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No. 3-07-0799

Order filed January 5, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

|                         |   |                               |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of the 12th Judicial Circuit, |
|                         | ) | Will County, Illinois,        |
| Plaintiff-Appellee,     | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 05-CF-391                 |
|                         | ) |                               |
| ROBERT J. CHAPMAN,      | ) | Honorable                     |
|                         | ) | Daniel J. Rozak,              |
| Defendant-Appellant.    | ) | Judge, Presiding.             |

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

*Held:* The trial court's failure to strictly comply with Supreme Court Rule 431(b) was error, but not plain error because the court's incomplete admonishments did not deny defendant a fair trial. Also, the trial court did not abuse its discretion by admitting defendant's prior domestic battery conviction against the victim because it was admissible under the plain language of section 115--20 of the Code of Criminal Procedure of 1963. Furthermore, the trial court did not abuse its discretion by admitting defendant's prior act of arson to the victim's apartment because it was relevant to his intent for the instant offense of murder.

A jury convicted defendant, Robert Chapman, of first degree murder (720 ILCS 5/9--

1(a)(1) (West 2004)) of Cassandra Frazier, and the trial court sentenced him to a 60-year term of imprisonment. Defendant appeals, contending that: (1) his conviction should be reversed and the cause should be remanded for a new trial because the court failed to strictly comply with Supreme Court Rule 431(b) (eff. May 1, 2007); and (2) the court denied him a fair trial when it erroneously admitted his prior conviction for domestic battery against Frazier, as well as testimony regarding defendant's prior arson of Frazier's apartment. We affirm.

### FACTS

On February 24, 2005, the State charged defendant with the first degree murder of Frazier, who was defendant's live-in girlfriend. The State alleged that on February 22, 2005, defendant repeatedly stabbed Frazier with the intent to kill.

Before defendant's trial, the State moved to admit evidence of defendant's prior domestic battery conviction against Frazier, as well as testimony pertaining to defendant's prior act of setting fire to Frazier's apartment. After conducting a hearing on the State's motion on July 23, 2007, the court held that the State could introduce defendant's prior domestic battery conviction pursuant to section 115--20 (725 ILCS 5/115--20 (West 2004)) of the Code of Criminal Procedure of 1963 (Code). Although murder was not one of the offenses specifically enumerated in section 115--20 that allowed admission of the conviction, the court stated that it was similar to those listed in the section. Noting that aggravated battery was one of the offenses enumerated in the section, the court stated that such an offense that resulted in the victim's death "could very well be first degree murder[,] " as was the charge against defendant in this case.

The court further held that it would permit testimony of defendant's prior act of setting fire to Frazier's apartment pursuant to the supreme court case of *People v. McCarthy*, 132 Ill. 2d

331 (1989). *McCarthy* involved a defendant's trial for the murder of his former girlfriend, whom defendant claimed he shot because he saw her in bed with another man. The supreme court affirmed the State's introduction of defendant's prior acts of domestic violence towards his former girlfriend and members of her family, finding they were relevant because they showed defendant's intent to harm the victim and that the shooting was not done in the heat of passion in seeing her with another man.

The instant cause immediately proceeded to jury selection. The court informed the venire that: (1) defendant was presumed innocent of the charges against him and this presumption remained with defendant throughout the trial and during their deliberations unless, after hearing all the evidence, they were convinced beyond a reasonable doubt of defendant's guilt; (2) the State had the burden of proving defendant's guilt beyond a reasonable doubt, and this burden remained on the State throughout the entire case; and (3) defendant was not required to prove his innocence, or present evidence on his own behalf, but he may rely on the presumption of innocence.

The court inquired whether each of the potential jurors could set aside any sympathy or prejudice and base their decision on the evidence alone, and if each could wait until the conclusion of all of the evidence to formulate an opinion. The court further asked each of the potential jurors if they understood and accepted the following propositions that: (1) defendant was presumed innocent of the charges against him; (2) the State had the burden of proving defendant's guilt beyond a reasonable doubt; and (3) defendant did not have to prove his innocence or present evidence on his own behalf. The court also asked each if they would sign a guilty verdict if the State met their burden of proving defendant's guilt beyond a reasonable

doubt, or if they would sign a not guilty verdict if the State did not meet their burden. All jurors indicated appropriate responses to each of the court's questions.

Defendant's trial commenced on July 24, 2007. At trial, the State played two audiotaped interviews between defendant and Joliet police officer Scott Cammack. According to defendant, he considered Frazier to be his wife, but he admitted that they often argued. Defendant stated that on the day of Frazier's death, he went to work. After work, he consumed alcohol and got high on crack cocaine. Defendant came home to the apartment he shared with Frazier around 9:45 or 10 p.m., and according to him, Frazier yelled at him. Defendant showered and went to bed with Frazier, at which point Frazier yelled at him again. Defendant then packed his clothes into a box and placed it by the door, but he returned to bed with Frazier.

