SIXTH DIVISION
October 30, 2015

No. 1-14-0841

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 CR 7800
	)	
MICHAEL DAWSON,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction of first-degree murder and his 70-year sentence, finding: (1) the trial court properly admonished the potential jurors pursuant to Supreme Court Rule 431(b); (2) the trial court committed no error in its written response to a jury question regarding nullification; and (3) the trial court committed no abuse of discretion during sentencing.

¶ 2 A jury convicted defendant, Michael Dawson, of first-degree murder and aggravated discharge of a firearm and found that defendant personally discharged the firearm during the commission of the murder. The trial court sentenced him to 50 years' imprisonment for the murder conviction, plus an additional 20 years' imprisonment for personally discharging the firearm, for a total of 70 years' imprisonment. On appeal, defendant contends the trial court: (1) failed to properly admonish the prospective jurors during *voir dire* in violation of Illinois

Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)); (2) gave an improper response to a jury question regarding nullification; (3) abused its discretion during sentencing by using his silence as evidence that he lacks remorse, and then considering defendant's supposed lack of remorse as an aggravating factor; and (4) imposing a *de facto* life sentence. We affirm.

¶ 3 During jury selection, the trial court made the following, pertinent opening remarks to the prospective jurors:

> "Now, under the law a defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on a verdict. And it is not overcome unless from all the evidence in the 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, and this burden remains with 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. He may rely on the presumption of innocence."

¶ 4 The trial court later told the prospective jurors in pertinent part:

> "Now the defendant is presumed to be innocent of the charges against him. This presumption remains with the defendant throughout the trial, and it's not overcome unless by your verdict you find the State has proven the defendant guilty beyond a reasonable doubt.
>
> Does anybody have any quarrel with this proposition of law with the 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 on the State throughout the trial.

Does anybody have any quarrel with this proposition of law, the burden of proof? If so, raise your hand.

The record will reflect there are none.

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

The record will [reflect] there are none.

The defendant has the absolute right to remain silent. He may elect to sit there, not testify in his own defense and rely on the presumption of innocence. You may draw no inference from the fact the defendant chooses to remain silent either in favor of or against the defendant because he elects 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.

The record will reflect there are none."

¶ 5 The trial court then gave the prospective jurors an example as to "the way these four propositions of law work if you put them all together":

"[I]f I took the first 12 of you right now, gave you your verdict forms and told you to go back in that jury room and deliberate and reach a verdict, could you do it? Right now I'm sure there is somebody thinking how do you expect me to decide this case if I haven't heard any evidence. See, that would be wrong because since the defendant is presumed to be innocent of the charges against him and you've heard no evidence to remove that presumption, and since the State has the burden of proving the guilt of the

> defendant beyond a reasonable doubt, and you've heard no evidence to sustain their burden, and since the defendant is not required to prove his innocence, you can't consider the fact that the defense hasn't presented any evidence. And since the defendant has the absolute right to remain silent, you can't consider that either for or against him. The only possible verdict you could come back with right now would be not guilty. That's the way those four propositions of law work if you put them all together."

¶ 6 The trial court asked the prospective jurors whether any of them "could not apply those four propositions of law in the manner that I've indicated? If so, raise your hand. Is there anybody here who does not understand those four propositions of law? If so, raise your hand."

¶ 7 The trial court noted that two prospective jurors raised their hands. The trial court then stated: "Is there anybody here who does not accept these four propositions of law? If so, raise your hand."

¶ 8 The trial court noted one prospective juror raised her hand. The trial court then stated: "Is there anybody here who does not accept those four propositions of law? If so, raise your hand. The record will reflect there are none."

¶ 9 The three prospective jurors who raised their hands were later excused for cause. A jury was subsequently seated.

¶ 10 At the trial, Shirley Jones Allen testified that the victim in this case, Famous Lee Ware, Jr., was her son. The victim was 40-years old on January 3, 2009, and made his living selling cigarettes and gym shoes from the trunk of his vehicle, a green 1990 Chrysler.

¶ 11 Latrice Neals testified that on January 3, 2009, she lived on the third floor of a building located at 2111 East 68th Street in Chicago with her husband and daughter. At about 4:35 p.m.,

on that date, Latrice called the victim, who she knew as "the cigarette guy," and told him she wanted to buy two packs of cigarettes for $10. The victim told her that he would be over shortly.

¶ 12 At approximately 5:11 p.m., Latrice received a call from the victim saying he was downstairs. Latrice gave her husband $10 and sent him and her daughter downstairs to purchase the cigarettes. While Latrice was waiting in the front room of the apartment, she heard gunshots. Her husband and daughter came back upstairs, and Latrice called the victim's phone to see if he was okay. The victim did not answer his phone, and Latrice then called 911. Latrice looked out her window and saw a vehicle parked "catty corner" in the middle of the street. Latrice could not see who was inside the vehicle and she did not go outside to investigate.

