607 (although the trial court asked potential jurors if they understood the presumption of innocence, it failed to comply with Rule 431(b) because it did not ask whether they accepted that principle); *People v. White*, 407 Ill. App. 3d 224, 230 (2011) (although trial court asked whether the potential jurors accepted the defendant's right to not testify, it did not comply with Rule 431(b) because it did not ask whether the jurors understood that right).

¶ 55 Defendant further argues that the trial court's failure to comply with Rule 431(b) resulted in plain error. Defendant recognizes that our supreme court has held that such an error, alone, does not establish that the jury was biased, and therefore does not automatically mean that the deficiency affected the trial's fairness or the integrity of the judicial process, as required to satisfy the second prong of the plain error analysis. *Thompson*, 238 Ill. 2d at 615. However, defendant argues that the deficiency in questioning the venire satisfies the first prong of plain error analysis, *i.e.* that a clear error occurred and the evidence was so closely balanced that the error alone threatened to tip the scales of justice against him. Defendant argues that the evidence was closely balanced because the

only evidence linking him to the crime scene was a smeared fingerprint matched to him by detectives who had limited skills in the area of fingerprint analysis and considered only him as a suspect. Defendant argues that the jury found itself "hung" after an entire day of deliberations and wrote the court several notes indicating that some jurors were having trouble accepting the fingerprint testimony. Defendant also argues that the State did not prove the intentional injury element of home invasion.

¶ 56 In analyzing the sufficiency of the evidence, we have already discussed defendant's arguments regarding the quality of the fingerprints, the skill of the detectives who analyzed the prints, and proof of intentional injury, and we determined that the alleged deficiencies did not amount to a lack of proof beyond a reasonable doubt. The State presented evidence that a fingerprint left at the scene belonged to defendant and that defendant was hiding from police, with the latter constituting evidence of consciousness of guilt. The defense challenged the strength of the State's case, but it was not a situation where the jury was required to judge an alibi or other proof that defendant was not involved in the crime. Although the jury took many hours in deliberating and debated about the proof linking the fingerprint to defendant, it ultimately found defendant guilty. Thus, we disagree that the evidence in this case was closely balanced. Further, under the first prong of the plain error analysis, defendant must establish that the error alone could have led to his conviction. *People v. Willis*, 409 Ill. App. 3d 804, 810 (2011). Here, defendant cannot establish that the failure to ask the jury if they understood and accepted two of the four *Zehr* principles led to a biased jury, as the jury was instructed on the basic principles, and the jurors' intense deliberations over the fingerprint evidence indicated an unbiased jury. Accordingly, defendant has not shown that the trial court's failure to strictly comply with Rule 431(b) resulted in plain error.

¶ 57 D. Response to Jurors' Questions

¶ 58 Last, defendant argues that the trial court erred in responding to the jurors' last questions by telling them that they should not draw their own conclusion as to whether the latent fingerprint from the crime scene matched his fingerprint. Defendant maintains that the response invaded the jury's province as fact finder because it took out of the jury's hands the resolution of the critical factual issue of whether his fingerprints were found at the scene.

¶ 59 Defendant forfeited this argument by not objecting at trial or raising the issue in a posttrial motion, but he asks that we review the issue under plain error. In applying the plain error test, we must first determine whether any error occurred. *Thompson*, 238 Ill. 2d at 613.

¶ 60 As previously recited, at 5:10 p.m., the jury sent a note with two questions. The first question asked:

> "Your Honor, Some of the Jurors are basing their decision on the fact that the two detectives were deemed expert and *their opinion* is so because they are experts. That is why we are hung. Even though I have stated it[,] is our decision to make the decision beyond a reasonable doubt[?] Please help."

With the parties' agreement, the trial court responded, "The 2 detectives were declared experts to testify in the area of fingerprint analysis and comparison." The trial court also reiterated that the jurors were "the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them," and that they could consider, among other things, the witnesses' ability to observe and the reasonableness of their testimony in the light of all the evidence.

¶ 61 The jury's second question on the same note asked: "Should we as Jurors be [r]eading the fingerprints and drawing a conclusion of our own interpretation if they are a match[?]" With the

parties' agreement, the trial court responded: "You may examine all exhibits, including the fingerprint exhibits. You are not experts in the area of fingerprint analysis and comparison and therefore you are not to draw your own conclusion based upon your own interpretation if they are a match." The trial court also again stated the jurors were the judges of the believability of the witnesses and of the weight to be given to their testimony.