According to defendant, Frazier stabbed him in the leg after he got back into bed. Defendant grabbed the knife from Frazier, and in doing so, cut his finger. Defendant then began stabbing Frazier while they were still in the bed. Eventually, they both fell onto the floor, at which point defendant straddled Frazier and continued to stab her. At some time during the attack, Frazier told defendant that she loved him. Defendant then regained his senses and stopped stabbing Frazier, but he left the knife in Frazier's neck.

After the attack, defendant stated that he dressed and looked for some money so he could get a cab to leave the apartment. Before defendant left, Frazier attempted to move towards defendant and the partially opened front door, but defendant pushed her away because he did not want to attract the attention of the neighbors. Defendant stated that he was not really aware of what had occurred until he left their apartment and began walking down the street. Once he realized the gravity of the situation, he walked towards an area where he believed he could find a

police officer to get help for Frazier.

Karen Bergin testified that she was driving along Jefferson Street around 10:30 p.m. when she saw defendant running in the street and waving his arms for help. After Bergin stopped, defendant asked her to call 911, so she did.

Cammack also testified. According to him, he arrived on the scene on Jefferson Street just as defendant was entering the ambulance. Cammack noticed the cut on defendant's finger and a small cut on his right leg. He also noticed puffiness around defendant's eye, and defendant told him Frazier probably caused the puffiness by striking him. Cammack accompanied defendant to the hospital, where defendant received eight stitches in his finger and four stitches for the cut on his leg.

The record shows that Frazier died as a result of the attack. Dr. Brian Mitchell, who performed the autopsy on Frazier, testified that defendant had stabbed Frazier 18 times on the upper part of her body. According to him, the most immediate cause of death was a stab wound to Frazier's neck that cut into her carotid artery. Mitchell opined that if Frazier would have gone to the hospital immediately following this injury, her artery could have been repaired and she may have survived the attack.

Herman Ware, the pastor at the church attended by defendant and Frazier, testified regarding defendant's prior act of arson to Frazier's former apartment. According to Ware, he visited Frazier's apartment on November 2, 2004, because it had been set on fire. Ware stated that after the fire, he walked through the apartment and saw that the bed and some clothing on the bed had been burned. Ware left Frazier's apartment that afternoon by car, and he encountered defendant on foot. Ware asked defendant why he started the fire. Defendant admitted to starting

it, but he ran away before saying anything else.

Ware testified that later that day, defendant called him and asked Ware to take him to the hospital for a stomach problem. Ware obliged. While they were waiting in the emergency room, Ware spoke with defendant about his relationship with Frazier. Ware was concerned for Frazier's safety due to "some pretty heated disagreements and arguments" between them. Defendant told Ware that he would rather see Frazier dead than with anyone else. Defendant also explained that he had burned Frazier's home by breaking into it, placing her clothes on her bed, and setting the bed on fire. According to defendant, he was angry at Frazier because he felt that her children and the church were more important to Frazier than her relationship with defendant. Defendant stated that he "wanted to show [Frazier] how he felt about [her priorities because he] was really upset about that." Defendant told Ware that he set fire to Frazier's clothing and home because he wanted her to see what it felt like to have nothing.

At the conclusion of the State's evidence, the State informed the jury that defendant had been convicted of domestic battery against Frazier on October 31, 2003. Defendant did not testify, nor did he present any evidence. However, in his closing argument, defense counsel contended that when defendant attacked Frazier, he "was acting under a sudden and intense passion as a result of a serious provocation by" her because Frazier stabbed him first, and the attack was a continuation of the longstanding arguments between defendant and Frazier.

Prior to deliberations, the court instructed the jury that the State had the burden to prove defendant's guilt beyond a reasonable doubt, the defendant was not required to prove his innocence, and the fact that "defendant did not testify must not be considered [by them] in any way in arriving at [their] verdict." Thereafter, the jury convicted defendant of first degree

murder. Defendant filed a motion for a new trial, which the court denied. The court subsequently sentenced defendant to a 60-year term of imprisonment. Defendant appeals.

## ANALYSIS

On appeal, defendant first contends that the trial court failed to strictly comply with Supreme Court Rule 431(b) (eff. May 1, 2007) because it did not ask potential jurors during *voir dire* whether they understood and accepted the proposition that defendant did not have to testify, and that they could not hold it against defendant if he chose not to testify.