¶ 13 Marcello Moore testified that at around 5 p.m. on January 3, 2009, he took his vehicle to a mechanic who had a garage located in an alley in the 6700 block between Clyde and Chappel Streets. While in the alley, a friend's son, Kenneth Garrett, asked Marcello for a ride home and Marcello agreed to take him. Kenneth got into the front passenger seat and Marcello drove south out of the alley. As they approached 68th Street going westbound, Marcello heard 6 to 12 gunshots coming from his left (east) side. Marcello looked to his left and saw two vehicles at 68th and Clyde Streets, about half a block away. One of the vehicles was green and "seemed to be angling as if it was parking." The other vehicle was a champagne gray Chrysler driving in Marcello's direction.

¶ 14 The gray Chrysler was moving very fast, "like a rocket," and Marcello saw that it was occupied by three African-Americans but he could not tell their gender. Two sat in the front and one sat in the back. The gray Chrysler swerved around Marcello's vehicle and continued on to the next corner at 68th and Chappel Streets.

¶ 15 Marcello followed the gray Chrysler, which was speeding and which "blew" a stop sign. Marcello was able to get close enough to see its license plate number, which he wrote down on a Burger King crown that his son had left in his vehicle. Marcello stopped following the vehicle when it turned north onto Lake Shore Drive. Marcello then exited his vehicle, called 911, and reported the shooting and gave the operator the license plate number of the gray Chrysler.

¶ 16 Marcello went back to 68th and Clyde Streets, where he saw the green vehicle "angled towards the northeast corner." Marcello drove up to the green vehicle, looked inside, and saw the victim, whom he had known for a long time, in the driver's seat. The victim was still alive and breathing heavily. There were bullet holes in the driver-side window and rear of the vehicle. Marcello called 911 and asked for an ambulance.

¶ 17 Marcello parked his vehicle four blocks away and then walked back to 68th and Clyde Streets to see if the ambulance had arrived; meanwhile, Kenneth had walked away to a friend's house. At the scene, Marcello saw detectives canvassing the area, asking people questions. Marcello encountered Detective Martin and identified himself. Marcello later went to the police station to make a written statement and gave Detective Martin a Burger King crown on which he had written the gray Chrysler's license plate number.

¶ 18 Marcello admitted he has prior convictions of possession of a controlled substance and residential burglary. Marcello also admitted he has a pending burglary case for which he expected to plead guilty to a misdemeanor and receive 364 days in jail concurrent to his residential burglary sentence in exchange for his cooperation on this case.

¶ 19 Kenneth Garrett testified he was a passenger in a vehicle driven by Marcello Moore around 5 or 5:30 p.m. on January 3, 2009. As they were coming out of an alley and approaching 68th Street, Kenneth heard "[m]ore than six" gunshots. Kenneth then saw a gray Chrysler with

three African-American men inside speed past them, drive through a stop sign, and go in the direction of 67th and Chappel Streets. Marcello followed behind and wrote down the vehicle's license plate number on a Burger King crown. They stopped following the gray Chrysler when it turned onto Lake Shore Drive.

¶ 20 Marcello called 911 and then drove them back to 68th and Clyde Streets, where Kenneth saw an African-American man in a green vehicle, gasping for air. No police cars were yet there. Marcello pulled over and Kenneth got out and walked home.

¶ 21 Kenneth admitted he has previous convictions of possession of a controlled substance, possession of a stolen motor vehicle, and aggravated discharge of a firearm.

¶ 22 Rachel Randle testified she is a certified nursing assistant who was living at 68th and Paxton Streets on January 3, 2009. Shortly after 5 p.m. on that date, Rachel was walking down Merrill towards 68th Street when she heard multiple gunshots coming from more than one gun. The gunshots were coming from the direction of 68th Street. Rachel walked to 68th Street and saw the victim's green vehicle parked at a diagonal. Rachel was friends with the victim and sometimes bought cigarettes from him.

¶ 23 The driver-side door was open and the victim was inside. He was not moving. Rachel walked to within three feet of the vehicle and saw that the victim had been shot multiple times and was bleeding. Rachel called his name three times, and when he did not respond, she ran down the street, called 911, and reported the shooting.

¶ 24 Rachel admitted she was on probation for an aggravated battery to a police officer and that no deals or promises were made to her in exchange for her testimony.

¶ 25 Officer Andrew Larson testified that at 5:18 p.m. on January 3, 2009, he and his partner responded to a call of shots fired in the 2100 block of East 68th Street. When they arrived at

68th Street, Officer Lawson saw an older model, green Chrysler parked at an angle against the curb with the driver-side door open. Officer Lawson exited his police vehicle and approached the green Chrysler.

