2015 IL App (1st) 130891-U
Rule 23 Order filed May 15, 2015
Modified Upon Denial of Rehearing September 4, 2015

FIFTH DIVISION

No. 1-13-0891

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARRQUIS ISAAC, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 12 CR 4135 Honorable Dennis J. Porter, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where: (1) the trial court properly admonished the venire under Rule 431(b); (2) the prosecutor's remarks during closing argument were proper; and (3) the record does not demonstrate the jury was improperly polled or coerced.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Marrquis Isaac was

convicted of delivery of a controlled substance of more than one but less than 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2012)).[1] The trial court sentenced defendant to four years' imprisonment and a two-year term of mandatory supervised release. On appeal, defendant raises three main contentions as to why this matter should be reversed and remanded for a new trial: (1) the trial judge failed to admonish the venire according to Rule 431(b); (2) the prosecutor's closing arguments were improper and inflammatory resulting in an unfair trial; and (3) the trial judge improperly polled the jury and the jury was coerced into reaching a guilty verdict. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On February 5, 2012, defendant was charged with delivery of more than one gram but less than 15 grams of a controlled substance (720 ILCS 570/401(c)(1) (West 2012)). A jury was selected on December 3, 2012. At that time, Illinois Supreme Court Rule 431(b) required the trial court to ask each potential juror, either individually or as a group, whether he understood and accepted the propositions that defendant was presumed innocent of the charge, the State had the burden of proving him guilty beyond a reasonable doubt, defendant was not required to present any evidence, and his decision against testifying could not be held against him. Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Prior to the *voir dire* of the individual venire panel members, the trial judge admonished the entire group of potential jurors about each of the principles set forth in the rule:

> "Now, under the law a defendant is presumed to be innocent of the charge against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the record. It is not overcome unless from all of the evidence in the

[1] Throughout the record defendant's name is spelled "Marrquis." Defendant, however, signed his name as "Marquis" on the notice of appeal. We will refer to him herein as defendant.

case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden remains on the State throughout the case. The defendant is not required to prove his innocence nor is he required to present any evidence on his own behalf. You may rely on the presumption of innocence."

¶ 5 During *voir dire* the trial judge asked the potential jurors as a group the following questions:

"The defendant is presumed to be innocent of the charges against him. This presumption remains with the defendant throughout the trial, and it is not overcome unless by your verdict you find that the State has proven the defendant guilty beyond a reasonable doubt.

Is there anybody here who has any quarrel with this proposition of law this presumption of innocence? If so, raise your hand.

The record will reflect there are none.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden remains with the State throughout the trial. Does anybody have any quarrel with this proposition of law, burden of proof? If so, raise your hand.

The record will reflect there is [*sic*] none.

The defendant is not required to prove his innocence. Anybody have a quarrel with this proposition of law? If so, raise your hand.

The record reflect [*sic*] there are none.

The defendant has the absolute right to remain silent. He may elect to sit there and not testify in his own defense and rely on the presumption of innocence. You may

draw no inference from the fact that the defendant chooses to remain silent either in favor of or against the defendant because he likes to remain silent. Anybody have any quarrel with this proposition of law, the right of the defendant to remain silent? If so, raise your hand.

Let the record reflect there are none.

* * *

Is there anybody here who cannot apply those four propositions of law in the manner I've indicated? If so raise your hand.

Let the record reflect there are none.

I take it then that you all accept these as the law? If that is not the case, raise your hand.

The record will reflect there are none and. [*sic*]

I take it you are all able to apply these four propositions of law in the manner I have indicated. If that is not the case, raise your hand.

Let the record reflect there are none.

I take it then that you all understand these four propositions of law. If that is not the case, raise your hand.

The record - - yes, ma'am.

THE PERSPECTIVE JUROR: Could you restate the four propositions?

THE COURT: Yes. The defendant is presumed to be innocent of the charges against him. The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. The defendant is not required to prove his innocence and, four, the defendant has the absolute right to remain silent.

Do you understand those?

THE PERSPECTIVE JUROR: Yes.

THE COURT: And you can apply those?

THE PERSPECTIVE JUROR: Yes.

THE COURT: You accept those?

THE PERSPECTIVE JUROR: Yes."

During this exchange, defense counsel did not make any objections.

¶ 6 Outside of the presence of the venire and before the jurors were selected, the trial judge, counsels for the State and defendant, along with the sheriff had a discussion regarding juror scheduling. The sheriff informed the court that, due to various prior engagements, five jurors were unavailable on Wednesday, December 4, 2012, and the following exchange took place:

"THE SHERIFF: *** I guess we will have to be done before Wednesday.

THE COURT: That's good. We have to be done before Wednesday.

THE SHERIFF: Some can do Tuesday, Thursday they said.

THE COURT: We don't have to worry about any of that. That's Wednesday."

Thereafter, in the presence of the potential jurors, the trial court stated, "Ladies and gentlemen, some of you are expressing some concern about Wednesday. We're going to be done with this case tomorrow. Don't worry about this case on Wednesday." Four of the five jurors who expressed reservations about Wednesday were then selected to serve on the jury.

¶ 7 The matter proceeded to trial with Chicago police officers Raphael Mitchem (Mitchem), David Showers (Showers), Timothy Williams (Williams), John Czarnik (Czarnik), and forensic scientist Maeemah Powell (Powell) testifying on behalf of the State. Defendant presented no witnesses. The following facts were adduced.

¶ 8 On February 4, 2012, Chicago police officers Mitchem, Williams, Showers, Czarnik and Brian Kane (Kane) conducted a "controlled narcotics buy" in the area of West Augusta Boulevard and North Mayfield Avenue in Chicago. Williams was the designated undercover officer who would purchase the narcotics, Mitchem and Showers acted as the surveillance officers, and Kane and Czarnik were the enforcement officers.

¶ 9 While in an unmarked police vehicle parked on West Augusta Boulevard, Mitchem observed defendant exiting a grocery store in the company of two other African-American males. Defendant was wearing a gray jacket with tan fur around the hood and blue jeans. His hair was "like an afro" with "twists or dreads."[2] Mitchem then observed an unknown African-American female approach defendant, engage him in conversation, and hand him an unknown amount of paper currency. Defendant took the money and dropped a small, unknown object into her hand. The unknown female accepted the object and walked away.

¶ 10 Upon making this observation, Mitchem radioed his team to inform them he had just witnessed a suspected narcotics exchange. Mitchem described defendant's appearance over the radio and directed Williams to approach defendant and attempt to purchase narcotics from him. Thereafter, Mitchem and Showers observed Williams park his unmarked vehicle on West Augusta Boulevard and approach defendant. Williams was in street clothes, had a removable cast on his leg, and was utilizing a crutch. Defendant walked towards Williams and engaged him in conversation. Williams asked defendant for four "blows," a street term for heroin. Defendant instructed Williams to wait there. Defendant then went around the corner out of sight of the officers. One minute later defendant returned and handed Williams four zip lock bags of

[2] During their testimonies, however, Mitchem and Czarnik indicated defendant's appearance during the trial was different because his hair was cut short and he was wearing glasses.

suspected heroin. Williams attempted to hand defendant $40 in "1505 prerecorded funds," but defendant would not accept the money.[3] Instead, defendant instructed Williams to drop the money to the ground, which Williams did. As Williams walked away towards his vehicle, Showers and Mitchem observed defendant retrieve the money. Showers and Mitchem then observed defendant and the two other individuals with him commence exchanging money between each other. Thereafter, the group dispersed with defendant and one other individual proceeding to walk southbound on North Mayfield Avenue.