The supreme court adopted Rule 431(b) to ensure compliance with their decision in *People v. Zehr*, 103 Ill. 2d 472 (1984). In *Zehr*, the court found that the trial court committed reversible error when it refused to ask the venire questions proffered by defendant regarding the presumption of innocence and the State's burden to prove defendant's guilt beyond a reasonable doubt, which were topics not otherwise covered during *voir dire*. *Zehr*, 103 Ill. 2d 472.

In 2007, the supreme court amended Rule 431(b). The current version of the rule, effective May 1, 2007, and thus applicable to the instant cause, provides 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; however, no inquiry of a prospective juror shall be made into

the defendant's failure to testify when the defendant objects.

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

Here, defendant acknowledges that this issue is subject to plain error analysis because he did not object to the alleged error at trial, and did not include this issue in a posttrial motion. See *People v. Keene*, 169 Ill. 2d 1 (1995). However, before deciding whether the court committed plain error, we will first determine whether the trial court erred. If the trial court did not err, we need not determine whether plain error occurred. *People v. Harris*, 225 Ill. 2d 1 (2007).

In this case, the trial court did not ask the venire whether any of them understood and accepted the proposition that defendant did not have to testify on his own behalf, and that his failure to testify could not be held against him. Thus, those ultimately selected to serve on the instant jury were not admonished of this principle prior to serving on the jury. Therefore, the court's Rule 431(b) admonishments were incomplete, and we conclude that the court erred. See *People v. Amerman*, 396 Ill. App. 3d 586 (2009) (this court concluded that the trial court erred when it failed to strictly comply with amended Rule 431(b) admonishments).

Plain error is a limited and narrow exception to the general rule of waiver. *People v. Weathersby*, 383 Ill. App. 3d 226 (2008). The plain error doctrine allows a court of review to consider an unpreserved error where: (1) the evidence was closely balanced; or (2) the error so prejudiced defendant's case that it resulted in an unfair trial. *People v. Allen*, 222 Ill. 2d 340 (2006).

Here, defendant does not argue that the evidence was closely balanced. He only argues

that the court's error impeded his right to be tried before an impartial jury and that the court thus denied his right to a fair trial. Therefore, we limit our analysis to the second prong of the plain error analysis.

Under the second prong of the plain error analysis, a defendant must prove that the trial court committed an error that "was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). However, a fair trial is different from a perfect trial, and the plain error doctrine does not permit a reviewing court to consider all forfeited errors. *Herron*, 215 Ill. 2d 167. The burden of persuasion is on the defendant to show that plain error occurred. See *People v. Belknap*, 396 Ill. App. 3d 183 (2009).

The supreme court has recently considered amended Rule 431(b) in the case of *People v. Thompson*, No. 109033 (October 21, 2010). In *Thompson*, the trial court admonished the venire members of three of the four 431(b) principles during *voir dire*, asked the individual jurors whether they understood two of the four principles, and asked them whether they accepted one of the principles. *Thompson*, No. 109033. The supreme court considered the *Thompson* defendant's claim of error under the second prong of the plain error analysis, and noted that, "[d]espite [the 2007] amendment to the rule, [they could] not conclude that Rule 431(b) questioning [was] indispensable to the selection of an impartial jury." *Thompson*, slip op. at 13. The court ultimately held that a trial court's failure to strictly comply with the current version of Rule 431(b) did not require reversal under the second prong of the plain error analysis in the absence of a showing that the jury was actually biased due to the error. *Thompson*, No. 109033.

In this case, we must follow the mandate of *Thompson* and conclude that the trial court's

failure to strictly comply with Rule 431(b) did not deny defendant an impartial jury and, thus, a fair trial. Here, like *Thompson*, defendant has not alleged or shown that the trial court's failure resulted in a biased jury. Rather, defendant contends that we should find plain error, reverse his conviction, and remand the cause for a new trial only due to the trial court's failure to strictly comply with Rule 431(b). Such a result was forbidden by *Thompson*. In addition, we have carefully reviewed the record, and it does not contain any evidence indicating the jury was unfair or partial.

We will not presume citizens sworn as jurors ignore the law and jury instructions given to them by the court. See *Amerman*, 396 Ill. App. 3d 586. Additionally, the court inquired of each juror's ability to judge the case on the evidence, refrain from making a conclusion until the close of the evidence, and hold the State to their burden of proof. The court received appropriate responses, thus providing additional indicia of fairness.

Furthermore, the court admonished the entire venire of the first three Rule 431(b) principles, and all venire members indicated that they understood and accepted these principles. Prior to deliberations, the court instructed the jury that defendant had a right not to testify, and they could not hold his decision to refrain from testifying against him. As such, the court ultimately informed the jury of all four principles of Rule 431(b).

In light of the circumstances in the case at bar, we conclude that the trial court's error regarding the Rule 431(b) admonishments did not deny defendant his right to a fair trial.