¶ 26 Officer Larson observed glass in the street and saw a number of bullet holes in the green Chrysler. Officer Lawson saw the victim sitting in the driver's seat, slumped over the wheel and "kind of leaning out of the car." Officer Larson knew of the victim as someone who sold cigarettes, purses, and DVDs. The victim was bleeding and unresponsive to the officer's attempts at conversation. The victim was breathing when Officer Larson initially approached, but he stopped breathing a short time later. The officer radioed for an ambulance, which later arrived and transported the victim to the hospital. Officer Larson subsequently learned that the victim was pronounced dead on arrival at the hospital.

¶ 27 The parties stipulated that forensic investigator Susan Wolverton was assigned to process the scene at 2104 East 68th Street. She recovered a black garbage bag containing seven cartons of cigarettes; five one-dollar bills; six five-dollar bills; and two 10-dollar bills. On the street she found: six 9 mm Luger fired cartridge cases at 2109 East 68th Street; one .40 caliber Smith & Wesson cartridge case in the street at 2103 East 68th Street; one .40 caliber Smith & Wesson cartridge case in the parkway grass at 2103 East 68th Street; and one .40 caliber Smith & Wesson cartridge case in the corner parkway grass at 2101 East 68th Street. She recovered two packages of cigarettes from the floor of the victim's vehicle.

¶ 28 Detective Clifford Martin testified he and his partner, Officer Colvin, arrived at the crime scene at 68th and Clyde Streets at about 6 p.m. on January 3, 2009. Detective Martin saw a green Chrysler "sitting askew in the street." The vehicle was riddled with bullets and there were numerous shell casings surrounding the area. The rear-passenger window and rear windshield

were shattered and the front-passenger window was shattered and missing. Detective Martin had a conversation with Marcello Moore, who gave him the license plate number of the get-away vehicle (the gray Chrysler). The license plate number was 599K898. The license plate number was run through an Illinois Secretary of State database to determine ownership of the vehicle, and a message was sent to police agencies throughout the State that the vehicle was wanted in connection with the shooting.

¶ 29 Cook County Sheriff's police investigator Roy Jones testified that on January 3, 2009, he received a dispatch call to locate a vehicle with temporary tag number 599K898. The vehicle was registered to Dominique Jenkins, at 3415 West 194th Street, in Flossmoor, Illinois. Investigator Jones went to that location at about 8:35 p.m. and spoke to Dominique's mother, who then called Dominique. Investigator Jones subsequently stopped Dominique's vehicle as she returned home; Dominique was driving and Christopher Jones was in the passenger seat. They were placed into custody.

¶ 30 Dominique Jenkins testified that in 2009 she lived with her parents in Flossmoor, Illinois, and was dating Christopher Jones. She knew of defendant, who went by the nickname "China," but had no relationship with him. On January 3, 2009, Dominique owned a "grayish" 2007 Chrysler Sebring; she had just bought the vehicle about a week before and it had temporary license plates. That afternoon, Dominique drove her vehicle to Christopher Jones' grandmother's house on Wabash Avenue, where she saw Christopher. Dominique was not feeling well, so she laid down for awhile and was still asleep at 5 p.m. (around the time of the shooting). Dominique does not know whether anyone drove her vehicle while she was lying down.

¶ 31 Christopher eventually woke Dominique up that evening, and they drove to a movie. While at the movie theater, Dominique received a phone call from her mother, after which she

and Christopher drove to her home. As she approached her house, Dominique saw a police vehicle in the driveway and she was pulled over. She and Christopher went to the police station.

¶ 32 Dominique testified she never fired guns out of her vehicle and never saw anyone else do it and has no idea whether or how shell casings got in her vehicle.

¶ 33 Detective Martin testified that Dominique's 2007 Chrysler Sebring, with a temporary license plate number 599K898, was towed to the police station. Detective Martin saw a jacket in the back seat and two spent .45 caliber shell casings inside the vehicle. Detective Martin spoke with Christopher Jones around midnight, after which police began looking for defendant.

¶ 34 Raymond Jester, a forensic investigator with the Chicago police department, testified that on January 6, 2009, he processed Dominique's gray 2007 Chrysler Sebring. Mr. Jester found two spent shell casings inside the vehicle as well as some clothing on the rear passenger seat.

¶ 35 Scott Rochowicz, a forensic scientist with the Illinois State Police, testified he examined a tan jacket recovered from Dominique's gray 2007 Chrysler Sebring. He determined that gunshot residue (GSR) particles were on samples taken from the left and right cuff of the jacket, meaning that the jacket had been in the environment of a discharged firearm or had contacted a GSR-related item. Mr. Rochowicz reached the same conclusion about a white hooded sweatshirt found in that vehicle.

¶ 36 Marvin Otten, a forensic investigator with the Chicago police department, testified he processed the victim's vehicle (the green Chrysler) on January 6, 2009. Mr. Otten determined there were eight bullet holes on the passenger side of the vehicle; seven in front and one in back. There was glass on the front passenger seat. No drugs or guns were found in the vehicle. The door panels of the vehicle were removed so investigators could look for bullets in the door frames. When the front-passenger door panel was removed, a fired bullet fell to the floor.