¶ 11 Williams notified the team over the radio that he had made a positive purchase of suspect heroin and provided the same description of defendant. Kane and Czarnik drove to defendant's location where Williams identified defendant as the individual who sold him the suspected narcotics, and defendant was placed under arrest. Defendant did not resist and no weapons were recovered from his person. The other individual with defendant was not arrested as he was not observed engaging in a narcotics transaction.

¶ 12 Defendant was transported to the police station where he was photographed. The booking photograph, which was entered into evidence, depicted defendant's hair in dreads or twists. Defendant, however, was not wearing a jacket in the photograph due to police procedures. Czarnik searched defendant's person at the station and recovered $168. Czarnik compared the funds he recovered against the serial numbers of the "1505 funds" which Williams used in the transaction and determined that defendant was not in possession of the "1505 funds." Mitchem, however, testified that these "1505 funds" were not a "significant factor" in the operation because the officers were not trying to recover money, but were instead trying to identify the person who sold the narcotics.

[3] Mitchem testified that "prerecorded 1505 funds" is paper money drawn from a bursar that is inventoried by serial number and signed for by the officers.

¶ 13 The suspected narcotics were tested by Powell and found to consist of 1.1 grams of heroin. The suspected narcotics were not tested for fingerprints. In addition, no cameras or video equipment was utilized during the controlled narcotics buy due to officer safety concerns and the unknown female was not arrested because the officers did not want to jeopardize the operation. All of the testifying officers identified defendant in court as the individual who sold Williams the narcotics.

¶ 14 During closing arguments, the prosecutor asserted the facts of the case were simple and the evidence presented proved defendant was guilty of delivery of a controlled substance beyond a reasonable doubt. Defendant's closing argument focused on the inconsistencies in the officers' testimonies as well as the lack of physical evidence that defendant sold Williams narcotics. Defendant also argued that the officers arrested the wrong individual because Williams could not recall what the other two individuals who were with defendant looked like and no "1505 funds" were in defendant's possession. In rebuttal, the prosecutor acknowledged that there were slight differences in the officers' testimonies, but that those differences were due to the fact that each of us perceives events slightly differently. The prosecutor further argued that despite defendant's change in appearance during trial, each of the officers identified defendant in court as the drug seller.

¶ 15 After being advised by the trial court that the State bears the burden of proof and that closing arguments are not evidence and should not be considered as evidence, the jury commenced deliberations at 6:43 p.m. A guilty verdict was returned at 8:10 p.m. Defense counsel requested the jurors be polled. To the question, "Was this then and is this now your verdict?" four jurors indicated yes. When the fifth juror was similarly questioned the following occurred:

"THE COURT: *** was this then and is this now your verdict?

THE JUROR: No.

THE COURT: Then, ladies and gentlemen, you may retire back to the jury room and continue your deliberations. We will be returning the - - we will give you two new verdict forms in just a moment. Retire to the jury room."

¶ 16 Thirty minutes later, the court was informed that the jury had reached a verdict. Prior to the jury returning to the courtroom, defense counsel made a motion for a mistrial arguing:

"I think, your Honor, given the fact it is 9 o'clock now, the lateness of the hour, I think the fact that if indeed a new verdict was done so quickly in a half hour period of time, at best a half hour, that indeed it wasn't in no small part due to the lateness of the hour here at 26th and California.

However, this person or whomever [*sic*] is making her decision is making it more based, I believe, on the lateness of the hour as opposed to careful deliberation of the evidence."

The trial court denied the motion, indicating that, "It is not all that late."

¶ 17 The jury found defendant guilty of delivery of more than one gram and less than 15 grams of a controlled substance. Again, the jury was polled and all of the jurors indicated that it was then and was now their verdict.

¶ 18 Thereafter, defendant filed a posttrial motion in which he argued: (1) he was denied a fair trial due to the State's comments in closing argument regarding defendant wearing a disguise and trying to trick the jury as well as the comment that the unknown female was a "repeat customer" of defendant's; (2) the trial court erred when it discontinued polling after a juror dissented and that such a practice lead to a coercive atmosphere; and (3) the State did not prove

defendant guilty beyond a reasonable doubt.

¶ 19 The trial court denied defendant's posttrial motion. Defendant was then sentenced to four years' imprisonment with two-year term of mandatory supervised release. Defendant timely appealed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant raises three main contentions as to why this matter should be reversed and remanded for a new trial: (1) the trial judge failed to admonish the venire according to Rule 431(b); (2) the prosecutor's closing arguments were improper and inflammatory resulting in an unfair trial; and (3) the trial court improperly polled the jury and the jury was coerced into reaching a guilty verdict. We address each contention in turn.

¶ 22 A. Supreme Court Rule 431(b)

¶ 23 Defendant contends that this matter should be reversed and remanded for a new trial because the trial judge failed to properly instruct the venire during *voir dire* on the four principles of Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Defendant maintains the trial court misstated two of the principles set forth in Rule 431(b) and that he did not ensure that the venire understood and accepted the four principles of that same rule. Defendant acknowledges he failed to preserve this claim for review, and accordingly requests we consider his claim under the first prong of plain-error doctrine.

¶ 24 Defendant did not object to the court's questioning during *voir dire*, and he did not raise this issue in a posttrial motion; therefore, any claimed error must be the subject of a plain-error analysis. See *People v. Herron*, 215 Ill. 2d 167, 181-82 (2005). The plain-error doctrine allows us to consider a forfeited error when either (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the defendant,

regardless of the seriousness of the error, or (2) a clear and obvious error occurs and that error is so serious that it affects the fairness of the defendant's trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *Id.* Before we make a plain-error analysis, we first determine whether an error occurred, for, absent error, there can be no plain error. *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010); *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶ 34.

¶ 25 We first determine whether the trial court violated Rule 431(b), and if it did, what consequences should flow from noncompliance with this court's rule. Our review of these questions is *de novo. People v. Wilmington*, 2013 IL 112938, ¶ 26.

¶ 26 In *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), our supreme court held that "essential to the qualification of jurors in a criminal case is that they know" that the defendant: (1) is presumed innocent; (2) is not required to offer any evidence on his own behalf; (3) must be proved guilty beyond a reasonable doubt; and (4) may decide not to testify on his own behalf and that cannot be held against him. It follows that this qualification must come at the outset of trial because if a juror has a bias against any of these basic guarantees, an instruction given at the end of the trial will have little effect. *Id.*

¶ 27 Rule 431(b) provides:

> "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 if a

> defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not 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. July 1, 2012).

¶ 28 Defendant first argues that the trial judge misstated two of the "basic guarantees" of Rule 431(b) when admonishing the venire. Specifically, defendant argues that the trial judge conflated the principles that (1) "a defendant does not have to present any evidence" with the idea that "the defendant does not have to prove his innocence" and (2) "if a defendant does not testify, that fact cannot be used for or against him" with "the defendant has the absolute right to remain silent."

¶ 29 Regarding the third principle of Rule 431(b), prior to *voir dire* the trial judge admonished the potential jurors that, "The defendant is not required to prove his innocence nor is he required to present any evidence on his own behalf." During *voir dire*, the trial judge twice stated that, "The defendant is not required to prove his innocence." All of the potential jurors indicated that they understood and accepted this principle.

¶ 30 In *People v. Kidd*, 2014 IL App (1st) 112854, the trial judge similarly admonished the prospective jurors that, " 'The defendant is not required to prove his [*sic*] innocence.' " *Id.* ¶ 38. There, the reviewing court found that the trial court "sufficiently conveyed the principle that [the defendant] was not obligated to present evidence on her behalf" with this statement. *Id.* In rendering this determination, the reviewing court acknowledged that this exact phrase was also found to be a "satisfactory paraphrase" of the third principle in *People v. Chester*, 409 Ill. App.

3d 442, 447 (2011). *Id.* As explained in *Chester*:

> "The court's statement that 'defendant is not required to prove his innocence' would be interpreted by a reasonable jury to satisfy the third Rule 431(b) principle because if defendant is not required to prove his innocence, he has no reason to present evidence. As Rule 431(b) does not require the court to recite principles verbatim, the court's language was sufficient to comply with the rule." *Chester*, 409 Ill. App. 3d at 447.

¶ 31 Defendant argues we should not follow *Kidd* as "all of the cases *Kidd* cites as support for its proposition are appellate cases decided before *Wilmington*, where the [s]upreme [c]ourt reinforced the importance of compliance with [Rule] 431(b)."

¶ 32 In *Wilmington*, prior to the *voir dire* of the individual jury panel members, the trial judge admonished the entire group of potential jurors about each of the principles set forth in Rule 431(b). *Wilmington*, 2013 IL 112938, ¶ 28. Later, in the course of admonitions, the trial court again addressed the principles of Rule 431(b), however, it did not inquire into whether the prospective jurors understood and accepted the principle that they could not hold it against defendant if he exercised his right not to testify. *Id.* Further, in questioning the prospective jurors regarding the principles the trial court asked, "Is there anyone in the courtroom in the jury box amongst you who disagrees with this fundamental principle of law? If so, please raise your hand." *Id.* Before our supreme court, the defendant argued the trial judge violated Rule 431(b) in that he did not ask prospective jurors whether they understood and accepted the principle that they could not hold it against the defendant if he exercised his right not to testify. *Id.* ¶ 30. The defendant also asserted that the judge erred by asking only whether the prospective jurors accepted the other three principles enumerated in the rule, but not asking whether they also understood those principles. *Id.*

¶ 33 Our supreme court did not specifically address the defendant's first contention that the trial judge failed to admonish the prospective jurors about one principle of Rule 431(b). Instead, our supreme court focused on whether the trial court adequately inquired into whether the potential jurors understood the Rule 431(b) principles when it asked the question, "Is there anyone *** who disagrees with this fundamental principle of law?" Our supreme court held:

> "Rule 431(b) requires that the trial court ask potential jurors whether they *understand* and *accept* the enumerated principles, mandating 'a specific question and response process.' [Citation.] While it may be arguable that the court's asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court's failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself. Moreover, the trial court did not even inquire regarding the jury's understanding and acceptance of the principle that defendant's failure to testify could not be held against him. Thus, error clearly occurred." (Emphases in original.) *Id.* ¶ 32 (citing *People v. Thompson*, 238 Ill. 2d 598, 607 (2010)).

¶ 34 As our supreme court in *Wilmington* did not consider whether specific language was required for Rule 431(b) to be satisfied, we find defendant's argument against the application of *Kidd* to the instant matter to be misplaced. We find *Kidd* to be directly on point and, thus, conclude that the trial judge did not err when he admonished the prospective jurors as the phrase "the defendant is not required to prove his innocence" satisfies the requirements of Rule 431(b). *Kidd*, 2014 IL App (1st) 112854, ¶ 38; *Chester*, 409 Ill. App. 3d at 447; See *People v. Atherton*, 406 Ill. App. 3d 598, 611 (2010) (where trial court admonished prospective jurors that " 'defendant does not have the burden of proving himself innocent,' " it sufficiently conveyed the principle that the defendant was not obligated to present any evidence on his behalf); *People v.*

Ingram, 409 Ill. App. 3d 1, 12-13 (2011) ("We find that, by informing the venire that the defendant is not required to prove that she is innocent of the charges and that she is not required to prove anything, the trial court sufficiently ensured the venire understood and accepted that defendant was not required to provide evidence on her own behalf.").

¶ 35 Regarding the fourth principle of Rule 431(b), defendant contends that the trial court conflated the fourth principle that "if a defendant does not testify, that fact cannot be used for or against him" with "the defendant has the absolute right to remain silent."

¶ 36 The record here discloses that the trial court properly admonished the venire regarding the fourth principle. The trial judge stated in full:

> "The defendant has the absolute right to remain silent. *He may elect to sit there and not testify in his own defense and rely on the presumption of innocence.* You may draw no inference from the fact that the defendant chooses to remain silent either in favor of or against the defendant because he likes to remain silent." (Emphasis added.)

Defendant fails to cite to any case law that would suggest that the trial judge's statements did not comport with Rule 431(b)(4) in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). In addition, the record discloses that the trial judge did in fact inform the venire that defendant "may elect to sit there and not testify in his own defense." Accordingly, despite defendant's attempt to characterize the trial judge's statements as inaccurate, the trial judge properly instructed the jury that defendant did not have to testify in his own defense and that defendant's decision could not be used for or against him in accordance with Rule 431(b)(4). See *People v. Ingram*, 401 Ill. App. 3d 382, 391-93 (2010) (finding no error where the trial court informed the venire that " '[d]efendant *** has the right to remain silent. She may choose sitting right here throughout the course of the entire trial, and not testify on her own behalf, and rely

upon the presumption of innocence.' ").

¶ 37 Defendant also argues that the trial judge did not adequately ensure that the venire understood and accepted the four principles of Rule 431(b) when it asked the venire if it had "any quarrel with" the four principles and asked the venire if it collectively understood and accepted "these four propositions of law."

¶ 38 Again, defendant relies on *Wilmington* to support his position and, again, we find this reliance to be misplaced. As previously discussed, in *Wilmington* our supreme court held that "the trial court's failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself." (Emphasis in original.) *Wilmington*, 2013 IL 112938, ¶ 32. In that case, our supreme court did not address whether a trial judge could ask the potential jurors about their understanding and acceptance of all four principals simultaneously, as defendant asserts is at issue here.

