

**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).

NO. 4-09-0684

Filed 1/11/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
STEVIE LIDELL,	)	No. 08CF230
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Turner and Pope concurred in the judgment.

**ORDER**

*Held:* As it gave the potential jurors an opportunity to respond to specific questions about their understanding and acceptance of the principles in the rule, the trial court did not err in its compliance with Illinois Supreme Court Rule 431(b).

In April 2009, a jury found defendant, Stevie Lidell, guilty of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2006)), a Class 2 felony (720 ILCS 5/12-4(e)(2) (West 2006)) with mandatory Class X sentencing based on defendant's prior record (730 ILCS 5/5-5-3(c)(8) (West 2006)). In June 2009, the trial court sentenced defendant to 10 years' imprisonment.

Defendant appeals, arguing the trial court erred by failing to comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). Although he failed to preserve the issue for appellate review, defendant contends the alleged error is revers-

ible under the first prong of the plain-error doctrine. Because we find no error occurred, we affirm.

#### I. BACKGROUND

In September 2008, the State charged defendant, an inmate at Pontiac Correctional Center, with aggravated battery, a Class 2 felony, for throwing an unknown liquid substance onto Keith Thrasher, a corrections officer at Pontiac Correctional Center. Defendant faced mandatory Class X sentencing as he had two recent prior felony convictions of Class 2 or greater. See 730 ILCS 5/5-5-3(c) (8) (West 2006).

In April 2009, the case proceeded to a jury trial. During *voir dire*, the trial court admonished the entire venire regarding the principles enumerated in Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). In pertinent part, the court said:

"Since this is a criminal trial, there are certain propositions of law that you must be willing to follow. Please listen carefully as I state these propositions as I will be asking each of you whether you understand and accept these principles of law.

A person accused of a crime is presumed to be innocent of the charge against him. The fact that a charge has been made is not

to be considered as any evidence or presumption of guilt against \*\*\* [d]efendant.

The presumption of innocence stays with \*\*\* [d]efendant throughout the trial and is not overcome unless from all of the evidence you believe the State proved \*\*\* [d]efendant's guilt beyond a reasonable doubt. The State has the burden of proving \*\*\* [d]efendant's guilt beyond a reasonable doubt. \*\*\* Defendant does not have to prove his innocence. \*\*\* Defendant does not have to present any evidence on his own behalf and does not have to testify if he does not wish to. And if \*\*\* [d]efendant does not testify, that fact must not be considered by you in any way in arriving at your verdict."

The venire was split into two panels of 16 potential jurors each. The court questioned each of the two panels regarding the Rule 431(b) principles. The court asked the first panel as follows:

"THE COURT: \*\*\* Do each of you understand and accept the principles of law that I set forth a few minutes ago? If you do not understand them or do not accept them, please

raise your hand. So everybody accepts them?

PROSPECTIVE JURORS: (Nod heads)."

Seven jurors were accepted from the first panel. The court later asked the second panel as follows:

"THE COURT: Do each of you understand and accept the principles of law that I set forth a few minutes ago? If not, please raise your hand.

PROSPECTIVE JURORS: (Nod heads)."

Five jurors were accepted from the second panel.

Thrasher and Jeff Gabor, an investigator at Pontiac Correctional Center, testified for the State. Thrasher testified he was struck by an unknown liquid as he was walking past defendant's cell on June 27, 2008. On that day, Thrasher was tasked with escorting prisoners from their cells to the shower and back. After lunch, Thrasher was returning an inmate, Cornelius Lewis, to his cell. Thrasher was walking a short distance behind Lewis. Lewis's cell was adjacent to defendant's, requiring Thrasher and Lewis to pass defendant's cell to get to Lewis's.

When he was passing defendant's cell, Thrasher was struck by a liquid on his arm and leg. The liquid smelled like feces. After securing Lewis in his cell, Thrasher reported the incident to the cellhouse lieutenant. The lieutenant and two other officers removed defendant from his cell and detained him

in another part of the prison.

Instead of reporting to a nurse pursuant to protocol, Thrasher continued his shift after cleaning himself as much as he practically could. Thrasher was concerned the prison was understaffed to handle his duties without him and was determined to make it through the day. He did not change clothes or subsequently attempt to preserve his clothes as evidence.

Gabor testified he was charged with investigating the incident. His investigation consisted of interviews of Thrasher and defendant. Defendant told Gabor he had thrown feces toward Thrasher and Lewis as they passed his cell but had not seen whether the feces made contact with either. Defendant refused to sign a statement to that effect, and the interview was not recorded.

Lewis testified for the defense. He testified he did not know either Thrasher or defendant. He testified he had no recollection of such an incident ever happening.

The jury returned a guilty verdict. In June 2009, the court sentenced defendant to 10 years in prison, to run consecutively with his previous sentence.

This appeal followed.