Another bullet was found in the frame of that door and one was found in the frame of the rear-passenger door.

¶ 37 Kurt Zielinski, a forensic scientist with the Illinois State Police, testified he examined the fired bullets recovered from the victim's vehicle. Mr. Zielinski determined that six fired bullets and one bullet fragment were 9mm/.38 caliber, with six lands and grooves and a right hand twist. All were fired from the same gun. One bullet was a .40 caliber bullet, with six lands and grooves and a left hand twist; and the other was a .45 caliber bullet, with six polygonal lands and grooves with a right hand twist.

¶ 38 Mr. Zielinski also examined the fired cartridge casings recovered in this case. Three 9mm Remington Luger cartridge cases; three 9mm PMC Luger cartridge cases; and three .40 caliber Winchester Smith & Wesson cartridge cases were recovered from the crime scene at 68th and Clyde Streets. Two .45 caliber cartridge cases were recovered from Dominique's gray 2007 Chrysler Sebring. Mr. Zielinski explained that the 9mm weapon was shot at least seven times; the .40 caliber weapon was shot at least three times; and the .45 caliber weapon was fired at least twice. Thus, from all the firearms evidence, Mr. Zielinski concluded that three weapons were fired a total of at least 12 times.

¶ 39 Dr. James Filkins conducted the autopsy of the victim and determined he died from multiple gunshot wounds and that the manner of death was homicide.

¶ 40 Detective Danny Stover testified that at about 2:30 p.m. on March 27, 2009, he was at the police station with his partner, Detective Timothy Murphy, when defendant was brought into the station under arrest. Detective Stover knew defendant from a previous unrelated investigation in which defendant was a witness. Defendant looked at Detective Stover and said: "Let me holler at you."

¶ 41 Later that day, at about 3:24 p.m., Detectives Stover and Murphy had a 10 to 12 minute conversation with defendant in an interview room at the police station. This interview was video recorded. A DVD of the interview was admitted into evidence and played for the jury. We have viewed the DVD, which is included in the record on appeal. In the DVD, defendant told Detectives Stover and Murphy that he was not present at the shooting. Defendant claimed he had not seen Christopher Jones for months, and that Christopher Jones had a motive to implicate defendant in the shooting because they had had a disagreement.

¶ 42 After the DVD was played for the jury, Detective Martin testified that on March 27, 2009, he had a conversation with Detectives Stover and Murphy following their interview with defendant. At about 4 p.m. on that date, Detectives Martin and Colvin went in to speak with defendant. Defendant told them he knew of the murder but was not present for it, and he said had never been in Dominique's Chrysler Sebring. Detective Martin then told defendant that if, in fact, he had been in the Chrysler Sebring, he might have left some fingerprints. Defendant then admitted he got into the vehicle with Christopher Jones and Christopher's brother, Larry Jones, to get a ride and smoke some marijuana, but that he never fired a weapon.

¶ 43 Detective Martin told defendant they had recovered shell casings and there was a possibility they might recover fingerprints from those casings. Defendant then said that Christopher had passed him a .40 caliber gun, which defendant shot out of the passenger window. Defendant claimed he fired the weapon twice up in the air, and did not fire it at the victim's vehicle. Defendant stated that only Christopher and Larry Jones fired at the victim's vehicle.

¶ 44 Detective Martin left the interview room and went to inspect the victim's vehicle. Detective Martin saw three distinctly different-sized bullet holes in the vehicle. Detective Martin

returned to the police station and relayed this information to defendant. Defendant then stated he had reached across the driver, Christopher, and fired out of the driver-side window in the direction of the victim's vehicle. Defendant said he was not aiming at the victim, however. Defendant stated that Christopher had a .45 caliber weapon; Larry had a 9mm weapon; and both of them fired their weapons into the victim's car.

¶ 45 Andrew Dalkin, who was an Assistant State's Attorney in March 2009, testified that at approximately 1:47 p.m. on March 28, 2009, he and Detective Fassl went into the interview room at the police station to speak with defendant. They had approximately a 30-minute conversation with defendant, which was video recorded. A DVD of the conversation was admitted into evidence, and played for the jury. We have viewed the DVD, which is included in the record on appeal. In the DVD, defendant claimed no prior knowledge of any plan to shoot the victim. Defendant stated he got into Christopher's vehicle to smoke marijuana, and he was surprised when Christopher and Larry began shooting at the victim's car. Defendant stated that Christopher handed him a .40 caliber gun and asked: "What you doin'?" Defendant stated that he was afraid that Christopher and Larry would kill him if he did not fire the weapon.

¶ 46 Defendant first stated he shot into the air twice. Later, he admitted firing twice into the air and once at the victim's vehicle through the rear-passenger window of the vehicle Christopher was driving. Defendant stated he had no intent to harm the victim. He said he later made Christopher and Larry let him out of the vehicle a few blocks away from the shooting.