¶ 39 In *Thompson*, our supreme court interpreted Rule 431(b):

> "The language of Rule 431(b) is clear and unambiguous. The rule states that the trial court 'shall ask' potential jurors whether they understand and accept the enumerated principles. While the prospective jurors may be questioned individually or in a group, the method of inquiry must 'provide each juror an opportunity to respond to specific questions concerning the [Rule 431(b)] principles.' The committee comments emphasize that trial courts may not simply give 'a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law.' [Citation.]
>
> Rule 431(b), therefore, 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*, 238 Ill. 2d at 607.

¶ 40 In *People v. Gilliam*, 2013 IL App (1st) 113104, a case cited by neither party, this court considered whether the exact language and questioning utilized by the trial judge in this case violated Rule 431(b). We concluded no error occurred. *Id.* ¶¶ 49, 54. There, the trial court initially asked the prospective jurors if they had " 'any quarrel' " with the principles under Rule 431(b). *Id.* ¶ 49. It then asked the venire as a group whether they "both understand and accept these four propositions of law. If not, raise your hand." *Id.* No hands were raised. *Id.* This court concluded no error occurred, as the record demonstrated that the trial court asked the potential jurors whether they understood and accepted the enumerated principles, and used the specific question and response process required by Rule 431(b). *Id.* ¶¶ 52, 54.

¶ 41 Here, the trial judge went through each individual principle and, after stating each principle, asked the venire if anyone had "a quarrel with this proposition of law." If a juror had an issue, he or she was directed to raise their hand. No prospective juror raised their hand. The trial judge then asked if the venire accepted "those four propositions." No one indicated that they did not accept the 431(b) principles. The trial judge then asked if the prospective jurors understood the four propositions of law. In response, one juror asked if the trial judge could restate the four propositions. After restating the propositions, the trial court individually questioned the juror as to if she understood the four principles, to which she replied, "Yes" and if she could accept them, to which she replied, "Yes." The record reflects that no other juror indicated they did not understand or accept the principles. As in *Gilliam*, the trial court here did not err where it asked the venire whether they understood and accepted the enumerated principles and used the "specific question and response process" required by Rule 431(b). *Id.* ¶

52; see *Wilmington*, 2013 IL 112938, ¶ 32. Thus, we find no error with respect to the trial court's Rule 431(b) admonitions to the venire.

¶ 42 We further find that defendant's reliance on *People v. Richardson*, 2013 IL App (1st) 111788, is misplaced. There, the trial court asked the venire only whether they had " 'any quarrel with' " the specified principles of Rule 431(b) and did not inquire as to whether they understood the principles. *Id.* ¶ 22. As the trial judge here inquired into whether the venire understood and accepted the four principles, we find this case to be inapplicable to the matter at bar.

¶ 43 B. Prosecutorial Misconduct

¶ 44 Defendant next asserts that the prosecutor made "inflammatory and irrelevant" remarks to the jury in closing argument. Specifically, the prosecutor: (1) told the jury "to 'do something' about drugs, and finish the job the police had started when they arrested Marrquis for selling heroin, which was referred to as 'poison' "; (2) "accused Marrquis of 'wearing a disguise' and trying to 'trick' the jury'" (3) "repeatedly drew attention to Marrquis's decision not to testify"; and (4) "suggested that Marrquis was involved in prior instances of drug dealing, with no evidence" when referring to the unknown female as a "repeat customer." Defendant contends that because the prosecutorial misconduct in this case was substantial this court should reverse and remand for a new trial.

¶ 45 Initially, the State acknowledges an apparent conflict in our supreme court's rulings regarding the proper standard of review, but argues that the ultimate result is the same because the closing arguments were proper. In *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), our supreme court applied a *de novo* standard of review, but in *People v. Blue*, 189 Ill. 2d 99, 128 (2000) and *People v. Caffey*, 205 Ill. 2d 52, 128 (2001), the court applied an abuse of discretion standard. In this case, however, we need not resolve this issue, as our conclusion is the same

under either standard. See *People v. Crawford,* 2013 IL App (1st) 100310, ¶ 139; *People v. Hayes,* 409 Ill. App. 3d 612, 624 (2011).

¶ 46 In addition, the State asserts that defendant preserved only two of the complained-of comments for appellate review, namely, that defendant was in "disguise" and that the unknown female was a "repeat customer." The State concludes that defendant has failed to preserve the other two comments for review and has thus forfeited his claims on appeal. The State further asserts defendant cannot establish plain error given that: (1) all the comments were proper; and (2) even if they constituted error, the evidence against him was overwhelming and, therefore, did not rise to the level of plain error. Defendant requests we review the unpreserved errors under the first prong of the plain-error doctrine. As previously discussed, the first step of our analysis is to determine whether any error occurred. *Caffey,* 205 Ill. 2d at 130. Accordingly, we first turn to consider whether any of the prosecutor's arguments in closing constituted error.

¶ 47 "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper,* 234 Ill. 2d 173, 204 (2009). "Closing arguments must be reviewed in their entirety, and the challenged remarks must be viewed in context." *Caffey,* 205 Ill. 2d at 131. Comments made during rebuttal argument are not improper if they were invited by the defense. See *People v. Giraud,* 2011 IL App (1st) 091261, ¶ 43, *aff'd,* 2012 IL 113116. The State "may fairly comment on defense counsel's characterizations of the evidence and may respond in rebuttal to statements of defense counsel that noticeably invite a response." *People v. Willis,* 2013 IL App (1st) 110233, ¶ 110. Moreover, improper arguments can be corrected by proper jury instructions, which carry more weight than counsel's arguments. *People v. Willis,* 409 Ill. App. 3d 804, 814 (2011). Improper closing arguments constitute reversible error only when they result in

substantial prejudice against a defendant "to the extent that it is impossible to determine whether the jury's verdict was caused by the comments or the evidence." *Caffey*, 205 Ill. 2d at 131. "[C]omments made in closing argument must be considered in the proper context by examining the entire closing arguments of both the State and the defendant." *People v. Kliner*, 185 Ill. 2d 81, 154 (1998).

¶ 48 Defendant first argues the State used improper inflammatory rhetoric in its initial and rebuttal closing arguments that attempted to "stir the jury to action over society's drug problem." Specifically, defendant asserts that the prosecutor's invocation of "the problem of drugs," accusations of selling "poison," and exhortation of the jury to "do something" about it, was nothing more than an inflammatory appeal to the jury to render a verdict based on emotion, and not the evidence.

¶ 49 In response, the State argues that it is not improper for a prosecutor to refer to illegal narcotics as poison and that, viewed in context, its comments were directly responsive to defense counsel's arguments that the police "didn't care about completing their job," sarcastically accused one officer of "standing like a dunce on the corner with blinders on his eyes," incorrectly told the jury that the "missing funds" were an "essential element of this case," and criticized the police for not stopping the unknown female. Thus, when the prosecutor told the jury that the police had done their job properly when he stated, "when the topic of drugs and drug dealers comes up, the comment is often made, why doesn't somebody do something about that. [These officers] did something about that. *** They did their job that day."