Defendant next contends that the court erred when it permitted the State to present evidence that defendant had been previously convicted of domestic battery against Frazier. Section 115--20 of the Code (725 ILCS 5/115--20 (West 2004)) provides that evidence of a

defendant's prior conviction for domestic battery, aggravated domestic battery, stalking, aggravated stalking, or violation of an order of protection "is admissible in a later criminal prosecution for any of these types of offenses when the victim is the same person who was the victim of the previous offense that resulted in conviction of the defendant." 725 ILCS 5/115--20 (West 2004). The statute permits the court to admit a defendant's prior domestic violence conviction during the trial for a later domestic violence offense involving that defendant and the same victim.

The decision to permit the admission of evidence regarding defendant's other offenses lies within the sound discretion of the trial court, and we will not overturn this decision absent an abuse of discretion. *People v. Heard*, 187 Ill. 2d 36 (1999). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Illgen*, 145 Ill. 2d 353 (1991).

At the outset, we disagree with defendant's assertion that section 115--20 is ambiguous because it did not specifically articulate murder as an included offense. Here, the legislature listed specific crimes for which convictions may be admitted at a later trial regarding either those specific offenses of domestic violence, or "any of th[o]se types of offenses." Merely because the legislature gave the court latitude to interpret whether a particular offense constitutes a domestic violence "type[] of offense[]" does not render the statute ambiguous. Therefore, because the statute is not ambiguous, we need not turn to the canons of statutory construction to properly interpret it. See *People v. Libbra*, 268 Ill. App. 3d 194, 198 (1994) (court noted that when the language of a statute was plain, there was no need for interpretation, as it was "only where the statute [was] ambiguous that the rules of statutory construction [were] to be applied").

Considering the plain language of the statute at hand, we conclude that the court did not err when it held that the instant murder was the "type[] of offense[]" for which the statute applied. The legislative history of the statute shows that one of the reasons the legislature enacted it was to curtail the often recurring patterns of domestic violence between the same aggressor and victim. 90th Ill. Gen. Assem., House Proceedings, April 19, 1997, at 26-27. Such was the case between defendant and Frazier, as defendant admitted that he and Frazier argued often. Furthermore, the types of offenses specified in the statute all involve offenses of domestic violence. Likewise, the instant case involved an incident of domestic violence, *i.e.*, the murder of a live-in girlfriend in the family residence after a physical attack that the girlfriend allegedly initiated. Thus, we believe that the court properly characterized the instant crime as the "type[] of offense[]" for which a prior domestic battery conviction is admissible at trial under section 115--20.

The trial court noted that an incident can begin as an aggravated battery, an offense enumerated in section 115--20(a), but conclude as a murder. We believe that simply because defendant's acts resulted in the victim's death following a battery, the State should not have been precluded from presenting the prior domestic battery offense. Additionally, the prior domestic battery conviction was relevant to the State's case because the State contended that defendant did not act defensively or in the heat of passion, but with the intent to harm Frazier in this case.

Therefore, we conclude the trial court did not abuse its discretion regarding the admission of defendant's previous conviction for domestic battery against this victim.

Defendant next contends that the court erred when it admitted Ware's testimony regarding defendant's prior act of committing arson to Frazier's apartment. It is well established that

evidence of other crimes is admissible if it is relevant for any purpose other than to show defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127 (2005). Evidence is relevant if it tends to make the existence of any fact of consequence more or less probable than without the evidence. *People v. Tolbert*, 323 Ill. App. 3d 793 (2001). Other crimes evidence may be relevant and admissible for any legitimate purpose, including, but not limited to, establishing the absence of an innocent frame of mind or the presence of criminal intent, or the absence of mistake or accident. *Tolbert*, 323 Ill. App. 3d 793. We will not overturn the trial court's decision on the admission of evidence absent an abuse of discretion. *Heard*, 187 Ill. 2d 36.

At trial, defendant contended that he stabbed Frazier after she first stabbed him, and that he kept stabbing her in a fit of passion. Thus, the testimony regarding defendant's prior act of arson to Frazier's apartment, *i.e.*, an act of hostility to his girlfriend and her property, was relevant to show defendant's intent to harm Frazier during the course of the instant offense. Furthermore, this evidence supported the State's theory that defendant did not commit the instant offense as a result of self-defense or due to a fit of passion.

Under these circumstances, we believe that defendant's act of arson to Frazier's apartment was relevant and more probative than unduly prejudicial. Therefore, we conclude the trial court properly admitted Ware's testimony of defendant's prior arson of Frazier's apartment.

#### CONCLUSION

For the foregoing reasons, the decision of the trial court of Will County is affirmed.

Affirmed.