¶ 47 Following all the testimony, the State argued during closing that defendant was legally accountable for the victim's murder.

¶ 48 The jury convicted defendant of aggravated discharge of a firearm and first-degree murder and found that defendant personally discharged the firearm during the commission of the murder. The trial court sentenced defendant to 70 years' imprisonment. Defendant appeals.

¶ 49 First, defendant contends the trial court failed to properly admonish the prospective jurors during *voir dire* in violation of Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)). Our review is *de novo*. *People v. Peters*, 2011 IL App (1st) 092839, ¶ 28.

¶ 50 Rule 431(b) 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 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).

Our supreme court has held that the language of Rule 431(b) clearly and unambiguously requires the trial court to ask the prospective jurors whether they understand *and* accept the four principles set forth in the rule. *People v. Thompson*, 238 Ill. 2d 598, 607 (2010); *People v. Belknap*, 2014 IL 117094, ¶ 46; *People v. Wilmington*, 2013 IL 112938, ¶ 32. In the present case, the trial court asked the prospective jurors whether they had "any quarrel with" the

principles of Rule 431(b). Defendant argues that this inquiry failed to satisfy the requirements of Rule 431(b) that the trial court question the prospective jurors as to their understanding and acceptance of the principles of Rule 431(b).

¶ 51 In support of his argument, defendant cites *Wilmington*, in which the trial court only asked the prospective jurors whether they "disagree[d]" with the principles of Rule 431(b); that the defendant is presumed innocent; that the State bears the burden of proving him guilty beyond a reasonable doubt; and that defendant is not required to offer any evidence on his behalf. *Id*. ¶ 28. Our supreme court held that "[w]hile 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." (Emphasis in the original.) *Id*. ¶ 32. Defendant also cites *People v. Richardson*, 2013 IL App (1st) 111788, in which the trial court asked the prospective jurors only whether they had "any quarrel with" the principles of Rule 431(b). *Id*. ¶ 22. Citing *Wilmington*, the appellate court held that the trial court's inquiry violated Rule 431(b) by failing to ensure that the potential jurors understood the enumerated principles. *Id*. ¶ 24.

¶ 52 In the present case, defendant contends there is no significant difference between the trial court's questioning of the prospective jurors here as to whether they had "any quarrel" with the principles of Rule 431(b), and the questions asked of the prospective jurors in *Wilmington* and *Richardson* that were found to fail to comply with Rule 431(b). Defendant argues that, by only asking the prospective jurors whether they had "any quarrel with" the principles of Rule 431(b), the trial court failed to comply with the Rule's "specific question and response process" (*Thompson*, 238 Ill. 2d at 607), designed to ensure that the prospective jurors both understood and accepted each of the principles of the Rule. Defendant acknowledges that in *People v*

Martin, 2012 IL App (1st) 093506, the appellate court held the trial court complied with Rule 431(b) by asking the prospective jurors whether they had "any quarrel" with the principles of Rule 431(b). *Id*. ¶ 78. However, defendant contends that *Martin* was wrongly decided in light of *Wilmington* and *Richardson*.

¶ 53 Defendant forfeited review by failing to object to the trial court's Rule 431(b) admonitions. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Addressing the issue on the merits, we note that Rule 431(b) does not dictate a precise method for determining whether a prospective juror understands and accepts the enumerated principles of the Rule, and a trial court need not use the precise language of the Rule. *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 62. In addressing the prospective jurors here, the trial court initially gave them an overview of the principles of Rule 431(b). The trial court then discussed each principle individually. After discussing each principle, the trial court asked the prospective jurors whether they had any quarrel with it, and if so to raise their hands. No one raised their hands at any time to signal a quarrel with any of the principles discussed. The trial court then gave an example of how to apply those four principles, noting that if the prospective jurors were told to fill out a verdict form prior to hearing any evidence, they would have to acquit defendant because he is presumed innocent, with no obligation to testify or present evidence on his own behalf, and the presumption of innocence remains until the State meets its burden of proving him guilty beyond a reasonable doubt. The trial court informed the prospective jurors that, in the absence of any evidence from the State, it would not have met its burden of proof, and the jury would have no choice under the principles of Rule 431(b) but to find defendant not guilty.

¶ 54 The trial court then specifically asked the prospective jurors whether there was "anybody here who does not *understand* those four propositions of law? If so, raise your hand."

(Emphasis added.) After noting that two prospective jurors had raised their hands, the trial court stated: "Is there anybody here who does not *accept* these four propositions of law? If so, raise your hand." (Emphasis added.) After noting that one prospective juror had raised her hand, the trial court again stated: "Is there anybody here who does not *accept* those four propositions of law? If so, raise your hand. The record will reflect there are none." (Emphasis added.)

¶ 55 Thus, careful review of the record indicates that, unlike *Wilmington* and *Richardson* as cited by defendant, the trial court specifically questioned the prospective jurors regarding their understanding and acceptance of the principles of Rule 431(b), gave them the opportunity to respond, and discovered from this question and response process that two prospective jurors did not understand the principles of Rule 431(b), and that one prospective juror did not accept the principles of Rule 431(b). Those three prospective jurors who indicated their inability to understand or accept the principles of Rule 431(b) were excused for cause. The trial court's question and response process complied with Rule 431(b); we find no error.

¶ 56 Defendant next argues that the trial court misstated the third principle of Rule 431(b) to the prospective jurors. The third principle requires the trial court to inform each potential juror that "the defendant is not required to offer any evidence on his or her own behalf." Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Defendant argues that the trial court erred here by merely informing the prospective jurors that "defendant is not required to prove his innocence." Defendant cites in support *People v. Walker*, 2011 IL App (1st) 072889, which held that the trial court's admonishment that "[t]he law does not require the defendant to prove his innocence" did not satisfy the requirements of Rule 431(b) that the prospective jurors be informed that defendant is not required to offer any evidence on his behalf. *Id*. ¶ 22.

¶ 57 We find no error here, as careful review of the record shows that, in its initial remarks to the prospective jurors regarding all the principles of Rule 431(b), the trial court stated: "The defendant is not required to prove his innocence, *nor is he required to present any evidence on his own behalf*." (Emphasis added.) Later, when discussing each principle of Rule 431(b) individually, the trial court informed the prospective jurors that defendant is not required to prove his innocence, and the court asked them to raise their hands if they had any quarrel with this proposition of law. No one raised their hand. The trial court then gave the example of how the four principles of Rule 431(b) applied stating, in pertinent part, that "since the defendant is not required to prove his innocence, *you can't consider the fact that the defense hasn't presented any evidence*." (Emphasis added.) Taken as a whole, the trial court's remarks adequately informed the prospective jurors of the third principle of Rule 431(b), that defendant is not required to offer any evidence on his behalf.

¶ 58 Next, defendant contends the trial court misstated the fourth principle of Rule 431(b) to the prospective jurors. The fourth principle of Rule 431(b) requires the trial court to inform the prospective jurors that "if a defendant does not testify it cannot be held against him or her." Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Defendant argues the trial court erred by telling the prospective jurors that defendant "has the absolute right to remain silent." Defendant contends that defendant's "absolute right to remain silent" relates to his *Miranda* right when interrogated in a police interview room, and is separate and apart from his right not to *testify* in a courtroom. Defendant argues that the trial court's admonition to the prospective jurors confused the right to remain silent with the right not to testify, and constituted error.

¶ 59 We find no error. Careful review of the record shows that the trial court informed the prospective jurors:

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

¶ 60 Thus, the trial court clearly and explicitly equated defendant's "absolute right to remain silent" with his right to "not testify in his own defense," using the two phrases interchangeably to inform the prospective jurors that they were not to hold defendant's decision not to testify against him. The trial court thereby adequately conveyed the fourth principle of Rule 431(b) to the prospective jurors.

¶ 61 Next, defendant contends the trial court erred by providing an incorrect answer to the jury's question regarding jury nullification. During deliberations, the jury sent the following note to the trial court:

> "In the event that a juror, or the jury, does not agree with the law/charges brought against the defendant, is jury nullification an option? Are there options, under the law, for jurors who may not agree with the law or charges that have been brought against the defendant after all evidence has been presented?"

¶ 62 The parties met in chambers to discuss the note. Defense counsel stated: "First I would say on behalf of [defendant] any jurors can nullify—no I'm kidding. You have heard the evidence, please continue to deliberate. That would be my suggestion." The prosecutor suggested that the jury be advised, that "the law has been given to you. Apply the law to the facts as given to you." The trial court then proposed the following written answer: "Each and every one [of] you swore under oath that you would follow the law as I give it to you. You are

to decide the facts and apply the law that I give you to those facts and in this way decide the case. Please continue your deliberations." (Underlining in the original.)

¶ 63 The following exchange then took place:

"DEFENSE COUNSEL: Why do you have to underline all of these things?

THE COURT: Because I cannot shout at them from here. If I could, I would, but I cannot so I will not.

DEFENSE COUNSEL: I don't object to the answer, but the underlining appears to be *** excessive. I don't object to the answer."

¶ 64 The trial court then sent the answer (including the underlined portions) to the jury.

¶ 65 On appeal, defendant contends the trial court's answer was in error as it failed to inform the jurors of their nullification power. Defendant forfeited review by failing to so object at trial. *People v. Reid*, 136 Ill. 2d 27, 38 (1990).

¶ 66 Addressing the issue on the merits, we note that "[t]he general rule is that the trial court has a duty to provide instructions to the jury where it has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion." *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994). "A trial court may, however, exercise its discretion and properly decline to answer a jury's inquiries where the instructions are readily understandable and sufficiently explain the relevant law; where further instructions would serve no useful purpose or would potentially mislead the jury; when the jury's inquiry involves a question of fact; or if providing an answer would cause the court to express an opinion which would likely direct a verdict one way or another." *People v. Pulliam*, 176 Ill. 2d 261, 285 (1997). "A trial court's decision to answer or refrain from answering a jury question will not be disturbed absent an abuse of discretion." *People v. Landwer*, 279 Ill. App. 3d 306, 314 (1996).

¶ 67 Defendant argues that the trial court's answer to the inquiry regarding jury nullification constituted an abuse of discretion. Jury nullification occurs when a jury chooses to disregard the law and acquit a defendant or, otherwise, treat a defendant with leniency because the jurors believe they are achieving "true justice" in so doing. See *People v. Smith*, 296 Ill. App. 3d 435, 441 (1998) (Steigmann, J., specially concurring). Defendant cites *People v. Moore*, 171 Ill. 2d 74 (1996), which held that, while a defendant has no right to instruct the jury about jury nullification, the jury still retains the "power" to engage in such nullification and acquit defendant on the basis of extraneous factors. *Id*. at 109-10. Defendant argues that, since the jury has the inherent power to engage in jury nullification, the trial court should have answered its question by stating that, if the crimes charged are not proven beyond a reasonable doubt, the jury *must* acquit, but that if the crimes are proved beyond a reasonable doubt, the jury *should* convict. Defendant contends that by informing the jury that it "should" (instead of "must") convict if the crimes are proved beyond a reasonable doubt, the trial court would be informing the jury that the power of jury nullification exists.

¶ 68 Defendant's contention is without merit. "The power of jury nullification exists, but it is not authorized by the law. A defendant has no right to have the jury defy the law or ignore the undisputed evidence." *People v. Montanez*, 281 Ill. App. 3d 558, 565 (1996). Given that jury nullification is not authorized by the law, and defendant has no right to argue or instruct on jury nullification (*Moore*, 171 Ill. 2d at 109-110), the trial court here was under no obligation to answer the jury's inquiry in such a way as to encourage it to engage in such behavior. Instead, the trial court correctly answered the jury's inquiry by paraphrasing an instruction already given to it, IPI Criminal 3d No. 1.01, stating that the jury was to determine the facts and apply the law

as given to it by the court. The response given by the trial court to the jury's inquiry did not constitute an abuse of discretion.

¶ 69 Defendant next argues that the trial court's written response to the jury's inquiry was error because: (1) it implied that an acquittal would constitute a violation of the jury's oath to follow the law; and (2) it raised the "specter" that an acquittal could lead to the jurors being prosecuted for perjury. Defendant forfeited review by failing to raise these objections at trial. *Reid*, 136 Ill. 2d at 38. Addressing the issue on the merits, we disagree with defendant's interpretation of the trial court's written response. The trial court's response reminded the jurors of their oath to follow the law as given to them by the trial court, but it never stated, or even hinted at, the verdict they should return, nor did it in any way threaten perjury (or any other punishment) for returning a not guilty verdict.

¶ 70 Next, defendant contends the trial court erred during sentencing when it used his silence as evidence that he lacks remorse, and then considered this alleged lack of remorse as an aggravating factor. Defendant forfeited review by failing to object during sentencing and by failing to raise the issue in his post-sentencing motion. *People v. Burt*, 168 Ill. 2d 49, 69 (1995).

¶ 71 Addressing the issue on the merits, we note the record of the sentencing hearing reveals that the trial court reviewed the presentence report, heard a victim impact statement, and listened to the arguments of counsel. The trial court asked defendant if he wanted to say anything in allocution, and defendant said no. The trial court then stated it had considered defendant's criminal background, which consisted of an aggravated DUI where he was placed on probation and violated the probation, and juvenile possession of a stolen automobile. The court further stated:

"In aggravation the sentence is necessary for the protection of the public. Also in aggravation, sentence [*sic*] is necessary for whatever deterrent effect it may have.

The facts of the case are probably the single most aggravating thing. This is a person who's minding his own business engaged in the business of selling cigarettes apparently and he's shot down for whatever reason that you and Mr. Jones thought was a good idea to do that. It's just an extraordinarily vicious act on the part of someone who apparently has never done you any personal harm, at least there's no evidence of it, and it indicates a complete disregard for human life as well as the laws of the State of Illinois as well as the safety of anybody else who might happen to be out on the street.

And very frankly, Mr. Dawson, I consider you to be every bit as responsible for this as Mr. Jones was. You're not just accountable. You're an active participant in it.

And I'll also be honest with you. I haven't seen a shred of human remorse over the whole act all the time that you've been in here quite frankly.

In mitigation the defendant has some family support. The defendant is relatively young. That's about all the mitigation I can find." (Emphasis added.)

¶ 72 The trial court then sentenced defendant to 50 years' imprisonment on the murder conviction, and a mandatory consecutive 20-year add on for personally discharging a weapon, for a total of 70 years' imprisonment.

¶ 73 Defendant contends on appeal that, as he did not testify at trial and declined his right of allocution during sentencing, the trial court must have gleaned his supposed lack of remorse from his silence, and then considered his lack of remorse as an aggravating factor, all in violation of his Fifth Amendment right against self-incrimination. In support, defendant cites *People v. Pace*, 2015 IL App (1st) 110415, in which the court held:

> "[A] criminal defendant's privilege against self-incrimination is unconstitutionally infringed when (1) the defendant's silence is used as evidence that he lacks remorse and (2) the trial court considers the defendant's lack of remorse as an aggravating factor when imposing a sentence. A contrary rule would require criminal defendants to choose between (1) waiving their right to silence and speaking in allocution to express remorse (perhaps untruthfully) on the one hand, and (2) maintaining steadfast in their silence and thereby risking a lengthier sentence, on the other. Such an interpretation of the fifth amendment would be self-defeating, for *** that text at its core means that the government, not the accused, must produce the evidence necessary to convict and impose a particular punishment. [Citation.] *Thus, while a sentencing court may consider a defendant's lack of remorse as an aggravating factor, evidence that the defendant lacks remorse must be drawn from some source other than the defendant's silence during the sentencing hearing*, such as the manner in which the defendant refers to a victim [citation] or describes his crime [citation]." (Emphasis added.) *Id.* ¶ 100.

¶ 74 In the present case, the trial court stated it had not seen a "shred of human remorse" from defendant "all the time that you've been in here," presumably meaning all the time defendant had physically been in court and during his videotaped statements at the police station which were played in court. Although defendant chose not to testify at trial or make a statement in allocution during sentencing, his videotaped statements revealed that he initially denied being present at the shooting, then changed his story and said he was present but only shot into the air, and then changed his story a second time and admitted to shooting at the victim's vehicle through the rear side window of the vehicle Christopher Jones was driving. In the videotapes, defendant never expressed any remorse for shooting into the victim's vehicle or for his death. As the trial court's

finding of lack of remorse was drawn from sources (the videotaped statements) other than his silence at trial and during sentencing, it was properly considered in aggravation. We find no error.

¶ 75 Defendant also cites *People v. Ward*, 113 Ill. 2d 516 (1986), in support of his argument that the trial court should not have considered his lack of remorse during sentencing. In *Ward*, our supreme court held that a defendant's lack of remorse "may properly be considered in determining sentences," but cautioned that such lack of remorse should not be "automatically and arbitrarily applied as [an] aggravating factor" but, instead, must be evaluated "in light of all the other information the court has about the defendant." *Id.* at 529. In the present case, the trial court did not mechanically consider defendant's lack of remorse as automatically justifying a lengthy sentence, but rather evaluated defendant's lack of remorse in conjunction with the other aggravating factors, such as the viciousness of the crime and his active participation therein, his criminal history, and the need to deter others from committing the same crime. The trial court also considered defendant's lack of remorse in conjunction with the mitigating factors, including his relatively young age, and his family support. The trial court's consideration of defendant's lack of remorse complied with *Ward* and did not constitute error.

¶ 76 Finally, defendant contends his 70-year sentence constituted a "*de facto* life sentence" and was excessive, especially as he was an unwilling participant in the shooting, and his conviction was based on accountability. The trial court has broad discretionary powers in choosing the appropriate sentence defendant should receive. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). A reasoned judgment as to the proper sentence to be imposed must be based on the particular circumstances of each individual case and depends on many factors, including defendant's credibility, demeanor, general moral character, mentality, social environment, habits

and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the trial court is presumed to have considered evidence presented in mitigation. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). A reviewing court gives substantial deference to the trial court's sentencing decision and will not modify a defendant's sentence absent an abuse of discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 77 In the present case, the record indicates that the trial court read the presentence investigation report, heard a victim impact statement, and listened to the arguments of counsel. The trial court stated it had considered defendant's criminal history, and noted that the facts of the case "are probably the single most aggravating thing" as they showed that the shooting was "an extraordinarily vicious act" indicating defendant had a complete disregard for human life as well as the laws of the State of Illinois. The trial court determined that defendant was an active participant in the shooting, that he failed to show any remorse, and that a lengthy sentence was necessary as a deterrent and to protect the public. In mitigation, the trial court considered defendant's relatively young age (30 years old at the time of sentencing), and "some family support." The trial court then sentenced defendant to a total of 70 years' imprisonment, which was within the permissible range of 20 to 60 years for first-degree murder, plus 20 years for personally discharging a firearm. See 730 ILCS 5/5-4.5-20(a)(1) (West 2012); 730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2012). We find no abuse of discretion.

¶ 78 For the foregoing reasons, we affirm the circuit court.

¶ 79 Affirmed.