¶ 50 The record discloses the prosecutor made the following statements to the jury during rebuttal closing argument:

> "When the topic of drugs and of drug dealers comes up, the comment is often

made, *why doesn't somebody do something about that*. On February 4th a team of Chicago police officers from Unit 189 did something about that. They came up with their plan, assigned each other their roles, undercover, surveillance, enforcement. They went out to Augusta and Mayfield to catch a drug dealer because that's what needed to be done, and that's exactly what they did. They did their job that day." (Emphasis added.)

Then, at the end of its rebuttal argument, the prosecutor stated:

"Ladies and gentlemen, when you walked through those doors, you were no longer ordinary citizens. You became representatives of our community, and when you speak, your verdict is going to represent justice.

Justice in this case comes when you look at the fact that over and over and over again one person and one person only was the one in that gray hooded sweatshirt standing within inches of Officer Williams handing him heroin.

The evidence in this case is not something that you have to walk along a cliff and jump off of like the Defense wants you to believe. It is not that at all, ladies and gentlemen. This is a mountain of evidence against the defendant.

When the topic of drugs and drug dealers comes up and someone out on Augusta and Mayfield wonders why doesn't somebody do something about that, after today you will know in your hearts I did; I found Marrquis Isaac guilty." (Emphasis added.)

¶ 51 In support of his argument that it is improper for a prosecutor to ask a jury to "send a message" with its verdict or indulge in a description of the "broader problems of crime in society," defendant relies primarily on *People v. Johnson*, 208 Ill. 2d 53 (2003). A review of that opinion, however, makes it clear that the alleged prosecutorial misconduct in the present case pales in comparison to the outrageous prosecutorial misconduct that our supreme court deemed

substantially prejudicial in *Johnson*. There, the supreme court reversed and remanded for new trials the convictions of some defendants based on the cumulative effect of the prosecutorial misconduct, including displaying for the jury a "bloodied and brain-splattered uniform" of the murdered police officer on a life-sized, headless mannequin. *Id.* at 73-74, 84. The prosecutor in *Johnson* also encouraged the jury to " 'think about [the] message' " that a not guilty verdict would send to the law enforcement community. *Id.* at 77. The prosecutor further implored the jury, " 'We don't have to allow that to happen in our community *** We as a people can stand together ***.' " *Id.* at 79. In granting a new trial, our supreme court held that the cumulative errors and the pervasive pattern of unfair prejudice caused by the prosecutor's misconduct denied some of the defendants a fair trial and cast doubt upon the reliability of the judicial process. *Id.* at 88.

¶ 52 Here, the record discloses that the prosecutor's statements encouraged the jury to send a message to defendant, not to the community at large. In making his initial statement, the prosecutor was not asking the jury or "society" to do something about the drug problem, but was instead informing the jury that the specific officers who testified against defendant "did something about [drugs]" when they "did their job that day." The prosecutor's remarks were specifically directed to the officers and defendant in this case. See *People v. Desantiago*, 365 Ill. App. 3d 855, 865 (2006). In addition, when the prosecutor stated to the jury that "your verdict is going to represent justice" he immediately clarified that "[j]ustice in this case comes when you look at the fact that over and over and over again *one person and one person only* was in that gray hooded sweatshirt standing within inches of officer Williams handing him heroin." (Emphasis added.) The prosecutor then directed the jury to consider the "mountain of evidence against the defendant." These comments illustrate that the prosecutor was focusing specifically on defendant's conduct and not on crime in society at large. See *People v. Deramus*, 2014 IL

App (1st) 130995, ¶ 56.

¶ 53 Defendant also urges us to consider the prosecutor's references to heroin as "poison" as "piqu[ing] the jury's emotions about 'the drug problem.' " A prosecutor may comment on the evil effects of a crime and urge the jury to administer the law without fear when such argument is based upon competent and pertinent evidence. *People v. Nicholas*, 218 Ill. 2d 104, 121-22 (2005). Moreover, it is not improper for the prosecution to refer to drugs as "poison." *Deramus*, 2014 IL App (1st) 130995, ¶ 56; *People v. Janis*, 240 Ill. App. 3d 805, 815 (1992); *People v. Winters*, 25 Ill. App. 3d 1056, 1058 (1975) (it was not improper for the prosecution to refer to heroin as "poison" at the defendant's sentencing hearing). We conclude these comments during closing arguments did not rise to the level of prosecutorial misconduct proscribed by our supreme court in *Johnson*. This is especially true in light of the fact that the jury was instructed that the comments made by the attorneys during closing arguments should not be considered evidence, which served to mitigate any of the potential prejudice of which defendant now complains. See *Deramus*, 2014 IL App (1st) 130995, ¶ 63.

¶ 54 Defendant next asserts that he was prejudiced when the prosecutor told the jury that defendant cut his hair and wore glasses during trial as a disguise in order to trick them. In response, the State contends that its argument that defendant changed his appearance was based on the evidence and directly responsive to defense counsel's claims during trial and closing argument that police had arrested the wrong man.

¶ 55 The record discloses the following statements made by the prosecutor during rebuttal closing argument:

> "The defendant looks a lot different today than he did on February 4th. Why does the defendant look so different today? Is it a coincidence that when the Defense is

getting up here and claiming that identification of the defendant is an issue that he was wearing his disguise with his haircut?

[DEFENSE COUNSEL]: Objection, your Honor.

THE COURT: Overruled. They may argue.

[PROSECUTOR]: He is wearing his disguise with his glasses and his haircut. It is like Clark Kent and Superman. When you saw that movie, everyone in their right mind saw the glasses on Clark Kent and was like, how does everyone not know that this guy is superman? It is the same guy. He has just got glasses on.

That's the case in this case. It is not a coincidence his hair is shorter than you saw on the photographs and how these officers testified. The defendant is hoping to trick you in that way. It is under the law what we call consciousness of guilt.

[DEFENSE COUNSEL]. Objection, your Honor.

THE COURT: That objection is sustained. Ladies and gentlemen, disregard that statement. You may continue.

[PROSECUTOR]: Ladies and gentlemen, when you were picked as jurors, you were picked for a reason. You all come from different backgrounds, different areas, different education and jobs. You are bringing all of your collective life experiences together, your common sense together to seek the truth.

I know you won't be fooled by haircuts and glasses when you look at the evidence in this case and the testimony of the police officers and the evidence that you saw. Your common sense tells you that they got it right who that was. It was the defendant."

¶ 56 Defendant relies on *People v. Byron*, 164 Ill. 2d 279 (1995), however, we can find no support in *Byron* for defendant's contention that our supreme court in that case "asserted that

such argument [regarding the defendant's change in appearance at trial] is improperly prejudicial." In that case, the defendant alleged he was prejudiced by the prosecutor's comments during closing arguments that he " 'pretends, grows a beard, puts on glasses' " and "' [l]ooks like the county jail librarian because that's not what a murderer is supposed to look like ***.' " *Id.* at 296. In fact, our supreme court found these "isolated remarks" did not sufficiently prejudice defendant so as to require reversal where they were "brief, isolated, and came after the jury heard an abundance of evidence regarding defendant's guilt." *Id.* at 296. Accordingly, *Byron* fails to support defendant's contentions.

¶ 57 In the present case, the prosecutor's comments regarding defendant's appearance were not improper. See *People v. Jackson*, 391 Ill. App. 3d 11, 44 (2009) ("Commenting on a defendant's appearance during closing argument is implicitly recognized as falling within the bounds of legitimate argument."). Additionally, the prosecutor's remarks directly related to arguments defendant asserted during trial and closing argument. See *Giraud*, 2011 IL App (1st) 091261, ¶ 43, 47; *People v. Clark*, 335 Ill. App. 3d 758, 767 (2002) (the State's assertion that the defendant changed his appearance by growing a beard prior to trial was not error where the State's inference was legitimate and based on the evidence and that the defendant's change in appearance "arguably indicated a consciousness of guilt on the defendant's part."). Moreover, the prosecutor drew on the jury's common sense and asked them not to be "fooled" by defendant's current appearance when considering the evidence. Common sense is a factor the jury was instructed to keep in mind when considering the evidence. See *Jackson*, 391 Ill. App. 3d at 42-43.

¶ 58 Defendant also asserts that the prosecutor improperly commented on defendant's decision not to testify or present evidence. Defendant points to the following statements made by the

prosecutor during opening closing argument:

> "Now, ultimately you either believe the officers or you don't, but there was *nothing that came from that witness stand* that contradicted anything that they told you. There was nothing to impeach them. There is *nothing that contradicted* what those officers told you, and they told you what they saw and what they did on February 4, 2012.
>
> * * *
>
> Either you believe Officer Williams and you believe Officer Showers and you believe Officer Mitchem as to what they told you they observe on February 4th or you don't, but there was *nothing that came from that witness stand* that's contrary to what they told you." (Emphasis added.)

¶ 59 Because an accused has the constitutional right not to testify, a prosecutor cannot make either a direct or indirect comment on the exercise of that right. *Griffin v. California*, 380 U.S. 609, 613 (1965); *People v. Arman*, 131 Ill. 2d 115, 125-26 (1989). In deciding whether an improper comment has been made on a defendant's exercise of his right not to testify, the court should consider whether the reference was intended or calculated to direct the attention of the jury to the defendant's neglect to avail himself of the right to testify. *Arman*, 131 Ill. 2d at 126. In making that determination, a reviewing court must examine the challenged comments in the context of the entire record. *Id.*

¶ 60 Generally, it is permissible for the State to point out in closing argument that evidence is uncontradicted. *People v. Keene*, 169 Ill. 2d 1, 21 (1995). The State, however, may not " 'point the finger of blame directly at the defendant for his failure to testify when it was within his power to enlighten the jury.' " *Id.* (quoting *People v. Mills*, 40 Ill. 2d 4, 9 (1968)). Such

prosecutorial design crosses the "danger line" marking the outer boundary of proper commentary. *Id.* "To put it differently, the State is free to point out what evidence was uncontradicted so long as it expresses no thought about who specifically—meaning the defendant—could have done the contradicting." *Id.*

¶ 61 Defendant points to *People v. Edgecombe*, 317 Ill. App. 3d 615 (2000) as an example of when a prosecutor crosses the "danger line." There, this court reversed and remanded the matter for a new trial based on the prosecutor's remarks concerning the defendant's failure to testify and comments which improperly shifted the burden of proof. *Id.* at 624. The defendant was charged with armed robbery and only the victim testified in the matter. *Id.* at 621. According to this court, during closing arguments, the prosecutor "did not simply say that the evidence was uncontradicted, but focused upon the fact that 'no one' contradicted certain aspects of the State's evidence." *Id.* These numerous references to the defendant's failure to testify included: " 'there has been no evidence whatsoever from the witness stand that says $60 wasn't taken from them ***,' " " 'there's no one that got up there and said the defendant was just standing there ***,' " and " 'is there any evidence that you heard that this guy was just there? Nobody told you that.' " *Id.* This court ultimately expressed that because no one other than the victim testified regarding the offense, the only conclusion was that the prosecutor's remarks were designed to focus the jury's attention upon the defendant's failure to testify. *Id.*

¶ 62 Defendant argues that there is no difference between *Edgecombe* and the current matter because saying "no one" contradicted the State's evidence, and "nothing from the witness stand" are essentially the same phrase. Defendant surmises that the jury "was sure to take the reference *** as a direct comment on [defendant's] decision not to testify."

¶ 63 We disagree. This court in *Edgecombe* based its determination on the fact that the

prosecutor "focused" on the defendant's failure to testify when it weaved these objectionable phrases consistently in and out of closing argument. Here, however, the prosecutor made a singular argument which included the phrase "nothing that came from the witness stand." Looking at the phrase in the context of the trial, three officers and one forensic scientist testified as to the offense. In his closing argument, defense counsel focused on the discrepancies between the officers' testimonies, attempting to impeach them. Thus, when the prosecutor remarked that "ultimately you either believe the officers or you don't, but there was *nothing that came from that witness stand* that contradicted anything that they told you. There was nothing to impeach them[,]" he did not "point the finger of blame directly at the defendant for his failure to testify," but, instead, was commenting on the uncontradicted nature of the evidence. *Keene*, 169 Ill. 2d at 21.

¶ 64 Lastly, defendant asserts that the prosecutor introduced "totally speculative references to prior bad acts in rebuttal" when he stated:

> "It was different when that female had approached the defendant originally because you heard Officer Williams had never bought, his team had never gone in that area or ever bought from the defendant again. So when someone he didn't know came up to him and bought heroin from him, the defendant was extra cautious. He got rid of that money. He walked away. He had the officer drop the money.
>
> That female, who knows? She could have been *a repeat customer* of the defendant's. We don't know.
>
> * * *
>
> We don't know. I would argue that he probably did know that person because they walked up and talked and that hand-to-hand transaction happened right there and it was

no big deal. There was no need to hide." (Emphasis added.)

Defendant asserts the reference to a "repeat customer" was improper because: (1) it was not an inference based on the evidence; and (2) the prosecutor was stating his personal opinion. Defendant maintains this argument was prejudicial because no evidence was presented that defendant engaged in prior acts of drug dealing.

¶ 65 Here, Mitchem testified that he observed the unknown female approach defendant, engage him in conversation, and hand defendant an unknown amount of money. Defendant then took the money and handed her a small item. It was this conduct that Mitchem observed which lead him to suspect that defendant was dealing narcotics and to direct Williams attempt to purchase the narcotics from defendant. Officers Mitchem, Williams, and Showers testified that when Williams approached defendant to purchase the narcotics, his exchange with defendant was different. The testimony collectively established that defendant related in a more familiar way with the unknown female and, in contrast, treated Officer Williams with more caution. The prosecutor's remarks were based on the evidence presented. See *People v. Figueroa*, 381 Ill. App. 3d 828, 853 (2008) (prosecutor's comments during closing argument were based on the evidence and were directly in response to defendant's statements during his own closing argument). Further, any potential prejudicial impact was cured by the trial court's instructions to the jury that closing arguments are not evidence and to disregard any statement not based on the evidence. See *Willis*, 409 Ill. App. 3d at 814 (noting that even if the prosecutor's remarks were improper arguments they can be corrected by proper jury instructions, which carry more weight than the arguments of counsel and that any possible prejudicial impact is greatly diminished by the court's instructions that closing arguments are not evidence).

¶ 66 Accordingly, we conclude the complained-of comments made by the prosecutor, when

viewed in the entire context of the closing arguments, do not reach such a level as to be construed as inflammatory or a flagrant threat to the judicial process. See *Giraud,* 2011 IL App (1st) 091261, ¶ 47. Thus, we find that no reversible error resulted from the State's closing argument. Because no error occurred at trial, there can be no plain error. *Wilson*, 404 Ill. App. 3d at 247.

¶ 67 C. Jury Issues

¶ 68 Lastly, defendant asserts the trial court committed reversible error when it did not continue polling the jury after the juror repudiated her verdict. He further argues that he was denied his constitutional right to a unanimous verdict free from coercive influence.

¶ 69 The State asserts defendant did not preserve these issues for review because he failed to object when the trial court sent the jury back to deliberate and did not raise both arguments in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (timely objection and written posttrial motion are required to preserve issue for appellate review). In his reply brief, defendant asserts he properly preserved these claims for appellate review, but requests in the alternative that we review his claims for plain error.

¶ 70 Our review of the record reveals that defendant did not preserve these issues for review. Defendant did not object to the polling of the jury at the time the jury was polled nor did he raise the issue of the lateness of the hour in his posttrial motion. "An objection based upon a specified ground waives all grounds not specified, and a ground of objection not represented at trial will not be considered on review." *People v. Gales*, 248 Ill. App. 3d 204, 229 (1993). Accordingly, both issues are forfeited for appellate review. See *People v. McDonald*, 168 Ill. 2d 420, 462 (1995) (abrogated on other grounds by *People v. Clemons*, 2012 IL 107821). We acknowledge that although defendant requested plain-error review of this issue for the first time in his reply

brief, "the purpose of the plain error rule is to guard against the possibility that an innocent person may have been convicted due to some error which is obvious from the record, but not properly preserved and to protect and preserve the integrity of and the reputation of the judicial process." (Internal citations omitted.) *People v. Williams*, 193 Ill. 2d 306, 348 (2000) (considering the defendant's plain error argument where it was not raised in the opening brief). Therefore, even if we were to consider defendant's arguments under the plain-error doctrine, for the reasons that follow we find no error occurred. *People v. White*, 2011 IL App (1st) 092852, ¶ 81 (the first step in a plain-error analysis is to determine whether any error occurred). Thus, we first turn to consider whether the trial court committed reversible error when it did not continue polling the jury after a juror repudiated her verdict.

¶ 71 1. Jury Polling

¶ 72 The purpose of polling is to afford the juror, before the verdict is recorded, an opportunity for free expression unhampered by the fears or the errors which may have attended the private proceedings of the jury room. *People v. Kellogg*, 77 Ill. 2d 524, 528 (1979). Before the final verdict is recorded, a juror has the right to inform the court that a mistake has been made, or to ask that the jury be permitted to reconsider its verdict or to express disagreement with the verdict returned. *Id.* "If the trial judge determines that *any juror* does dissent from the verdict submitted to the court, then the proper remedy is for the trial court, on its own motion if necessary, to either direct the jury to retire for further deliberations ([citation]) or to discharge it ([citation])." (Emphasis added.) *Id.* at 528-529.

¶ 73 In conducting the poll, each juror should be examined to make sure that he or she truly assents to the verdict. *Id.* at 528. If a juror indicates some hesitancy or ambivalence in his or her answer, then it is the trial judge's duty to ascertain the juror's present intent by affording the juror

the opportunity to make an unambiguous reply to his or her present state of mind. *Id.* The judge conducting the poll must keep in mind that the influence of the trial judge on the jury is necessarily and properly of great weight and that jurors are ever watchful of the words coming from the trial judge. *Id.* at 529. Thus the judge, in posing questions to a juror during the poll, must carefully avoid the possibility of influencing or coercing the juror. *Id.* The manner in which the jury is polled and the subsequent questioning is conducted are within the trial court's discretion. *People v. Wheat*, 383 Ill. App. 3d 234, 238 (2008).

¶ 74 Defendant argues that the trial court committed reversible error when it discontinued polling after a juror repudiated her verdict. Defendant relies on this court's statement in *People v. Chandler*, 88 Ill. App. 3d 644, 650 (1980) that "[t]he polling of the jury, then, requires that the entire jury be polled in order to provide each juror the opportunity to dissent from the verdict." He also relies on *Bianchi v. Mikhali*, 266 Ill. App. 3d 767 (1994). In that case, the trial court twice discontinued polling the jury after the same juror was ambiguous about the verdict. *Id.* at 772-73. Relying on *Chandler*, this court determined that the court erred when it failed to continue polling the jury because it "effectively isolated the juror and conceivably could have had a coercive effect." *Id.* at 781.

¶ 75 In light of *Bianchi* and *Chandler*, defendant argues that it was reversible error for the court to discontinue the poll after a juror dissented from the verdict because "the judge sent a clear message to the dissenting juror, and any unpolled jurors who may have been having second thoughts: when being polled, 'no' is an unacceptable answer." We disagree.

¶ 76 In *Chandler*, this court rejected the defendant's argument that it was error to continue polling the jury after one juror dissented from the verdict because it isolated the dissenting juror and resulted in pressure from the trial court. *Chandler*, 88 Ill. App. 3d at 651. This court

observed that the isolation of dissenting jurors "is attendant to every jury poll. *** If the isolation and coercion of the jurors are to warrant reversal, however, they must result from the court's own actions, and not from the nature of the poll itself." *Id.*

¶ 77 Contrary to defendant's contention, *Chandler* did not create a steadfast rule that reversible error occurs when a trial court discontinues polling the jury after a juror has repudiated his or her verdict. Rather, the issue is whether, in and of itself, the trial court's determination to either discontinue the poll or to continue the polling after a jury has repudiated his or her verdict had a coercive effect on the dissenting juror. See *id.* at 654 (supplemental opinion on denial of rehearing). In this case, there is no evidence that by discontinuing the jury poll, the trial court coerced the dissenting juror or influenced the remaining jurors into returning guilty verdicts. Immediately upon learning of the juror's repudiation of the verdict, the trial court directed the jury to continue deliberations. No other comments were made to the jury. The jury returned 30 minutes later with a unanimous verdict and the entire jury was polled. No juror dissented during that poll and a verdict of guilty was recorded. The jury polling procedure followed in this case gave each juror the opportunity to disagree with the verdict, free from any coercion or influence and thus fulfilled the purpose of polling the jury. *Kellogg*, 77 Ill. 2d at 528.

¶ 78 In addition, the facts of *Bianchi* are distinguishable from the facts of the instant matter. There, the jury returned with a verdict for defendants and a juror expressed "some doubt" about the verdict. *Bianchi*, 266 Ill. App. 3d at 772. The judge discontinued the poll after questioning only this juror and sent the jury back to continue deliberations. *Id.* The jury again returned with a verdict in favor of defendants, but the same juror wrote "protest" next to her name on the second verdict form. *Id.* Again, the trial judge discontinued polling and sent the jury back to continue deliberations. *Id.* At this time, the plaintiff made a motion for a mistrial on the grounds

that the trial judge's conduct on focusing on this one juror was coercive. *Id.* at 772-73. When the jury returned for the third time, they returned a verdict for the defendants with no juror expressing dissent. *Id.* at 773. Regarding the polling issue, this court concluded that "[t]his conduct effectively isolated the juror and conceivably could have had a coercive effect." *Id.* at 781. In addition to finding this error, the *Bianchi* court also found the trial court abused its discretion when it failed to grant a mistrial and failed to allow the plaintiff the opportunity to rehabilitate its expert through the use of an evidence deposition. *Id.* at 777. Based on these collective errors, the *Bianchi* court reversed and remanded the matter for a new trial. *Id.* at 781. The facts of *Bianchi* support the conclusion that the trial court's focus on the dissenting juror could have had a coercive effect on that juror, impacting her verdict. Here, however, the trial court did not question the juror after the juror repudiated her verdict and simply ordered the jury to return to the jury room. See *Chandler*, 88 Ill. App. 3d at 654 (direct questioning by the court may have a coercive effect on a dissenting juror). Accordingly, we conclude that no reversible error occurred when the trial court discontinued polling and directed the jury to continue deliberations upon repudiation of the verdict by a single juror.

¶ 79 2. Jury Coercion

¶ 80 Defendant argues he was denied his right to a unanimous verdict free from coercion where the trial judge placed "immense coercive pressure on the dissenting juror to change her vote and on the entire jury to render a verdict quickly." Defendant specifically notes the lateness of the hour when the trial judge instructed the jury to continue deliberating (8:30 p.m.) and the trial judge's awareness that multiple jurors "had important obligations the next day and could not deliberate on Wednesday." Defendant further asserts the discontinuation of polling after one juror dissented "embarrassed" that juror and aided in the coercive atmosphere created by the trial

judge.

¶ 81 A trial court's comments to the jury are improper where, under the totality of the circumstances, the language used actually interfered with the jury's deliberations and coerced a guilty verdict. *People v. Fields*, 285 Ill. App. 3d 1020, 1029 (1996). Coercion is a highly subjective concept that does not lend itself to precise definition or testing and, as a result, a reviewing court's decision often turns on the difficult task of ascertaining whether the challenged comments imposed such pressure on the minority jurors as to cause them to defer to the conclusions of the majority for the purpose of reaching a verdict. *People v. Branch*, 123 Ill. App. 3d 245, 251 (1984). The trial court has "great influence on jurors" at all stages of trial and therefore "must exercise restraint over [its] utterances and refrain from unnecessary disparagement of issues." (Internal quotation marks omitted.) *People v. White*, 2011 IL App (1st) 092852, ¶ 83 (quoting *People v. Emerson*, 189 Ill. 2d 436, 485 (2000)). A trial court may not "hasten" a verdict by giving instructions that are intended to coerce jurors to change their views. *People v. Love*, 377 Ill. App. 3d 306, 316 (2007). Instead, "[a] court's instruction to continue deliberating should be simple, neutral, and not coercive" and should not imply that the majority view is the correct one. *People v. Gregory*, 184 Ill. App. 3d 676, 681 (1989). The test in determining the propriety of the trial court's comments to the jury in this context is whether the language used by the court actually interfered with the jury's deliberations and coerced a guilty verdict. *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010). In addition, matters relating to jury management are generally within the discretion of the trial court. *People v. Roberts*, 214 Ill. 2d 106, 121 (2005).

¶ 82 Defendant's assertion that the circumstances here were more coercive than those in *People v. Wilcox*, 407 Ill. App. 3d 151 (2010), is inaccurate. In *Wilcox*, the trial court received a

note from the jury indicating it was deadlocked. *Id.* at 163. Instead of issuing a *Prim* instruction, the trial judge sent a note to the jury directing that " '[w]hen you were sworn in as jurors and placed under oath you pledged to obtain a verdict. Please continue to deliberate *and obtain a verdict*.' " (Emphasis added.) *Id.* at 164. This court found the note to be coercive because it "indicated that being deadlocked was not an option, that the jurors were required by their oath to obtain a verdict, and that they would be required to deliberate until a verdict was reached." *Id.* at 165-65. In the instant matter, the record demonstrates that the jury did not communicate to the trial court that it was deadlocked. In fact, the jury had indicated it was unanimous by returning a verdict and it was not until one juror repudiated her verdict that it became apparent there was an issue. Further, upon discovery of the verdict repudiation, the trial court did not convey to jurors that it must arrive at a verdict or that it did not have the option of being deadlocked, but instead simply provided the jury with new verdict forms and instructed the jury to continue deliberating.

¶ 83 Defendant argues that the lateness of the hour, the knowledge that some jurors had "important obligations" on Wednesday, and the "embarrassment" the repudiating juror had to "endure" in open court created a coercive atmosphere that affected his right to a fair trial.[4] We disagree.

¶ 84 In *White*, the defendant claimed the trial court's comments to the jury that " 'we will finish the entire case tomorrow' " was reversible error. *White*, 2011 IL App (1st) 092852, ¶ 81. This court found that in making this statement to the jury "the judge was simply fulfilling his administrative responsibilities of informing the jury about scheduling." *Id.* ¶ 87. Further, this court indicated it did not "believe that the jury would infer from the judge's comments that he believed the jury should need little time to resolve the issues" as the comments were ambiguous.

[4] We note that defendant cites no cases in support of this argument in contravention of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013).

Id. In addition, the judge "never indicated that the jury would need to finish deliberations that day." *Id.* Similarly, here, the trial judge's comments to the venire prior to jury selection that, "Ladies and gentlemen, some of you are expressing some concern about Wednesday. We're going to be done with this case tomorrow. Don't worry about this case on Wednesday[,]" did not indicate to the potential jury members they would have to finish deliberations on Tuesday or that they should be able to come to a quick resolution. See *id.*; *Emerson*, 189 Ill. 2d at 486 (finding no error in the trial court's comments that "everybody anticipates that this case will be over next Monday").

¶ 85 Our examination of the record reveals that the totality of the circumstances here does not indicate the jury was coerced. In the instant cause, the jury had been deliberating for two hours and it was only 8:30 p.m. when it was instructed to continue deliberating. Defendant cites no cases that indicate that requiring a jury to continue deliberating at such an hour is coercive. Moreover, the record fails to support any indication that the trial judge coerced the jury into reaching a verdict. Accordingly, since we can find no error in the trial court's instruction to the jury to continue deliberating, it follows that there can be no plain error. *Piatkowski*, 225 Ill. 2d at 565.

¶ 86 CONCLUSION

¶ 87 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 88 Affirmed.