¶ 62 A trial court's decision regarding whether and how to answer questions the jury asks during deliberations is generally left to the trial court's discretion. *People v. Falls*, 387 Ill. App. 3d 533, 537 (2008). However, even if a jury has been properly instructed, a trial court generally has a duty to further instruct a jury that has raised an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion. *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994). "When a jury makes explicit its difficulties, the court should resolve them with specificity and accuracy." *Id.* at 229. When a court answers a jury's question, it must not misstate the law. *People v. Gray*, 346 Ill. App. 3d 989, 994 (2004). Whether the trial court correctly stated the law is a question of law, which we review *de novo*. *Id.*

¶ 63 Defendant argues that the trial court's response to the first question emphasized the detectives' "expert" status rather than directly stating that the jurors were not compelled to accept their conclusions. Defendant maintains that the trial court thereby began to steer the jurors toward blind acceptance of the experts' conclusions. Defendant argues that the second response unfairly suggested that because the jurors were not fingerprint experts, they could not reject the expert testimony about the fingerprints.

¶ 64 Comparing fingerprints is a science requiring specialized study. *People v. Rhoden*, 101 Ill. App. 3d 223, 226 (1981). Thus, a jury must be assisted by experts in fingerprint identification. *Id.*

"Although the jury may reject the expert's testimony and conclusions on the basis of his or her lack of credibility or on the basis of testimony developed on cross-examination, it may not exercise unlimited prerogative to speculate as to the presence or absence of points of similarity in fingerprint exhibits." *Id.* at 226-27.

¶ 65 This court applied the above-mentioned principles in *White*, 241 Ill. App. 3d 291. There, in closing argument the defense counsel asked the jury to consider dissimilarities in the fingerprints at issue, which he began pointing out. *Id.* at 295. Counsel had not previously questioned the State's expert witness about any dissimilarities in the prints, nor did the defense introduce its own expert. *Id.* at 299. In response to the State's objection to the closing argument, the trial court stated that the fingerprints were subject to expert opinion, and it was not proper for either counsel or the jury to make their own conclusions about the similarity of the fingerprints. *Id.* On appeal, we held that the trial court's comments were proper because defense counsel should not have been introducing new evidence during closing argument, and because fingerprint evidence is the subject matter of expert testimony, and the jury and counsel were not expert witnesses in the case. *Id.* at 299. Thus, "the judge properly indicated that it was improper for the jury or the counsel to express an opinion on the similarity or dissimilarity" of the fingerprints. *Id.* at 300. We further stated that, regarding the weight to ascribe to the evidence, the trial court properly instructed the jury that only it was to determine how much weight to give evidence based on witnesses' credibility. *Id.*

¶ 66 Defendant argues that *White* is distinguishable because the trial court's response there was in reaction to defense counsel's closing argument, rather than a question from a hung jury. Regardless, both *Rhoden* and *White* establish the principle that fingerprint comparison and identification is a science that is the subject of expert witness testimony, and jurors may not

independently try to analyze fingerprints to determine whether they match. Rather, they must consider and weigh the expert testimony based on the credibility of the expert and the basis of the expert's testimony, and then either accept or reject the expert opinion. See *White*, 241 Ill. App. 3d at 300; *Rhoden*, 101 Ill. App. 3d at 226-27. Accordingly, here the trial court properly instructed the jury, in response to its questions, that: the two detectives were declared experts to testify in the area of fingerprint analysis and comparison; the jurors could examine all exhibits, including the fingerprint exhibits; the jurors were not experts and should not draw their own conclusions based upon their own interpretation of whether the fingerprints matched; and the jurors were the judges of the witnesses' believability and the weight to be given to their testimony. Contrary to defendant's argument, the trial court's response did not take out of the jury's hands the factual question of whether his fingerprints were found at the crime scene. Rather, the trial court properly instructed the jurors that only they were the judges of the believability of witnesses and the weight to be given to their testimony, thereby keeping squarely within their hands the determination of whether to accept or reject the experts' conclusion that the fingerprint from the scene belonged to defendant. As we have found no error in the trial court's response, there can be no plain error. *People v. Calhoun*, 404 Ill. App. 3d 362, 382 (2010).

¶ 67 III. CONCLUSION

¶ 68 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 69 Affirmed.