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2018 IL App (5th) 140603-U

NO. 5-14-0603

NOTICE
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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 14-CF-94
	)	
ARIEL MIX,	)	Honorable
	)	William G. Schwartz,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence in home invasion case was sufficient to establish that motel room was a dwelling place; defendant was not deprived of effective assistance where counsel did not object to the State's motion to extend the speedy-trial term or request specific jury instructions; the circuit court's noncompliance with Illinois Supreme Court Rule 431(b) was procedurally forfeited where the evidence was not closely balanced; and the cumulative error doctrine did not apply without a showing of prejudice by the defendant.

¶ 2 Following a jury trial, the defendant, Ariel Mix, was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2014)) and robbery (*id.* § 18-1(a)) and received concurrent sentences of 20 years for home invasion and 7 years for robbery.

¶ 3 On appeal, the defendant contends that the State failed to prove beyond a reasonable doubt that the victim's motel room was a "dwelling place," a necessary element of the offense of home invasion. The defendant also urges that she was denied effective assistance of counsel when trial counsel failed to object to the State's motion to extend the speedy-trial term and did not tender accomplice witness and drug addict witness jury instructions. Additionally, the defendant argues that she was denied a fair trial due to the circuit court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during *voir dire*, and the cumulative effect of the claimed errors denied her a fair trial and violated her due process rights. For the following reasons, we affirm.

¶ 4 I. Background

¶ 5 On March 15, 2014, Richard Nelson (Nelson) and Marquis Sutton (Sutton) forcibly entered Alfonso Slaughter's (Slaughter) motel room at the Campus Inn Motel. After entry, Nelson and Sutton severely beat and robbed Slaughter. Initially, Nelson and Sutton were the only individuals charged. Later, however, the defendant was charged as an accomplice based on her participation in planning the attack. Sutton, Nelson, and the defendant were charged with home invasion (720 ILCS 5/19-6(a)(2) (West 2014)), robbery (*id.* § 18-1(a)), and aggravated battery (*id.* § 12-3.05(a)(1)).

¶ 6 On March 24, 2014, the defendant was arrested and remained in custody throughout the proceedings. The circuit court set trial for June 23, 2014. By April 16, 2014, Nelson, Sutton, and the defendant had each provided a DNA sample for testing by the Illinois State Police (ISP) Forensic Crime Lab (Lab).

¶ 7 On June 11, 2014, the State filed a motion to continue the trial and extend the speedy-trial term under section 103-5(c) of the Code of Criminal Procedure of 1963 (Criminal Code) (725 ILCS 5/103-5(c) (West 2014)), requesting additional time for the Lab to complete testing. The State's motion was agreed upon by the defendant prior to filing. Additionally, the State filed a motion to allow the Lab to consume the DNA samples during testing, indicating that this would expedite the process.

¶ 8 At the hearing on the State's motions, defense counsel made no objection but requested the defendant's release from custody on a recognizance bond. The circuit court denied the defendant's request, granted the State's motions, and set trial for August 18, 2014, based on the 60-day speedy-trial extension.

¶ 9 On August 18, 2014, the trial commenced. During *voir dire*, the circuit court questioned each prospective juror, stating the following:

> "It is your duty to follow the law as given to you by the Court. You may not agree with the law, but it will be your sworn obligation to follow the law even if you do not agree with it."

The court then asked 5 of the 12 jurors if they "would give the accused the presumption of innocence throughout the trial?" The court then individually asked each juror if they understood the second, third, and fourth principles.[1] The court did not ask the jurors if

[1]Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) states as follows: "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."

they accepted the four trial principles. The court concluded by asking each juror if they would "follow the law as I give it to you in the instructions at the end of the case[?]" Defense counsel made no objection regarding the court's questioning during *voir dire.*

¶ 10 The following evidence was adduced at trial. Officer Blake Harsy, a Carbondale police officer, testified to the following. On March 15, 2014, at 1:30 a.m., he and several officers were dispatched to the Campus Inn Motel for a disturbance call in a motel room. Upon entry into the motel room, Slaughter was severely beaten, bloody, and unresponsive, and there was visible blood on the walls, carpet, furniture, and television. Shortly after Officer Harsy's arrival, Slaughter was taken to the hospital by ambulance.

¶ 11 Slaughter testified to the following details. At the time of the trial, he was 40 years old and had been addicted to heroin for 20 years. On March 13, 2014, Slaughter traveled to Carbondale to sell heroin and stay at the Campus Inn Motel for a few days. On the evening of March 14, 2014, he watched television and talked to his children on the phone before he fell asleep. In the early morning of March 15, 2014, Slaughter was attacked, severely beaten, and robbed. Following the attack, he suffered brain damage, memory loss, numbness in both arms, and paralysis on one side of his body, which caused him to walk with a limp.

¶ 12 Officer Rebecca Mooney, an evidence custodian with the Carbondale Police Department, testified to the following. Mooney was responsible for collecting, packaging, and securing items of evidence, which, in this case, included blood-splattered tennis shoes and a cell phone. She explained that DNA samples had been collected from Nelson,

Sutton, and the defendant, and that these samples, along with other evidentiary items, had been sent to the Lab for testing.

¶ 13 Ashly Kaemmerer (Kaemmerer) testified to the following. On March 14, 2014, Nelson called Kaemmerer for a ride to the Campus Inn Motel to meet a friend that owed him money. Kaemmerer agreed to drive Nelson because she had planned to go to Steak ’n Shake, which was located next to the Campus Inn Motel, to pick up food when Nelson called her. When Kaemmerer arrived to pick up Nelson, she also picked up the defendant, Sutton, and Roberta Pemberton (Pemberton). When they arrived at Steak ’n Shake, Pemberton exited the car and walked to the Campus Inn Motel. A few minutes later, Nelson and Sutton followed Pemberton. The defendant, however, remained in the car. Roughly 10 minutes later, Pemberton returned to the car, and Nelson and Sutton followed several minutes later. Kaemmerer then drove back to Nelson’s apartment. Once inside, Nelson displayed several 20-dollar bills and asked Kaemmerer to take him to a liquor store. After Kaemmerer agreed, Nelson handed her his tennis shoes and asked her to take them to his girlfriend’s house. Kaemmerer agreed and placed the tennis shoes in the trunk of her car. Several days later, Kaemmerer was arrested, her car was impounded, and the tennis shoes were recovered from her trunk.

¶ 14 Heather Wright (Wright), an expert forensic scientist in DNA analysis with the ISP, testified to the following. After Wright had located bloodstains on the tennis shoes, she extracted and then tested a DNA sample that matched Slaughter’s DNA. Wright admitted on cross-examination, however, that she could not verify that the insoles of the tennis shoes contained Nelson’s DNA.

¶ 15 Pemberton testified to the following. Pemberton shared an apartment with the defendant. On March 14, 2014, after the defendant purchased heroin from Slaughter at the Campus Inn Motel, the defendant and Pemberton used the heroin. While in the apartment, Pemberton heard the defendant tell Sutton, the defendant's boyfriend, that Slaughter was any easy target because he appeared to be handicapped, unarmed, and alone in the motel room. Shortly thereafter, the defendant and Sutton then left the apartment and returned with Nelson. Pemberton overheard Nelson and Sutton discussing that they had gone to the Campus Inn Motel, but Slaughter would not open his door. Pemberton later told the defendant that she wanted to purchase heroin because she had "turned a trick [and] got some money," so the defendant arranged a deal with Slaughter. The defendant instructed Pemberton to go to Slaughter's room, state that her name was Nikki, the same name the defendant had used earlier, and Slaughter would open the door.

¶ 16 Shortly thereafter, Kaemmerer drove the defendant, Sutton, Nelson, and Pemberton to Steak 'n Shake. Pemberton exited the vehicle and walked to Slaughter's room. Pemberton could not recall whether Nelson or Sutton got out of the car at that time. After Pemberton knocked on Slaughter's door and identified herself as Nikki, Slaughter opened the door. Following the heroin purchase, Nelson and Sutton forcibly entered Slaughter's room. Pemberton immediately ran back to the car. A few minutes later, Nelson and Sutton returned to the car and Kaemmerer drove them back to the apartment complex. The defendant, Sutton, and Nelson discussed splitting $1700 that they had taken from Slaughter's room. Pemberton admitted that she wanted a cut of the money because she had been unwittingly used by Nelson and Sutton to gain entry into

Slaughter's motel room. Pemberton also acknowledged that she and the defendant later helped Sutton and Nelson remove blood from their clothes and skin.

¶ 17 On cross-examination, Pemberton acknowledged that she had used crack cocaine and heroin on March 14, 2014, and had been a drug user for several years. She also admitted that she had felony theft-related charges and had previously served time in prison. Pemberton had not been offered an agreement from the State in exchange for her cooperation, but the State agreed to a recognizance bond so that she could attend court for a pending theft charge in Williamson County, Illinois.

¶ 18 Roquecce Benjamin (Benjamin) testified to the following. On March 14, 2014, Benjamin attended a party at the Campus Inn Motel. When Benjamin arrived at the motel, he observed Nelson, an individual he was familiar with, and another man standing outside a motel room. Benjamin left to go to a liquor store. After he returned, he observed two men exit a motel room and "frantically" run to a silver car parked at Steak 'n Shake. Benjamin believed that the two men had robbed Slaughter, but he did not check on Slaughter or call the police.

¶ 19 Detective Aaron Baril with the Carbondale Police Department testified to the following. Shortly after the defendant's arrest, the defendant admitted in a postarrest interview that she had purchased heroin on March 14, 2014, from Slaughter. She, however, denied any involvement in Slaughter's attack. Detective Baril's interview with Pemberton revealed that Nelson had stolen Slaughter's cell phone and later tossed it into a dumpster. Slaughter's cell phone was later recovered.

¶ 20 Following the close of evidence, the jury returned guilty verdicts against the defendant, Sutton, and Nelson for home invasion and robbery. The defendant was acquitted on the charge of aggravated battery. On October 31, 2014, the circuit court sentenced the defendant to concurrent sentences of 20 years for home invasion and 7 years for robbery. The defendant filed a motion for reduction of sentence, which the circuit court denied. The defendant filed a timely notice of appeal.

¶ 21 II. Analysis

¶ 22 On appeal, the defendant contends that the State failed to prove beyond a reasonable doubt that the defendant's accomplices, Nelson and Sutton, entered a "dwelling place." The defendant also urges that she was denied effective assistance of counsel when trial counsel failed to object to the State's motion to extend the speedy-trial term and did not tender accomplice witness and drug addict witness jury instructions. Additionally, the defendant argues that she was deprived a fair trial for the circuit court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during *voir dire*, and the cumulative effect of the claimed errors denied her due process. We review the defendant's claims in turn.

¶ 23 A. Dwelling Place of Another

¶ 24 The defendant first challenges the sufficiency of the evidence. The defendant argues that the State failed to prove beyond a reasonable doubt that Slaughter's motel room was the "dwelling place of another." A challenge to the sufficiency of the evidence may be raised for the first time on direct appeal. *People v. Enoch*, 122 Ill. 2d 176, 190 (1988). When a defendant challenges the sufficiency of the evidence, the standard of

review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). A reviewing court applies the same standard whether the evidence is direct or circumstantial. *People v. Pryor*, 282 Ill. App. 3d 92, 97 (1996). It is the role of the trier of fact to draw reasonable inferences from the evidence and to apply the law as instructed. *People v. Lara*, 2012 IL 112370, ¶ 46. Accordingly, we will not reverse the circuit court's judgment of conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 25 Section 19-6(a)(2) of the Criminal Code of 2012 (Code) defines the offense of home invasion as follows:

> "(a) A person *** commits home invasion when without authority he or she knowingly enters the *dwelling place of another* when he or she knows or has reason to know that one or more persons is present *** and
>
> ***
>
> (2) Intentionally causes any injury *** to any person or persons within the dwelling place ***." (Emphasis added.) 720 ILCS 5/19-6(a)(2) (West 2012).

Additionally, section 2-6 of the Code has two definitions for "dwelling," which include the following:

> "(a) Except as otherwise provided in subsection (b) of this Section, 'dwelling' means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.
>
> (b) For the purposes of Section 19-3 of this Code [the residential burglary provision], 'dwelling' means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." *Id.* § 2-6(a), (b).

Here, the jury was instructed, consistent with section 2-6(a) of the Code, that "[t]he term 'dwelling place' means a building or portion of a building which is used or intended for use as a human habitation, home, or residence." Illinois Pattern Jury Instructions, Criminal, No. 4.03 (4th ed. 2000).

¶ 26 Citing to the Illinois Supreme Court's decision in *People v. Bales*, 108 Ill. 2d 182 (1985), the defendant contends that whether a structure is the dwelling place of another depends on the purpose for which it is used. Thus, she maintains that Slaughter was using the motel room "as a convenience store for drug users," not as a human habitation. See *id.* at 190 (whether "a structure is a dwelling place of another depends on the purpose for which it is used, rather than the nature of the structure").[2] The State asserts, however, that

[2] At the time of the *Bales* decision, the statutory definition of "dwelling" consisted only of what is now subsection (a) of the definition of "dwelling," as set forth above. The pattern jury instruction for residential burglary referred the user to section 2-6 of the Code for the definition of "dwelling." Illinois Pattern Jury Instructions, Criminal, No. 14.09, Committee Note (2d ed. Supp. 1989). Section 2-6(b),

the evidence adduced at trial permitted the jury to rationally conclude beyond a reasonable doubt that Slaughter's motel room was used or intended for use as a human habitation. We agree.

¶ 27 We first note that the Illinois Supreme Court in *Bales* distinguished the offense of residential burglary from the offense of burglary when it concluded that the determination of a dwelling place of another "depends on the purpose for which it is used, rather than the nature of the structure." *Id.* Regardless, section 2-6(a) of the Code still required that the building, etc., be used or intended for use as a human habitation, home, or residence in order to constitute a dwelling place. That requirement is consistent in the instant case.

¶ 28 Here, the evidence presented at trial supported the conclusion that Slaughter's motel room was a dwelling place for purposes of home invasion. In particular, it was undisputed that Slaughter lived in Chicago and traveled to Carbondale to sell heroin. While in Carbondale, Slaughter resided at the Campus Inn Motel from March 13, 2014, until March 15, 2014. Slaughter's room was intended as a human habitation, given that it was furnished with standard amenities, such as a queen-sized bed, television, closet, chair, nightstand, and vanity area. Moreover, Slaughter kept his motel room locked, and

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defining "dwelling" for purposes of the residential burglary statute, was enacted effective January 1, 1987. Ill. Rev. Stat. 1989, ch. 38, ¶ 2-6(b) (now 720 ILCS 5/2-6(b) (West 2014)). See also *People v. Pearson*, 183 Ill. App. 3d 72, 74-75 (1989) ("The legislative history indicates that the amendment was made because suspects were being prosecuted for residential burglary for breaking into abandoned buildings and unoccupied buildings, such as garages. The legislative history also indicates that the new definition of dwelling was intended to encompass vacation homes and the like, where there are identified owners or occupants who in their absence intend within a reasonable period to come and reside.").

photographic evidence demonstrated personal items on the nightstand next to an unmade bed, a drinking cup with an inserted straw on the floor, and clothing draped over a chair.

¶ 29 Additionally, testimonial evidence demonstrated that Slaughter watched television and talked to his children on the phone the night before he was beaten and robbed. Moreover, when Slaughter was found by police on March 15, 2014, he was lying unresponsive on the floor in pajama pants, which is further indication that he had been sleeping the night before the incident. Consequently, the defendant’s assertion that Slaughter was using the motel room solely as a convenience store for drug users is unsupported by the record. Accordingly, viewed in the light most favorable to the prosecution, the evidence was sufficient to show that the defendant entered the dwelling place of another.

¶ 30 B. Ineffective Assistance of Counsel

¶ 31 1. Speedy-Trial Motion

¶ 32 Next, the defendant argues that she was denied a speedy trial under section 103-5(a) of the Criminal Code. 725 ILCS 5/103-5(c) (West 2014). Although the defendant concedes that her claim is forfeited because trial counsel did not move for discharge (*People v. Murray*, 379 Ill. App. 3d 153, 157 (2008) (speedy-trial claim forfeited where counsel never moved for discharge)), she urges this court to review her claim because she was denied effective assistance of counsel. In particular, she asserts that trial counsel was ineffective for failing to object to the State’s motion to extend the speedy-trial term, not filing a motion for discharge, and not raising this issue in a posttrial motion. The defendant also urges that we review the court's decision to grant the State’s motions

under the plain-error doctrine because the State failed to demonstrate due diligence under section 103-5(c) of the Criminal Code.

¶ 33 We note claims of ineffective assistance of counsel are generally better addressed in postconviction proceedings. See *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990) ("Where, as here, consideration of matters outside of the record is required in order to adjudicate the issues presented for review, the defendant's contentions are more appropriately addressed in proceedings on a petition for post-conviction relief."). Here, however, our determination of the defendant's claim of ineffective assistance does not require consideration of information outside the record. Therefore, we conclude that the record is sufficient to address the defendant's claim.

¶ 34 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 525-26 (1984). To prevail under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance so prejudiced defendant that he or she was denied a fair trial. *People v. Cordell*, 223 Ill. 2d 380, 385 (2006). More specifically, defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms and, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Harris*, 225 Ill. 2d 1, 20 (2007). Additionally, defendant must overcome the strong presumption that the challenged action or inaction was the result of sound trial strategy. *People v. Thompson*, 359 Ill. App. 3d 947, 952 (2005).

¶ 35 The failure of counsel to move for discharge on the basis of a speedy-trial violation will constitute ineffective assistance of counsel where there is a reasonable probability that the defendant would have been discharged had a timely motion been made and there was no proffered justification for the attorney's decision not to make such a motion. *People v. Shipp*, 2011 IL App (2d) 100197, ¶ 17. The defendant must show that he or she was not tried within the statutory period and did not cause or contribute to the delay. *Murray*, 379 Ill. App. 3d at 158. If there was no lawful basis for raising a speedy-trial objection, counsel's failure to assert a speedy-trial violation cannot establish either prong of *Strickland*. *People v. Phipps*, 238 Ill. 2d 54, 65 (2010). Therefore, we must first determine whether defendant's statutory right to a speedy trial was violated before we can determine whether counsel was ineffective. *Cordell*, 223 Ill. 2d at 385. Because the facts surrounding the defendant's claim here are undisputed, our review is *de novo*. *People v. Berrier*, 362 Ill. App. 3d 1153, 1167 (2006).

¶ 36 The defendant's agreement with the State's motions are dispositive of this issue. While the accused has the right to make decisions involving certain fundamental rights, strategic matters involving the superior ability of trained counsel are left for the attorney. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). One of the many decisions belonging to a defense counsel is whether to seek a continuance and thereby relinquish a statutory right to trial within a specified period. *People v. Carr*, 9 Ill. App. 3d 382, 384 (1972). Although the record is silent regarding defense counsel's reasoning for agreeing to the State's motions prior to the hearing, a continuance may actually work to a defendant's

advantage and is not an uncommon defense tactic. See *Barker v. Wingo*, 407 U.S. 514, 521 (1972).

¶ 37 Assuming *arguendo* that the State failed to demonstrate due diligence in its acquisition of the defendant's DNA results, that failure has no impact because continuances requested or agreed to by defense counsel are attributable to the defendant and suspend the speedy-trial period. *People v. Kaczmarek*, 207 Ill. 2d 288, 296 (2003). Thus, we find no violation of the defendant's right to a speedy trial. As such, a motion to discharge based on a speedy-trial violation is futile, and the failure to file a futile motion does not establish deficient representation. *People v. Holmes*, 397 Ill. App. 3d 737, 741 (2010) (citing *People v. Patterson*, 217 Ill. 2d 407, 438 (2005)). Accordingly, where no lawful basis for raising a speedy-trial objection existed, the defendant's claim of error fails under *Strickland*. The defendant's claim is forfeited.

¶ 38 2. Accomplice Witness Testimony Jury Instruction

¶ 39 The defendant also argues that she was denied effective assistance of counsel where defense counsel failed to tender accomplice witness and drug addict witness jury instructions. In response, the State asserts that the defendant cannot establish ineffective assistance of counsel because she was not entitled to either jury instruction.

¶ 40 Failure to request a particular jury instruction may be grounds for finding ineffective assistance of counsel if the instruction was so "critical" to the defense that its omission "den[ied] the right of the accused to a fair trial." *People v. Pegram*, 124 Ill. 2d 166, 174 (1988); *People v. Pollards*, 367 Ill. App. 3d 17, 23 (2006). An accomplice witness instruction is appropriate where " 'there is probable cause to believe that [the

witness] was guilty either as a principal, or on the theory of accountability.' " *People v. Cobb*, 97 Ill. 2d 465, 476 (1983) (quoting *People v. Robinson*, 59 Ill. 2d 184, 191 (1974)). An accomplice witness instruction is also appropriate when there is probable cause to believe that the witness participated in the planning or commission of the crime. *People v. Caffey*, 205 Ill. 2d 52, 116-17 (2001).

¶ 41 In determining whether an individual is accountable for the criminal actions of another, a court considers several factors. *People v. Taylor*, 164 Ill. 2d 131, 140 (1995). These factors include proof that the individual: (1) was present during the perpetration of the offense; (2) belonged to a group with knowledge of the group's criminal purpose or design; (3) maintained a close affiliation with other involved individuals after the commission of the crime; (4) failed to report the crime; and (5) fled from the scene of the crime. *Id.* at 140-41. Mere presence at the scene plus knowledge that a crime was being committed, without more, is insufficient to establish accountability. *People v. Reid*, 136 Ill. 2d 27, 61 (1990).

¶ 42 Here, the defendant specifically asserts that the record establishes probable cause that Pemberton was a participant in the crimes against Slaughter. On that basis, the defendant argues that defense counsel's performance was deficient because he failed to tender the pattern jury instruction pertaining to accomplice witness testimony, which states as follows:

> "When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the

other evidence in the case." Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000).

Likewise, the defendant argues that she was prejudiced because Pemberton was the only witness to link the defendant to the planning of the crimes. In support, the defendant contends that the evidence showed that Pemberton was an accomplice to the crime because she was aware of the plan to rob Slaughter, but she failed to warn him or police that Nelson and Sutton were "going to rush into his motel room *** when she left." As such, the defendant asserts that, but for defense counsel's unprofessional errors, the result of the proceeding would have been different. We disagree.

¶ 43 We find that the evidence does not support the defendant's assertion that Pemberton participated in or had knowledge of Nelson and Sutton's intention to attack Slaughter when she left Slaughter's room. Instead, the record reveals that Pemberton's sole purpose for going to Slaughter's motel room was to purchase heroin with money she made "turning a trick" earlier that day, a transaction the defendant facilitated. The record also demonstrates that Pemberton walked to Slaughter's room alone to purchase heroin while Nelson and Sutton stayed in Kaemmerer's vehicle for several minutes. Moreover, testimonial evidence established that Pemberton was present when Nelson and Sutton forcibly entered Slaughter's room and that she immediately ran from the scene back to Kaemmerer's vehicle. Furthermore, Benjamin witnessed two men, Nelson and Sutton, "frantically" run from Slaughter's motel room, which corroborated Pemberton's testimony.

¶ 44 The defendant also argues that Pemberton lied on the stand and "let slip" that she knew that Nelson and Sutton planned to rob Slaughter after she purchased heroin from Slaughter. We find this argument unsupported by the record. First, the record demonstrates that Pemberton was angry that Nelson and Sutton had used her to gain entry into Slaughter's room, which strongly supports the State's theory that she was unaware of the robbery. Second, even though Pemberton was present for the conspiracy, her testimony was unrebutted where she stated that she did not want to be part of the plan. Next, Pemberton never received a cut of the money, not even the amount she paid Slaughter for the heroin. Lastly, once contacted, Pemberton cooperated with the police investigation without an agreement from the State. While we recognize that Pemberton failed to call the police and assisted Nelson in cleaning up blood after the crime, based on the totality of her actions, we find the evidence was insufficient to establish probable cause that Pemberton participated in the planning or commission of the crimes. On that basis, we also conclude that the defendant failed to establish that counsel's performance was deficient and that a reasonable probability existed that the result of the proceeding would have been different.

¶ 45 3. Drug Addict Witness Jury Instruction

¶ 46 The defendant also asserts that defense counsel should have tendered a drug addict witness jury instruction for the jury to view the testimony of Pemberton, a habitual drug user who used crack cocaine and heroin on March 14, 2014, with suspicion. In support, the defendant cites to *People v. Phillips* where the circuit court approved the following jury instruction:

> "[T]he testimony of an addict is to be scrutinized with great caution and if the jury were to find that a witness was an addict or used narcotics at about the time of the alleged crime, such finding would be an important factor going to the general reliability of the addict." 126 Ill. App. 2d 179, 187 (1970).

Although the appellate court in *Phillips* found that the circuit court properly instructed the jury to scrutinize the drug addict-informer's testimony, we find *Phillips* distinguishable.

¶ 47 In *Phillips*, George Lincoln (Lincoln), an addict-informer for the Chicago Police Department, testified that he had purchased heroin from defendant in a controlled purchase. *Id.* at 181-82. After Lincoln gave defendant marked money, he received two tinfoil packets of heroin from a brown envelope. *Id.* The two officers assigned to conduct surveillance did not observe the exchange of money or find the brown envelope when they searched defendant but found $9 of marked money on defendant. *Id.* at 182-83. Defendant testified that he did not sell heroin to Lincoln but had exchanged a 10-dollar bill for smaller bills following Lincoln's request. *Id.*

¶ 48 Unlike *Phillips*, here, the defendant's conviction did not depend solely upon the uncorroborated testimony of a drug addict informer. Rather, Pemberton was a reluctant witness whose testimony was corroborated by both Benjamin and Kaemmerer. First, both Pemberton and Benjamin testified that Sutton and Nelson attacked, beat, and robbed Slaughter. Second, both Pemberton and Kaemmerer testified that Kaemmerer drove Sutton, Nelson, Pemberton, and the defendant from Nelson's apartment to Steak 'n Shake. Third, the defendant corroborated Pemberton's testimony that Slaughter appeared

to be handicapped, unarmed, and alone in his motel room based on the defendant's observation when she purchased heroin earlier in the day on March 14, 2014. Moreover, unlike *Phillips*, there was no doubt that a crime took place, given Slaughter's brutal beating and severe injuries. Lastly, the record establishes that Pemberton was subjected to rigorous and thorough cross-examination by three defense lawyers who then attacked her credibility during closing argument. Given the aforementioned analysis, we find *Phillips* readily distinguishable.

¶ 49 Next, we find the defendant's reliance on *People v. Franz*, 54 Ill. App. 3d 550, 555 (1977), misplaced. In *Franz* (*id.* at 556), although the circuit court determined that a jury instruction would have been proper to inform the jury that it could judge a witness's credibility in considering a witness's drug addiction at the time of the crime, the appellate court determined that the circuit court was not obligated to tender the proposed instruction. Additionally, the *Franz* court did not address a claim of ineffective assistance of counsel, but determined only whether the court erred in rejecting a poorly worded instruction. *Id.*

¶ 50 We note that no Illinois cases have specifically held that a circuit court has erred in failing to give a proposed instruction regarding the effect of a witness's drug addiction on his or her credibility. *People v. Huffman*, 177 Ill. App. 3d 713, 727 (1988). In fact, a court is not required to instruct the jury on the unreliability of testimony by drug addicts. *People v. Reed*, 405 Ill. App. 3d 279, 288 (2010); see also *People v. Armstrong*, 183 Ill. 2d 130, 146 (1998) (parties must be allowed to cross-examine witnesses regarding drug use, but a court is not required to instruct the jury on the unreliability of testimony by

drug addicts). Moreover, it is not reversible error to deny a drug addict instruction where evidence of the addiction is before the jury for its determination on witness credibility. See *People v. Steidl*, 142 Ill. 2d 204, 238 (1991); *People v. Adams*, 109 Ill. 2d 102, 122-23 (1985). Based on the foregoing, we find that the defendant would not have been entitled to either accomplice witness or drug addict witness jury instructions. Accordingly, the defendant failed to establish that she was denied effective assistance of counsel.

¶ 51 C. Doctrine of Plain Error

¶ 52 1. Motion to Extend Speedy-Trial Term

¶ 53 Next, the defendant urges this court to review the circuit court's decision to grant the State's motion to extend the speedy-trial term under the plain-error doctrine. The defendant asserts that the court's finding challenged the integrity of the judicial process because a speedy trial is a substantial fundamental right. Under plain error, a reviewing court may consider a forfeited claim:

> "when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)).

However, where no error occurs, plain error cannot exist. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion." *Caffey*, 205 Ill. 2d at 89. We will find an abuse of discretion only where the circuit court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 54 As stated above, one of the many decisions belonging to defense counsel is whether to seek a continuance and thereby relinquish a statutory right to trial within a specified period. *Carr*, 9 Ill. App. 3d at 384. Here, because defense counsel consented to the continuance, no error occurred. Without error, there can be no plain error on the part of the court. Because the parties mutually agreed to extending the speedy-trial term, we find no reason to review whether the State demonstrated due diligence. Therefore, the defendant's claim is rejected.

¶ 55 2. Illinois Supreme Court Rule 431(b) Noncompliance

¶ 56 The defendant also argues that the circuit court erred when it failed to strictly comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during *voir dire.* Although unpreserved, the defendant urges this court to consider this issue under the first prong of the plain-error doctrine because the evidence was closely balanced.

¶ 57 To preserve a claim for review, a defendant must object at trial and include the alleged error in a written posttrial motion. *Enoch*, 122 Ill. 2d at 186-87. The plain-error doctrine, however, bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error. *People v. Averett*, 237 Ill. 2d 1, 18 (2010). The first

step of plain-error review is to determine whether a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565. After error has been established, the court must then determine if the evidence was closely balanced. *People v. Sebby*, 2017 IL 119445, ¶ 69. The defendant is not required to additionally establish that the error was prejudicial. *Id.* Our review of a supreme court rule is *de novo*. *People v. Wilmington*, 2013 IL 112938, ¶ 26.

¶ 58 In determining a circuit court's compliance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), it is critical that the court ask the potential jurors, individually or as a group, if they understood *and* agreed with the legal principles. The legal principles enumerated in Rule 431(b) are as follows:

> "(b) 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." Ill. S. Ct. R. 431(b) (July 1, 2012).

"The rule requires questioning on whether the potential jurors both understand and accept each of the enumerated principles." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010).

Rule 431(b) also requires an opportunity for a response from each potential juror whether he or she both understands and accepts the principles. *Id.* at 607.

¶ 59 Here, with regard to principle one, the presumption of innocence, the court asked seven jurors whether they understood, but not whether they accepted, this principle. The court then asked the remaining five jurors whether they accepted, but not whether they understood, this principle, stating: "[W]ill you be able to give the accused the presumption of innocence throughout the trial?" Next, the court generally inquired whether the jurors would "follow the law as I give it to you in the instructions at the end of the case?" The court, therefore, failed to ask each juror if they understood and accepted the second, third, and fourth principles.

¶ 60 Regardless, the State argues that the circuit court substantially complied, noting that strict compliance is not required because the rule does not require " 'special magic language.' " *People v. Smith*, 2012 IL App (1st) 102354, ¶ 105 (citing *People v. Ware*, 407 Ill. App. 3d 315, 356 (2011)). While we agree that the court may substantially comply with the rule without using specific language, the court must ascertain whether the jurors understand and accept the four principles to avoid error. See *People v. Vargas*, 409 Ill. App. 3d 790, 796 (2011) (no error found where the approach to the inquiry was sufficient to ascertain potential jurors' understanding and acceptance of the principle articulated). Here, as stated above, the court failed to do this. Accordingly, the court erred.

¶ 61 Having established that the circuit court erred, we must next determine whether the evidence was so closely balanced that the error alone threatened to tip the scales of

justice against the defendant. In doing so, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of the evidence presented in the case. *People v. White*, 2011 IL 109689, ¶ 139. A reviewing court's inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses' credibility. *Sebby*, 2017 IL 119445, ¶ 53. Under a plain-error analysis, the defendant bears the burden of persuasion. *Wilmington*, 2013 IL 112938, ¶ 43.

¶ 62 The defendant contends that the evidence is closely balanced concerning whether Slaughter's room was a dwelling place or a convenience store for drug users. The defendant asserts that because there was no evidence presented that Slaughter bathed, dined, engaged in sexual activity, watched television, read, or had luggage in the motel room, the jury was unable to find that he *actually resided* in the room. We disagree with the defendant's argument.

¶ 63 The definition of "dwelling" relevant to this case is provided in section 2-6(a) of the Code. The defendant, however, relies on section 2-6(b), which addresses the residential burglary statute in section 19-3 of the Code:

> "(b) *** 'dwelling' means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." 720 ILCS 5/2-6(b) (West 2012).

Under section 2-6(a) of the Code, in order to establish the offense of home invasion, the State must prove that an offender knowingly entered a building or portion thereof, a tent,

a vehicle, or other enclosed space which *is used or intended for use as a human habitation, home, or residence* when he or she knows or has reason to know that one or more persons were present and intentionally caused injury.

¶ 64 Here, there was ample, undisputed evidence that Slaughter resided at the Campus Inn Motel at the time of the attack and that he used the motel room as a human habitation. First, testimony established that Slaughter traveled to the Campus Inn Motel with the intent to stay in the motel room for a short period of time. Second, photographic evidence presented at trial showed Slaughter's personal items scattered throughout the motel room and that he had used many of the motel amenities, including the queen-sized bed, television, chair, and nightstand. Third, Slaughter testified that he watched television and talked on the phone before he went to sleep on March 14, 2014. Fourth, following the incident, police found Slaughter unresponsive on the floor wearing pajama pants. Thus, the defendant's assertion that Slaughter was using the motel room only as a convenience store for drug users is unsupported by the record.

¶ 65 The defendant further argues that Slaughter testified that his sole purpose for using the room was to sell heroin. This, too, is unsupported by the record. On cross-examination Slaughter stated that his "sole purpose for being [in Carbondale] was to sell heroin." The record, however, does not substantiate the broader claim that Slaughter's sole purpose for using the motel room was to sell heroin. Even though Slaughter sold heroin from his motel room, the evidence is devoid of any suggestion that he resided elsewhere.

¶ 66 Lastly, the defendant argues that the evidence was closely balanced because the judgment of conviction rests solely on Pemberton's testimony who was "an accomplice and drug addict." The defendant, relying on *People v. Naylor*, 229 Ill. 2d 584, 607-08 (2008), argues that when the judgment of conviction rests solely on the credibility of witnesses, the evidence is closely balanced. The State argues, however, that the defendant failed to present evidence to rebut Pemberton's credible, consistent, and corroborated testimony. We agree with the State.

¶ 67 We find that the instant case is readily distinguishable from *Naylor.* In *Naylor*, the circuit court, as the trier of fact, was faced with two different versions of events, both of which were credible. *Id.* at 608. The Illinois Supreme Court found that the evidence was closely balanced because the trial was a "contest of credibility" between two police officers and defendant. *Id.* at 606-07. The court had determined that defendant had failed to present extrinsic evidence to corroborate or contradict either version, so the court's assessment of guilt necessarily involved the credibility of two officers and defendant. *Id.* at 607. Thus, defendant's convictions turned on the court's assessments of defendant's credibility. *Id.*

¶ 68 Dissimilar to *Naylor*, the defendant did not to testify or present evidence—other than her own self-serving statement, given in a postarrest interview, where she denied all involvement in Slaughter's attack—to contradict the State's case-in-chief. In fact, the defendant did not provide an alternative version of events but argued against the sufficiency of the State's evidence. Moreover, the State presented extrinsic evidence to corroborate Pemberton's testimony concerning the events leading up to the attack—

specifically, that Kaemmerer drove Sutton, Nelson, Pemberton, and the defendant to the Campus Inn Motel and that Sutton and Nelson attacked Slaughter. Additionally, the defendant corroborated Pemberton's testimony that Slaughter appeared to be handicapped, unarmed, and alone in his motel room, based on the defendant's observation when she purchased heroin on March 14, 2014. Unlike the jury in *Naylor*, the jury here was not faced with equally credible versions of events.

¶ 69 In light of the corroborative evidence, we conclude that the jury could have reasonably discounted the defendant's denial in her postarrest interview concerning any and all involvement in Slaughter's attack. Accordingly, based on the totality of the evidence and our commonsense assessment of the evidence, we find that the evidence was not so closely balanced that the error alone threatened to tip the scales of justice against the defendant.

¶ 70 D. Cumulative Error

¶ 71 Lastly, the defendant argues that the cumulative effect of the claimed errors denied her a fair trial and violated her due process rights, which warrants a new trial. An appellate court's resolution of the argument that the cumulative effect of various trial errors warrants reversal depends upon the court's evaluation of the individual errors. *People v. Falconer*, 282 Ill. App. 3d 785, 793 (1996). If the alleged errors do not amount to reversible error on any individual issue, generally there is no cumulative error. *People v. Doyle*, 328 Ill. App. 3d 1, 15 (2002). However, where errors are not individually considered sufficiently egregious for an appellate court to grant defendant a new trial, but the errors, nevertheless, create a pervasive pattern of unfair prejudice to defendant's case,

a new trial may be granted on the ground of cumulative error. *People v. Blue*, 189 Ill. 2d 99, 139 (2000).

¶ 72 As discussed above, we have rejected all but one of the defendant's claims of error. We found that the evidence presented at trial was sufficient to prove that the motel room was a dwelling place and that the defendant was not denied effective assistance of counsel where trial counsel did not object to the State's motion to extend the speedy-trial term or request accomplice and drug addict witness jury instructions. Likewise, based on defense counsel's agreement, the circuit court did not commit error in granting the State's motion to extend the speedy-trial term. We also determined that the court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) was error, but not plain error, because the evidence was not so closely balanced that the error alone threatened to tip the scales of justice against the defendant. Accordingly, because none of the challenged issues prejudiced the defendant, the doctrine of cumulative error does not entitle her to a new trial. See *People v. Bradley*, 220 Ill. App. 3d 890, 904-05 (1991) ("Given our resolution that few errors occurred at trial, and given the lack of prejudice resulting therefrom, we hold that the doctrine of cumulative error does not apply to this case.").

¶ 73 III. Conclusion

¶ 74 The order of the circuit court of Jackson County is hereby affirmed where the State presented sufficient evidence to prove the offense of home invasion; there was no denial of effective assistance of counsel; there was no plain error where the court granted the State's motion to extend the speedy-trial term; the court's noncompliance with Illinois

Supreme Court Rule 431(b) (eff. July 1, 2012) was procedurally forfeited where the evidence was not so closely balanced that the error alone threatened to tip the scales of justice against the defendant; and the doctrine of cumulative error did not entitle the defendant to a new trial absent prejudice.

¶ 75 Affirmed.