## II. ANALYSIS

Defendant argues the trial court erred by failing to comply with Illinois Supreme Court Rule 431(b) (eff. May 1,

2007). Specifically, defendant asserts the court allowed too much time to lapse between reciting the Rule 431(b) principles and asking the potential jurors whether they understood and accepted those principles, thus depriving the jurors of a reasonable opportunity to respond to specific questions about the principles. We disagree.

Defendant forfeited this argument by failing to object at trial and to raise the error in a posttrial motion. See *People v. Wrencher*, 399 Ill. App. 3d 1136, 1143, 929 N.E.2d 1124, 1130-31 (2009). Defendant contends the error is nevertheless reviewable under the plain-error doctrine. Under the plain-error doctrine, a reviewing court may consider an otherwise unpreserved error under two circumstances:

"when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d

403, 410-11 (2007).

The first step in plain-error analysis is to determine whether error occurred. *Piatkowski*, 225 Ill. 2d at 565, 870 N.E.2d at 411.

In this case, defendant urges us to review his claim of error because the evidence was closely balanced. We first consider whether the trial court complied with Rule 431(b). This requires us to construe Rule 431(b). *People v. Thompson*, No. 109033, slip op. at 5 (October 21, 2010), \_\_\_ Ill. 2d \_\_\_, \_\_\_, \_\_\_ N.E.2d \_\_\_, \_\_\_. That is, we must decide what Rule 431(b) requires. We review *de novo* the proper interpretation of supreme court rules. *Thompson*, slip op. at 5, \_\_\_ Ill. 2d at \_\_\_, \_\_\_ N.E.2d at \_\_\_.

Rule 431(b) requires trial courts to read certain principles of law to the prospective jurors and determine whether each juror understands and accepts the principles. It states:

"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).

The supreme court recently interpreted the language of Rule 431(b) in *Thompson*, slip op. at 6, \_\_\_ Ill. 2d at \_\_\_, \_\_\_ N.E.2d at \_\_\_. There, it stated,

"Rule 431(b) \*\*\* mandates a specific question and response process. The trial court must 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." *Thompson*, slip op. at 6, \_\_\_  
Ill. 2d at \_\_\_, \_\_\_ N.E.2d at \_\_\_.

In this case, the trial court fully complied with Rule 431(b) when it received group responses from the potential jurors to specific questions regarding the principles. The court initially called the jurors' attention to the principles and alerted them it would later ask whether they understood and accepted the principles. The court then methodically laid out the four principles. The court later specifically asked the jurors whether they understood and accepted those principles. In groups, the jurors affirmatively responded they understood and accepted the principles. Rule 431(b) required nothing further of the court.

Defendant nevertheless argues the jurors were not given a reasonable opportunity to respond to specific questions because of the delay between the trial court's recitation of the principles and its questioning of the jurors concerning the principles. Defendant relies, for this proposition, on *Wrencher*, 399 Ill. App. 3d at 1144-45, 929 N.E.2d at 1131, where this court concluded the trial court violated Rule 431(b). There, the trial court enumerated the Rule 431(b) principles to the entire venire and subsequently, after a substantial delay (89 pages of transcript and a 15-minute recess for the last panel of potential jurors), asked the jurors whether they understood and accepted

those principles. *Wrencher* 399 Ill. App. 3d at 1144, 929 N.E.2d at 1131. This court expressed concern about such a practice. We said, "Reciting the four principles and then, an hour or so later, asking the potential jurors if they understood the principles and would follow them tends to defeat the purpose of the questioning and reduces it to a *pro forma* exercise." *Wrencher*, 399 Ill. App. 3d at 1144, 929 N.E.2d at 1131. We concluded such a practice violated Rule 431(b). *Wrencher*, 399 Ill. App. 3d at 1145, 929 N.E.2d at 1131.

This case is distinguishable from *Wrencher* in both the trial court's methodology and the length of the delay between recital of the Rule 431(b) principles and questioning on the principles. Here, unlike in *Wrencher*, the court alerted the potential jurors they should be considering whether they understood and accepted the Rule 431(b) principles before it recited the principles. Thus, the court laid a foundation to ensure the jurors would understand its later reference to the principles in questioning. Further, a comparatively short time lapsed between the court's initial recital of the Rule 431(b) principles and its questioning of the juror panels concerning the principles (2 pages of transcript with no recess for the first panel and 23 pages of transcript with no recess for the second panel).

We conclude the delay in this case, although not ideal, did not deprive the potential jurors of the opportunity to

respond to specific questions regarding their understanding and acceptance of the Rule 431(b) principles. Accordingly, we conclude the trial court fully complied with Rule 431(b) under the facts of this case. Because no error occurred, we need not address defendant's claim the evidence was closely balanced and we honor defendant's forfeiture of his Rule 431(b) argument. See *People v. Naylor*, 229 Ill. 2d 584, 593, 893 N.E.2d 653, 659-60 (2008) (procedural default must be honored when a defendant fails to establish plain error).

### III. CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed.