2019 IL App (4th) 170229-U

NO. 4-17-0229

FILED
October 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ANTHONY L. MEADS,	)	No. 12CF1317
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) defendant failed to establish a denial of his right to a speedy trial, (2) sufficient evidence proved defendant guilty beyond a reasonable doubt of first degree murder, (3) the trial court did not violate Rule 431(b) in admonishing the jury, and (4) the trial court properly conducted a preliminary inquiry into defendant's claims of ineffective assistance of counsel.

¶ 2 In October 2016, a jury convicted defendant, Anthony L. Meads, of first degree murder in the death of Desirae Austin on July 4, 2012. In December 2016, the trial court sentenced defendant to 45 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) he was denied his right to a speedy trial, (2) the State failed to prove him guilty beyond a reasonable doubt of first degree murder, (3) the trial court erred by failing to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and

(4) the court failed to conduct a proper preliminary inquiry into defendant's posttrial claims of ineffective assistance of counsel. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2012, the State charged defendant with first degree murder based on Desirae's death following the Parkland Community College (Parkland) fireworks display on July 4, 2012. Count I charged defendant with felony murder, alleging he, or one for whose conduct he was legally responsible, while committing the forcible felony of mob action and armed with a firearm, knowingly and with the use of force disturbed the public peace by discharging a firearm in the direction of Johnnie Campbell and Rajon Campbell, thereby causing the death of Desirae (720 ILCS 5/9-1(a)(3) (West 2010)). In September 2012, the State added two additional counts of first degree murder. Count II charged defendant with intentional murder, alleging he, without lawful justification and with the intent to kill or do great bodily harm to Desirae or another, discharged a firearm in the direction of Desirae or another, thereby causing Desirae's death (720 ILCS 5/9-1(a)(1) (West 2010)). Count III charged defendant with reckless murder, alleging he, without lawful justification, discharged a firearm in the direction of Desirae or another, knowing the act created a strong probability of death or great bodily harm, thereby causing Desirae's death (720 ILCS 5/9-1(a)(2) (West 2010)).

¶ 6 In May 2013, a jury convicted defendant of first degree murder, and the trial court subsequently sentenced him to 50 years' imprisonment. On appeal, this court reversed and remanded for a new trial, concluding the State presented sufficient evidence upon which a jury could find defendant guilty of first degree murder, but it engaged in prosecutorial misconduct that so seriously undermined the fairness of the trial that a new trial was warranted. *People v.*

Meads, 2015 IL App (4th) 130802-U. This court's mandate reversing and remanding for a new trial issued on May 17, 2016.

¶ 7 A. Pretrial Proceedings

¶ 8 On July 5, 2016, the trial court held the first preliminary hearing following remand, and an assistant public defender stated, "This is Mr. Rosenbaum's case. It was reversed by the Appellate Court recently. He's not had an opportunity to speak much with his client. We're asking for a continuance." On August 2, 2016, the State requested a continuance. The court overruled defendant's objection and set the matter for another pretrial hearing later that month. On August 30, 2016, defense counsel stated, "Ready for trial." The State responded, "Judge, we're also ready for trial. We'd request trial based on the other obligations Ms. Clark has and the age of the case. Since it's 2012, we need to collect those witnesses again. We'd request trial on October 17th, if possible." The court set the case for trial on October 17, 2016.

¶ 9 On October 12, 2016, defense counsel filed a motion to dismiss for a violation of defendant's right to a speedy trial. The motion alleged 126 days elapsed between the May 17, 2016, filing of the appellate court's mandate and the October 17, 2016, trial date, excluding the time period from July 6, 2016, to August 1, 2016, where the defense sought a continuance. The State argued the only delay attributable to the State was August 2, 2016, to August 30, 2016, because defense counsel did not object to the October 17, 2016, trial date during the August 30, 2016, pretrial hearing.

¶ 10 At the hearing on defendant's motion to dismiss, defense counsel argued the August 30, 2016, hearing "move[d] very fast" and counsel had no opportunity to object to the trial date. The State argued defense counsel "was fine with an October 17th setting" and never indicated an invocation of defendant's speedy-trial rights. The trial court ruled as follows:

"Well, at the pretrial, the matter was set for a date certain in this Court's trial term. The problem for setting it for this week is that Monday is a Court holiday. We're dealing with a murder case, the last time it was tried it took four, four and a half days. There would be no way that this case could have been tried beginning Tuesday, the 11th of October. We bring jurors in that morning, pick a jury that afternoon and then possibly have three days for the remainder of the trial.

Counsel asked for the date certain. The Court set the 17th of October for the trial, no objection. Ms. Miller-Jones, things don't move that fast in this courtroom. If you were aware of the problems created by the calendar, that should have been brought to the Court's attention. You agreed to the 17th for trial. The motion to dismiss is denied."

¶ 11 B. Jury Selection

¶ 12 On October 17, 2016, defendant's jury trial commenced. The trial court impaneled the jury in panels of four and chose three alternates. Prior to swearing the jurors in, the court said to each panel,

"[T]he four of you understand that the defendant is presumed to be innocent of the charge against him, that before the defendant can be convicted, the State must prove him guilty beyond a reasonable doubt, that the defendant is not required to offer any evidence on his own behalf, and that if the defendant does not testify, that fact

cannot be held against him in any way. The four of you understand those instructions; is that correct?"

The record indicates the jurors answered in the affirmative. The court asked each panel, "And the four of you will follow those instructions; is that correct?" The jurors again responded in the affirmative. The court read the same instructions to the alternate jurors, asked if the three alternates understood the instructions, and asked "And the three of you will follow those instructions; is that correct?" The alternate jurors answered both questions in the affirmative.

¶ 13 C. Trial

¶ 14 1. *Phillip McDonald*

¶ 15 Officer Phillip McDonald of the Champaign police department testified he was dispatched to the 1600 block of Cruising Lane on the evening of July 4, 2012. Upon arrival, a female ran toward Officer McDonald, screaming for help. A female, later identified as Desirae, was lying on her back and appeared to be unconscious. Officer McDonald could not detect a pulse and began to render aid. Fire and medical personnel arrived, and Officer McDonald attempted to locate eyewitnesses. Officer McDonald approached a large group of people and asked if anyone knew the victim's name or had seen what occurred. At that time, no one spoke up. After the crowd began to disperse, two subjects, later identified as defendant and Treshaun Jake, approached Officer McDonald. Defendant was upset and told Officer McDonald he thought the victim was his sister. The description of defendant's sister did not match the victim and Officer McDonald advised defendant to get in touch with his sister through a telephone call.

¶ 16 Officer McDonald was searching for evidence behind a house when Officer Marshall Henry requested extra assistance with three subjects held at gunpoint in front of 1607 Cruising Lane. Upon Officer McDonald's arrival, Officer Henry and Officer Corey Phenicie had

handcuffed the subjects and were conducting searches. Officer McDonald "assisted Officer Phenicie in securing and making safe a handgun that he retrieved off of one of the individuals." According to Officer McDonald, he secured the .45-caliber Hi-Point semiautomatic handgun by removing the magazine and a live round in the chamber. Two of the individuals arrested in front of 1607 Cruising were defendant and Treshaun.

¶ 17 2. *Marshall Henry*

¶ 18 Officer Marshall Henry, a Champaign Street Crimes Task Force officer, testified he was called to the intersection of Thornton Drive and Cruising Lane. Officer Henry's primary responsibility was to secure the scene and locate witnesses. According to Officer Henry, more than 50 people were at the scene but none were willing to talk. As Officer Henry walked down the street by 1607 Cruising, defendant flagged him down. Defendant appeared nervous and worried about the victim and asked who was shot. Officer Henry testified, "I was unable to provide him a name at that time. He then asked me if I would—if he would provide me a name if I would be able to tell him if that was the person that was shot or not, and I said possibly. So he provided me a name. I don't recall the name, but he—but then I told him that that was not the person that was shot."

¶ 19 Officer Henry testified his response seemed to put defendant's mind at ease. Defendant walked toward the residence at 1607 Cruising and kicked a metal object in the driveway. Officer Henry identified the object as a shell casing and observed several more shell casings in the driveway. Treshaun and Kahindae Jake were in the driveway with defendant, and Officer Henry ordered all three subjects to put their hands up. Two other officers dealt with defendant while Officer Henry held the other two subjects at gunpoint. According to Officer

Henry, nothing was found after searching Treshaun or Kahindae. A search of the residence at 1607 Cruising revealed no firearms or ammunition.

¶ 20 3. *Corey Phenicie*

¶ 21 Officer Corey Phenicie testified he was riding as a two-man unit with Officer Henry on July 4, 2012. Officer Phenicie helped establish a perimeter of the crime scene. As Officer Phenicie sectioned off part of the crime scene on Thornton Drive, he briefly spoke with a female resident named Tiffany Dishman. According to Officer Phenicie, the officers found shell casings in the area and "continued to find shell casings to the west, so [they] ended up in front of 1607 Cruising Lane." Defendant walked from the front of 1607 Cruising down the driveway and asked Officer Henry about the identity of the victim. Officer Phenicie testified that, as defendant walked on the driveway, "something consistent with a shell casing was kicked down the driveway." That prompted the officers to look around the immediate area where they found more than one casing and a live round.

¶ 22 According to Officer Phenicie, Treshaun and Kahindae were in the driveway with defendant and the officers ordered the three subjects to put their hands in the air. Officer Phenicie conducted a weapons pat down of defendant and felt a large bulge in the front right part of his waistband. Officer Phenicie testified, "Once I felt what was apparent to be a firearm and which felt consistent with a firearm on the pat-down search, I went to manipulate his shirt, and Officer Miller, who was on scene yelled, 'Gun, gun.' " At that point, Officer Phenicie tackled defendant to the ground and handcuffed him. Officer Phenicie testified he removed a black .45-caliber Hi-Point semiautomatic pistol from defendant's waistband and handed the firearm to Officer McDonald.

¶ 23 4. *Stipulation as to Cause of Death*

¶ 24 The parties stipulated that Desirae suffered a gunshot wound while standing near the intersection of Cruising Lane and Thornton Drive. Desirae was transported to the hospital, where a doctor determined she had sustained a single gunshot wound to the chest, was not breathing, and had no pulse. Forensic pathologist Amanda Youmans performed the autopsy, recovered the projectile from Desirae's back, and confirmed the cause of death was a gunshot wound to the chest.

¶ 25 5. *Johnnie Campbell*

¶ 26 Johnnie Campbell testified he attended a fireworks display at Parkland with family members, including his brother Rajon Campbell. After the fireworks show, Johnnie walked to his aunt's house on Thornton Drive. Johnnie testified he was outside his aunt's home with his ex-girlfriend Mycharrae Kirkwood, her sister Ryesha Howard, and his cousin Tiffany Dishman. Johnnie testified, "Me and my girlfriend, we had a, a quick argument, then we kind of like got back cool, and her sister blew it out of proportion. Me and her got into an argument." According to Johnnie, Ryesha tried to hit him, Mycharrae held her back, and then the sisters walked off.

¶ 27 Johnnie walked behind Mycharrae and Ryesha down Cruising Lane but he fell back a little bit when he saw Mycharrae and Ryesha talking to Phil Myrick and Antwon Anderson. According to Johnnie, "Mycharrae kind of kept walking. Ryesha was speaking with them." Johnnie observed their body language and they appeared "[m]ore or less just like ready to fight." Ryesha was angry and "talking with her hands." Johnnie called to Mycharrae, but she continued walking with her sister. Phil and Antwon told Johnnie they were not going to let him near Mycharrae. Johnnie walked down to approximately 1605 Cruising Lane because "[t]he guys were making threats there."

¶ 28 Johnnie thought there was going to be a fistfight, so he ran to get his brother from a nearby street. Rajon was down the street, and Johnnie yelled for him. With Rajon and Johnnie were Eva Troy, Tiffany Dishman, Yasmin Nichols, Desirae, Cortez Ross, Gwannecia Allen, Delores Tracey, Tameka Troy, and some others. Johnnie estimated there were 10 people out at the time of the initial altercation, and people were still walking back from the fireworks display and loitering outside their residences. At the time the shots were fired, Johnnie estimated there were at least 50 people in the area, but it was dark and he could not make out everyone's faces.

¶ 29 Johnnie was "arguing with the guys" when Rajon walked up and said, "We can fight but don't run up on the guy with the gun." Johnnie testified he also saw Treshaun Jake on Cruising Lane. According to Johnnie, Phil and Antwon made a telephone call and a few people ran up with guns. Johnnie also saw a crowd of people come running around the corner. Johnnie and Rajon intended to fight Phil and Antwon when Treshaun walked past them with a gun in his hand. Phil, Antwon, and Treshaun stood by a white car in front of 1607 Cruising Lane. Although Treshaun had a gun, the men talked about fistfighting and not using the gun. Treshaun put the gun down on the street and Johnnie began walking toward him.

¶ 30 Johnnie testified, "I was about to approach [Treshaun] until I heard someone say, 'No, we're not fighting. Pick up the gun.' " Treshaun picked up the gun and Johnnie began walking away when he heard the first shot fired. Johnnie stated, "I kind of kept walking a little, and then my brother was like, 'Oh, they're just shooting in the air, [t]hey're just shooting in the air.' And then I just hear someone say, 'Shoot at them. Shoot at them.' And then the shot goes off, and the next thing you know, I just ran behind a car." Johnnie and Rajon hid behind a black vehicle parked in the roadway. When the shooting stopped, Johnnie and Rajon ran through backyards back to their aunt's house.

¶ 31 According to Johnnie, neither he nor his brother had a firearm. The only firearm Johnnie saw was Treshaun's black handgun. Johnnie testified he knew defendant from school and he did not see defendant during the fight, when he ran up Thornton Drive, or at his aunt's house.

¶ 32 6. *Rajon Campbell*

¶ 33 Rajon Campbell testified he attended the fireworks display at Parkland with his family. After the fireworks, he and Johnnie went separate ways. Approximately 10 or 15 minutes later, Rajon heard Johnnie calling his name. Rajon ran toward the sound of Johnnie's voice and met up with him at the corner of Thornton Drive and Cruising Lane. According to Rajon, Johnnie was with Mycharrae, her sister, Tiffany, and a few others. Rajon testified, "I see [Johnnie] standing there with Mycharrae, and there was like a group of guys standing a couple feet ahead of him, and like he was walking towards the guys, and I was trying to get to him to stop him from walking towards the guys." Johnnie and one of the men were yelling back and forth and calling each other names. Rajon thought there was going to be a fight and somebody said they saw a gun. Rajon told Johnnie to come back and not to "run up on" somebody with a gun.

¶ 34 According to Rajon, there were five or six people in the group Johnnie was arguing with and Rajon only recognized Phil. Rajon tried to get Johnnie to return to their aunt's house and pulled him away from the group. Rajon heard a shot and stated, "When I turned around to look and duck down, I seen the gun in the air. So I told [Johnnie] like ['] they're shooting in the air, let's go,[']you know. And I heard somebody tell them like, 'Shoot them. Shoot at them. Shoot at them.' And that's when the bullets started coming in our direction." Rajon and Johnnie dove behind a truck to avoid the bullets. According to Rajon, the shots came

from in front of 1607 Cruising Lane. Rajon did not know the person with the gun. Rajon did not identify defendant as being present during the shooting.

¶ 35 When the shooting ceased, Rajon and Johnnie ran in the opposite direction of their aunt's house and doubled back through backyards so they would not be followed. As they ran, Rajon saw Desirae lying on the ground. Rajon later sent his cousin Tiffany and his girlfriend to check on Desirae.

¶ 36 7. *Tiffany Dishman*

¶ 37 Tiffany Dishman testified she attended a fireworks display at Parkland and later walked back to her home on Thornton Drive. Tiffany and her cousins, Yasmin and Kayla, walked down Cruising Lane toward Thornton Drive on their way home from the fireworks show. Tiffany stated that as they approached 1607 Cruising Lane, "There was a few boys out there shooting or whatever. They were shooting in the air, because at first we thought it was fireworks because it was the 4th. And my cousin was like hold on, I got my brother. Like then we—fireworks, then gunshots. So as we stopped, we stopped—you know what I'm saying, and they was like well, let them pass. They let us pass, and we went to my house."

¶ 38 After arriving home, Tiffany heard an argument and went outside to find out what was happening. Tiffany encountered two women (Mycharrae and Ryesha) and her cousin, Johnnie. Tiffany spoke with Mycharrae and observed Johnnie arguing with Ryesha. Ryesha then made her way toward the group of men on Cruising that Tiffany encountered earlier. According to Tiffany, Ryesha was yelling and "making it like *** there was something going on." Tiffany testified she observed a male in the middle of the street with his shirt off and thought he was going to fight Johnnie. Tiffany identified the shirtless male as Treshaun and testified he had a gun in his hand.

¶ 39 According to Tiffany, Johnnie asked Treshaun if he was going to shoot and indicated he thought the two were going to fistfight. Treshaun set the gun down and Johnnie began to take off his shirt. Tiffany testified, "Before Johnnie could get out of his shirt, he grabbed the gun and somebody told him shoot that, and he got to shooting." When the shooting began, Tiffany ran home and realized Desirae was missing. Tiffany went back outside and found Desirae lying on the corner of Thornton and Cruising. Tiffany called 911 and began performing cardiopulmonary resuscitation. Tiffany testified she was with Gwannecia Allen.

¶ 40 As Tiffany spoke to the 911 dispatcher, defendant came up holding a long, black shotgun. Defendant pointed the shotgun in Tiffany's direction, but he was not threatening her. Tiffany testified, "He just said, 'Where those n***s at?' And then went to the corner of Thornton and Hedge and he shot—fired shots." Defendant fired four or five shots. Tiffany admitted she did not tell the police officers about seeing defendant that night because no one asked about what happened after the shooting.

¶ 41 8. *Gwannecia Allen*

¶ 42 Gwannecia Allen testified she attended the fireworks show at Parkland with Rajon. After the show, the group walked to an address on Hedge Road when they heard Johnnie screaming Rajon's name. According to Gwannecia, the group followed Rajon to the corner of Thornton Drive and Cruising Lane. Gwannecia observed Treshaun and Johnnie arguing and thought a fight was going to take place. Gwannecia testified that Treshaun had a gun and, "[h]e aimed it in the crowd, and I heard, 'Shoot at them n***s,' or something like that." Treshaun fired the gun in Johnnie and Rajon's direction. Johnnie and Rajon took cover behind a vehicle, and Gwannecia ran behind a tree.

¶ 43 Before shots were fired, Gwannecia saw Desirae in the intersection and saw her fall after the shots were fired. Gwannecia went to Desirae and held her head while Tiffany stood over her on the phone with the police. According to Gwannecia, defendant ran up with a long, black rifle pointed toward her. Gwannecia testified defendant said, " 'Where did those n***s go[,]' " which Gwannecia understood to refer to Johnnie and Rajon. Gwannecia did not respond, and defendant went to the corner of Hedge Road and Thornton Drive and fired shots in the air.

¶ 44 9. *Ranece Fondia*

¶ 45 Ranece Fondia testified that on July 4, 2012, she lived at 1605 Cruising Lane. As she returned from the fireworks show with her children, Ranece passed by Treshaun and Antwon and gave them a bag of fireworks. Approximately 10 minutes later, Ranece heard a commotion. Ranece testified she went outside and saw Rajon, Johnnie, a couple of females, and a big crowd. According to Ranece, Antwon and Treshaun were arguing with Johnnie and Rajon. Ranece heard either Johnnie or Rajon say, "Oh, you shot in the air. You're a bitch." Ranece testified Treshaun did not respond but he pointed the gun in Johnnie and Rajon's direction and started to shoot. Ranece ran back into her house until the shooting stopped.

¶ 46 Once the shooting ended, Ranece went outside and saw Tiffany on top of a girl asking someone to dial 911. Ranece walked toward Tiffany and the victim and dialed 911. As Ranece spoke to the dispatcher, she saw another individual she could not identify approach with "a pretty big weapon."

¶ 47 10. *Russell Beck*

¶ 48 Russell Beck, an officer and crime scene technician with the Champaign police department, testified he was called to the area of Thornton Drive and Cruising Lane. While collecting evidence, Officer Beck observed suspected blood on the street. Officer Beck

recovered a projectile from the street and projectiles lodged in the rear end of a vehicle that had been parked on Cruising Lane during the shooting. Officer Beck recovered various .40-caliber shell casings lying in the street. Additionally, he recovered a shotgun shell casing from Thornton Drive. Defendant's white Buick LeSabre was located at the scene, and Officer Beck recovered a Remington 870 12-gauge shotgun and shells from the trunk.

¶ 49 11. *Arthur A. Miller III*

¶ 50 Arthur A. Miller III, an officer and crime scene technician with the Champaign police department, testified he observed Officer Phenicie dealing with defendant. Officer Miller observed a bulge in defendant's waistband and instructed him to lift his shirt. As defendant lifted his shirt, Officer Miller saw the butt of a black handgun, and Officer Phenicie tackled defendant, secured him in handcuffs, and retrieved the handgun. Officer Miller then began processing the scene and recovered multiple spent shell casings in the street and in the driveway of 1607 Cruising Lane. From the street and driveway of 1607 Cruising Lane, Officer Miller recovered (1) numerous shell casings and a live round from a 9-millimeter Luger, (2) a spent shotgun shell stamped Remington 12-gauge, and (3) casings from a .45-caliber weapon.

¶ 51 12. *Forensic Evidence*

¶ 52 The parties stipulated that the shotgun, pistol, and casings from the scene failed to produce any forensically useful latent fingerprints or deoxyribonucleic acid (DNA). Vickie Reels, a forensic scientist with the Illinois State Police, testified as an expert in firearms. Reels testified she examined seven .40-caliber casings fired from the same weapon and seven 9-millimeter casings fired from the same weapon, although the investigation failed to produce firearms with which to compare the casings. Reels examined two shotgun shell casings fired from the shotgun recovered from defendant's vehicle. Finally, Reels determined the .45-caliber

casings and the .45-caliber projectile recovered from Desirae's body were fired from the Hi-Point pistol found in defendant's possession at the time of his arrest.

¶ 53 13. *Robb Morris*

¶ 54 Detective Robb Morris testified he interviewed defendant as part of his investigation into the shooting. The State played a portion of the audio- and video-recorded interview with defendant. During the interview, defendant stated he drove his white Buick LeSabre to Antwon Anderson's home at 1607 Cruising Lane and then walked to the Parkland fireworks display with Antwon, Treshaun, and Darian Jake. The four men returned to Antwon's home after the show. Defendant indicated tensions were high between the Gangster Disciples and Black P. Stones gangs. According to defendant, the Gangster Disciples were near the intersection of Cruising Lane and Thornton Drive and a gun battle erupted as the Gangster Disciples were pushing the Black P. Stones out of the neighborhood. Defendant stated he and Treshaun were affiliated with, but not actual members of, the Gangster Disciples. According to defendant, he watched the altercation from the porch of 1607 Cruising Lane.

¶ 55 During the altercation, defendant claimed a Black P. Stones member known as "KG" was armed with a shotgun. Defendant further identified two Black P. Stones as "Little Mark" and "Taz." According to Detective Morris, defendant was the only person who brought up those names during the course of 42 interviews he conducted during the investigation.

¶ 56 During the interview, defendant claimed he hit KG with a large stick. When KG dropped the shotgun, defendant picked it up and placed it in the trunk of his vehicle. Defendant went with the Gangster Disciples to the west of Cruising Lane and when he returned to 1607 Cruising Lane, he discovered a .45-caliber Hi-Point pistol lying in the street. Defendant claimed he wrapped the pistol in a shirt and hid it by the house. After he hid the pistol, defendant

claimed he went over to the group gathered in the street to see if he could identify the victim. Defendant was concerned his sister was the victim, but the police pushed him away.

¶ 57 At one point, defendant stated he found the .45-caliber pistol after he encountered the police officers and the victim in the street. Defendant initially indicated he was with Treshaun the entire evening. Defendant later stated he was not in constant contact with Treshaun that night.

¶ 58 14. *Verdict*

¶ 59 Following deliberations, the jury found defendant guilty of the offense of first degree murder. The jury further found the State proved defendant was armed with a firearm.

¶ 60 D. Posttrial Proceedings

¶ 61 Defendant sent the trial court a letter raising various claims of ineffective assistance of counsel. Defendant alleged trial counsel was ineffective for failing to properly assert his right to a speedy trial. Defendant further alleged counsel was ineffective for failing to impeach some witnesses whose testimony was inconsistent with their testimony at his codefendant's trial. Additionally, defendant claimed ineffective assistance for counsel's failure to (1) file a motion to suppress the evidence retrieved from the trunk of his vehicle, (2) object to the State's alleged mischaracterization of evidence during opening argument, (3) strike juror Nos. 127, 140, and 149, whom defendant felt were unfair, and (4) introduce into evidence an interrogation video made following defendant's arrest in Vermilion County. Finally, defendant claimed his counsel rendered ineffective assistance when he asked to sit where he could see the State's video presentation during closing argument and counsel told him he could not move.

¶ 62 The trial court held a hearing on defendant's claims of ineffective assistance of counsel. The court first addressed defendant's claim of ineffective assistance related to his right

to a speedy trial. The court noted trial counsel filed a motion to dismiss based on the speedy trial violation, which the court heard and denied. The court found no ineffective assistance of counsel because counsel in fact raised the speedy trial violation.

¶ 63 The trial court next turned to defendant's claim that counsel provided ineffective assistance by failing to file a motion to suppress the evidence recovered from the trunk of defendant's vehicle. The court asked counsel if the search was the result of a search warrant. Defendant repeatedly interrupted trial counsel and the court, but eventually trial counsel stated the search was based on statements given by defendant to the police. Counsel indicated her belief that officers requested a search warrant.

¶ 64 The trial court found defense counsel's jury selection was a tactical decision and was not ineffective assistance of counsel. As to the State's alleged mischaracterization of the evidence, the court noted the jury was properly instructed that opening and closing argument are not evidence. The court further concluded any objection by defense counsel would not have been sustained. The court then addressed defendant's claim regarding the Vermilion County interrogation video. The court asked if someone could tell him what the video was. The State responded by informing the court the video was not played or referred to during the trial. The State went on to say, "[Defendant] was officially arrested and held on these charges once he was found in Vermilion County in a vehicle with Treshaun Jake with another gun. Charges were pending in Vermilion County were then dismissed. We agreed, pursuant to pretrial motions, that that would not be listed during this trial, and it was not." The court began to ask another question when defendant interrupted to again raise his speedy trial claim. The court concluded it did not find ineffective assistance of counsel and moved onto defendant's posttrial motion and

sentenced defendant to 45 years' imprisonment. The court entered judgment on the felony-murder count.

¶ 65 This appeal followed.

¶ 66 II. ANALYSIS

¶ 67 On appeal, defendant argues (1) he was denied his right to a speedy trial, (2) the State failed to prove him guilty beyond a reasonable doubt of first degree murder, (3) the trial court erred by failing to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and (4) the court failed to conduct a proper preliminary inquiry into defendant's posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We address these arguments in turn.

¶ 68 A. Speedy Trial

¶ 69 Defendant argues this court should reverse his conviction because he was denied his right to speedy trial. Specifically, defendant contends he was not brought to trial until 125 days after the trial court received this court's mandate remanding defendant's case for a new trial and the trial court erred by denying his motion to dismiss the charges against him. Alternatively, defendant contends his counsel rendered ineffective assistance for failing to zealously protect defendant's right to a speedy trial. We first address whether the trial court properly denied defendant's motion to dismiss the charges against him.

¶ 70 1. *Denial of Defendant's Motion to Dismiss*

¶ 71 Section 103-5(a) of the Code of Criminal Procedure of 1963 (Code) provides, in pertinent part, as follows: "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant ***. Delay shall be considered to be agreed

to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." 725 ILCS 5/103-5(a) (West 2016). Following remand for a new trial, the 120-day period begins to run when the circuit court receives the mandate from the appellate court. *People v. Dodd*, 58 Ill. 2d 53, 57, 317 N.E.2d 28, 30 (1974). A delay occasioned by the defendant temporarily suspends the 120-day period within which the defendant shall be tried "and on the day of expiration of the delay the said period shall continue at the point at which it was suspended." 725 ILCS 5/103-5(f) (West 2016). A defendant not tried within the applicable statutory time period must be discharged from custody and the charges must be dismissed. *People v. Woodrum*, 223 Ill. 2d 286, 299, 860 N.E.2d 259, 269 (2006).

¶ 72 The circuit court received this court's mandate on May 17, 2016. On July 5, 2016, defendant appeared at the first preliminary hearing following remand and requested a continuance. Defendant asserts this period of 49 days is attributable to the State, which the State does not dispute. The parties next appeared on August 2, 2016. Defendant concedes the time between July 5, 2016, and August 2, 2016, was a delay occasioned by him and does not count toward the 120-day statutory period. On August 2, 2016, the State requested a continuance, which the court granted over defendant's objection. Defendant asserts this 28-day period was attributable to the State. The State apparently concedes this issue. Accordingly, we must determine whether the "delay" from August 30, 2016, to October 17, 2016, was occasioned by defendant.

¶ 73 On August 30, 2016, defense counsel stated, "Ready for trial." The State responded, "Judge, we're also ready for trial. We'd request trial based on the other obligations Ms. Clark has and the age of the case. Since it's 2012, we need to collect those witnesses again.

We'd request trial on October 17th, if possible." The court set the case for trial on October 17, 2016.

¶ 74 Defendant contends the delay from August 30, 2016, until the date of his trial is attributable to the State and should count toward the 120-day period within which he should have been tried. Defendant argues the State requested October 17, 2016, for the trial date because it was not, in fact, ready to go to trial because of the prosecutor's other obligations and the need to line up witnesses. The State argues the time period in question is attributable to defendant because counsel neither objected to the delay caused by the State's proposed trial date, nor did counsel make an oral demand for a speedy trial on the record. We agree with the State.

¶ 75 Section 103-5(a) of the Code "places the onus on a defendant to take affirmative action when he becomes aware that his trial is being delayed." *People v. Cordell*, 223 Ill. 2d 380, 391, 860 N.E.2d 323, 331 (2006). In *People v. Murray*, 379 Ill. App. 3d 153, 161, 882 N.E.2d 1225, 1232-33 (2008), at the hearing in question, counsel appeared in court, "stated a readiness for trial[,] and objected to the delay, but did not specifically ask for trial or use language that would reference the speedy-trial statute." The appellate court concluded this was not sufficient to affirmatively invoke the speedy-trial right. *Id.* In this case, trial counsel stated a readiness for trial, but failed to object to a delay or make an affirmative demand for a speedy trial. *Id.* at 160 (while no magic words are required to constitute a demand for speedy trial, there must be some statement requesting a speedy trial and should not be masked in ambiguous language). "Should a defendant wish to employ section 103-5(a) as a shield against any attempt to place his trial date outside the 120-day period, he is free to do so. To allow section 103-5(a) to be used as a sword after the fact, to defeat a conviction, however, would be contrary to our

holding in [*People v.*] *Gooden*[, 189 Ill. 2d 209, 725 N.E.2d 1248 (2000)] and allow defendants to use a procedural loophole to obstruct justice." *Cordell*, 223 Ill. 2d at 390.

¶ 76 We find counsel failed to make an affirmative oral demand for a speedy trial at the August 30, 2016, hearing. Accordingly, we conclude the trial court properly denied the motion to dismiss the charges against him. As the supreme court noted in *Cordell*, to allow defendant's motion to dismiss would be to allow defendant to use section 103-5(a) as a sword to defeat conviction, rather than a shield against an attempt to place his trial date outside the 120-day period. We therefore affirm the judgment of the circuit court.

¶ 77 2. *Ineffective Assistance of Counsel*

¶ 78 A claim of ineffective assistance of counsel is governed by the familiar framework set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). "To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767. The deficient-performance prong requires a defendant to show that counsel's performance was objectively unreasonable under prevailing professional norms. *People v. Veach*, 2017 IL 120649, ¶ 30, 89 N.E.3d 366. The prejudice prong requires a showing that, but for counsel's deficient performance, the outcome of the proceeding would have been different. *Id.* A defendant must satisfy both prongs to prevail on a claim of ineffective assistance of counsel. *Id.*

¶ 79 Defendant asserts trial counsel's failure to demand a speedy trial at the August 30, 2016, hearing resulted in an objectively unreasonable performance. Defendant argues the outcome of the trial would have been different. Defendant asserts a reasonable probability exists

that the charges would have been dismissed because the State could not secure witnesses for trial.

¶ 80 Assuming, *arguendo*, that (1) the scheduling of defendant's trial on October 17, 2016, constituted a delay and (2) trial counsel was deficient for failing to object to the delay and demand a speedy trial, defendant has failed to demonstrate prejudice. To establish prejudice, defendant must show that if counsel zealously protected his right to a speedy trial at the August 30, 2016, hearing, the trial would nonetheless have occurred outside the 120-day speedy-trial period. Only then could defendant bring a meritorious motion to dismiss the charges. Defendant's conclusion is speculative. His argument presumes that, had counsel objected to the delay and demanded a speedy trial, the trial would nonetheless have occurred on October 17, 2016. In our view, the more likely scenario is the State and the court would have adjusted the scheduling of the trial to comply with the speedy-trial period. Defendant assumes the State would have been unable to secure the necessary witnesses but for the additional five days gained by scheduling the trial for October 17, 2016. Given that the court set the trial date approximately six weeks in advance of the expiration of the speedy-trial window, we conclude it is unlikely the State would have failed to secure the witnesses in a first degree murder case without the additional five days. Defendant's assumptions fail to create the reasonable probability of a different outcome necessary to establish prejudice. We therefore conclude his ineffective-assistance-of-counsel claim must fail.

¶ 81 B. Sufficiency of the Evidence

¶ 82 Defendant next contends the State failed to prove defendant guilty beyond a reasonable doubt of first degree murder.

¶ 83 When determining whether sufficient evidence supported a conviction, "our function is not to retry the defendant." *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). Instead, we must resolve " '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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We allow all reasonable inferences in the light most favorable to the State. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 323 (2011). It is the province of the finder of fact to determine the credibility of a witness and the finding is entitled to great weight. *People v. Smith*, 185 Ill. 2d 532, 542, 708 N.E.2d 365, 370 (1999). We reverse only where the evidence is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

¶ 84 The jury in this case found defendant guilty of three counts of first-degree murder: (1) felony murder (720 ILCS 5/9-1(a)(3) (West 2010)), (2) intentional murder (720 ILCS 5/9-1(a)(1) (West 2010)), and (3) reckless murder (720 ILCS 5/9-1(a)(2) (West 2010)). We begin our analysis with felony murder, as the court entered judgment on count I.

¶ 85 1. *Felony Murder*

¶ 86 Because the parties do not dispute Treshaun fired the shot that killed Desirae, the question for the jury was whether and, if so, to what extent defendant participated in the mob action that brought about Desirae's death.

¶ 87 To prove defendant committed mob action as charged, the State had to prove defendant engaged in "the knowing or reckless use of force or violence disturbing the public

peace by 2 or more persons acting together and without authority of law." 720 ILCS 5/25-1(a)(1) (West 2010).

¶ 88 Defendant first argues the State failed to prove that he was "acting together" with at least one other person. We disagree. During his interview, defendant indicated a gun battle erupted between members of the Gangster Disciples and Black P. Stones gangs. Defendant admitted to being "affiliated" with the Gangster Disciples, who were trying to "push" the Black P. Stones from the neighborhood. Defendant also indicated Treshaun was affiliated with the Gangster Disciples. Additionally, multiple witnesses testified there were numerous people in the street yelling at each other and a fight appeared to be imminent. Johnnie and Rajon testified they ran away from the direction of their aunt's house and doubled back through backyards to get to her house. Gwannecia and Tiffany both testified that while they were in the street with Desirae, defendant came up, pointed a shotgun in their direction, asked "Where those n***s at," and walked in the direction Johnnie and Rajon had run. Although this occurred after the shooting, it is still probative evidence of defendant acting together with Treshaun. We conclude this is sufficient evidence that defendant acted together with at least one other person.

¶ 89 Defendant next asserts the State failed to prove defendant engaged in the use of force or violence because the evidence shows only that he discharged a shotgun after the mob action ended. Defendant also argues the State should be estopped from arguing that defendant admitted to striking KG with a stick before the shooting occurred because it argued defendant's story was "outrageous." Defendant asserts, without citation to authority, that the mob action ended after Treshaun shot Desirae. We are not convinced this is the case, particularly in light of defendant's statements that the Gangster Disciples were pushing the Black P. Stones out of the neighborhood and his continued pursuit of Johnnie and Rajon. Nonetheless, the evidence is

sufficient to support a finding that defendant engaged in the use of force during the altercation. In his statement to police, defendant admitted to being present during the fight. Defendant claimed he merely observed and defended himself. Defendant claimed he armed himself with a stick that he used to disarm KG and he recounted "pushing" the rival gang members out of the area. This admission placed defendant at the scene and engaging in an act of violence that disturbed the public peace. Defendant argues the evidence shows he panicked and merely reacted to a rival gang member when he grabbed and swung the stick. However, the jury was entitled to accept or reject portions of defendant's statement as it saw fit.

¶ 90 Defendant also argues the State should be judicially estopped from arguing defendant's admission to swinging a stick at KG is sufficient to support a conviction because in closing argument the State asserted this story was outrageous. However, no matter the State's characterization of the evidence, we must determine whether the underlying evidence was sufficient to support a jury's finding of guilt. As noted above, the jury was free to accept and reject portions of defendant's statement as it saw fit. Perhaps, based on the evidence that defendant was clearly present both before and after the altercation and defendant's later wielding of the shotgun, the jury concluded he lied to officers about the stick. A jury could reasonably infer defendant actually wielded the shotgun during the mob action and told officers it was a stick to avoid a weapons possession charge. The State's characterization of the evidence during closing argument does not change the evidence actually heard by the jury, and we must examine the evidence actually heard to determine whether it was sufficient to support a finding of guilt. In this case, we conclude the evidence was sufficient to support a finding that defendant engaged in the use of force.

¶ 91 2. *Intentional and Reckless Murder*

¶ 92 Defendant asserts the evidence was insufficient to support the jury's guilty verdicts for intentional and reckless murder.

¶ 93 As noted above, the parties do not dispute that Treshaun fired the shot that killed Desirae. Accordingly, we must consider whether the evidence was sufficient to support a finding of guilt on an accountability theory.

¶ 94 "A person is legally accountable for the conduct of another if 'either before or during the commission of an offense, and with the intent to promote or facilitate [such] commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.' " *People v. Flynn*, 2012 IL App (1st) 103687, ¶ 23, 983 N.E.2d 8 (quoting 720 ILCS 5/5-2(c) (West 2010)).

> "Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct. [Citation.] Proof that defendant was present during the perpetration of the offense, that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the trier of fact may consider in determining the defendant's legal accountability. [Citation.] Defendant's flight from the scene may also be considered in determining whether defendant is accountable. [Citation.] Evidence that defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design also supports an inference that he shared the common

> purpose and will sustain his conviction for an offense committed by another." *People v. Taylor*, 164 Ill. 2d 131, 141, 646 N.E.2d 567, 571 (1995).

A defendant's mere presence at the scene is insufficient to prove accountability. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 79, 997 N.E.2d 947. However, presence at the scene does constitute circumstantial evidence which may tend to prove a defendant's guilt. *Id.*

¶ 95 After viewing the evidence in the light most favorable to the State, we conclude there was sufficient evidence to sustain defendant's conviction of intentional or reckless murder on an accountability theory. The evidence established defendant associated with Treshaun immediately before and immediately after the shooting. Additionally, defendant had the handgun Treshaun used in the shooting in his waistband at the time of his arrest. Defendant further failed to report the shooting. Defendant also told police he and Treshaun were affiliated with the Gangster Disciples and engaged in a gun battle with the Black P. Stones to "push" the rival gang out of the neighborhood. Although the State presented no evidence of an express agreement between Treshaun and defendant to engage in an altercation, the group arming themselves with firearms provides sufficient circumstantial evidence to support defendant's conviction for intentional and reckless murder.

¶ 96 C. Rule 431(b)

¶ 97 Defendant next contends the trial court committed reversible error by failing to ask whether the jurors understood and accepted the legal principles set forth in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Defendant failed to raise this issue before the trial court, thus rendering the issue forfeited. *People v. Kitch*, 239 Ill. 2d 452, 460, 942 N.E.2d 1235, 1240 (2011). However, we may consider a forfeited claim where the defendant demonstrates a plain

error occurred. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). To prevail under the plain-error doctrine, a defendant must first demonstrate a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007). If an error occurred, we will only reverse where (1) "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) the "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." *Id.* at 565.

¶ 98 Defendant contends the trial court violated Rule 431(b) by asking the jurors if they understood and would follow each legal principle, rather than asking if the jurors understood and accepted the legal principles. Defendant also asserts the court erred by commingling all four principles into one question. In considering whether the court committed a clear and obvious error with respect to its compliance with Rule 431(b), our review is *de novo*. *People v. Belknap*, 2014 IL 117094, ¶ 41, 23 N.E.3d 325.

¶ 99 Under Rule 431(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.
>
> 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).

¶ 100 We first consider whether the trial court erred by asking about the four principles in compound form. In this case, the trial court asked each panel of jurors the following question:

> "[T]he four of you understand that the defendant is presumed to be innocent of the charge against him, that before the defendant can be convicted, the State must prove him guilty beyond a reasonable doubt, that the defendant is not required to offer any evidence on his own behalf, and that if the defendant does not testify, that fact cannot be held against him in any way. The four of you understand those instructions; is that correct?"

The record indicates the jurors answered in the affirmative. The court then asked each panel, "And the four of you will follow those instructions; is that correct?" The jurors again responded in the affirmative.

¶ 101 In *People v. Willhite*, 399 Ill. App. 3d 1191, 927 N.E.2d 1265 (2010), this court considered whether the trial court violated Rule 431(b). We note this case involves the same trial court judge who presided over *Willhite,* and the language used to question the jurors in *Willhite* was identical to the language used in this case. This court held the trial court did not violate Rule 431(b) by asking the jurors if they understood the four principles in compound form

and if they would follow the four principles. *Id.* at 1196-97. This court concluded the plain language of Rule 431(b) does not require separate questions of the jurors about each individual principle. *Id.* "Nor does the rule require separate, individual answers from each juror." *Id.* at 1197.

¶ 102 Defendant relies on *People v. Thompson*, 238 Ill. 2d 598, 939 N.E.2d 403 (2010), in support of his argument. In *Thompson*, the supreme court found the trial court failed to comply with Rule 431(b), noting it entirely failed to address one of the four principles and did not ask the jurors if they both understood and accepted another principle. *Thompson*, 238 Ill. 2d at 607. The supreme court pointed out that Rule 431(b) requires the trial court to "address each of the enumerated principles" and to determine whether the jurors understood and accepted each of the principles. *Id.* In so holding, the supreme court noted the committee comments to the rule "emphasize that trial courts may not simply give 'a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law.' " *Id.* (quoting Ill. S. Ct. R. 431(b) (eff. July 1, 2012), Committee Comments). The court further held the rule required a specific question and response process, but the questioning may be performed individually or in groups so long as there was an opportunity for a response from each juror. *Id.*

¶ 103 Nothing in *Thompson* requires the circuit court to address each principle individually. Rather, *Thompson* was concerned with the court's failure to address one principle entirely and to determine the jurors' acceptance of another principle. Moreover, the plain language of Rule 431(b) contains no requirement that the court must recite each principle separately when determining the jurors' understanding and acceptance of the principles.

¶ 104 We are not persuaded by defendant's reliance on two First District cases—*People v. McCovins*, 2011 IL App (1st) 081805, 957 N.E.2d 1194, and *People v. Othman*, 2019 IL App

(1st) 150823. First, to the extent these cases interpret *Thompson* as requiring a trial court to question jurors about each principle individually, we disagree for the reasons discussed above. Second, these cases are clearly distinguishable from this case. See *McCovins*, 2011 IL App (1st) 081805, ¶ 36 ("[T]he trial court failed to abide by the mandatory question and response process required by Rule 431(b). In contravention of Rule 431(b), the trial court merely provided the prospective jurors with a broad statement of legal principles interspersed with commentary on courtroom procedure and the trial schedule, and then concluded with a general question about the potential jurors' willingness to follow the law."); *Othman*, 2019 IL App (1st) 150823, ¶ 65 ("The court failed to ask if the jury understood principles one and four or if it accepted principle two.").

¶ 105 For the foregoing reasons, we conclude the court did not err by asking about the four principles in compound form. Accordingly, we now consider whether the court erred by asking the jurors if they would "follow" the principles, rather than asking the jurors if they "accepted" the principles.

¶ 106 In its brief, the State asserts, "The question whether the jury would 'follow' the instructions is admittedly not sufficient to establish that they 'accepted' the principles." We disagree. In *People v. Wilmington*, 2013 IL 112938, ¶ 30, 983 N.E.2d 1015, the trial court did not ask the jurors if they understood and accepted the principle that they could not hold it against defendant if he did not testify. The trial court asked the jurors if anyone disagreed with the remaining three principles. *Id.* ¶ 28. The trial court also failed to ask the jurors if they understood the remaining three principles. *Id.* The supreme court concluded error clearly occurred, noting 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. Moreover, the

trial court did not even inquire regarding the jury's understanding and acceptance of the principle that defendant's failure to testify could not be held against him." (Emphases in original.) *Id.* ¶ 32.

¶ 107 In *Belknap*, 2014 IL 117094, ¶ 44, the trial court asked only whether the jurors disagreed with, had any quarrel with, or accepted the four principles. The court failed to ask if the jurors understood the principles. The supreme court again found error, stating as follows:

> "Here, the trial court did not explicitly ask the potential jurors whether they accepted the principles; rather the court asked if they had any disagreement or quarrel with the principles. As we noted in *Wilmington*, it may be arguable that asking jurors whether they disagreed with the Rule 431(b) principles is tantamount to asking them whether they accepted those principles. However, the trial court's failure to ask whether the jurors understood the principles constitutes error alone." *Id.* ¶ 46.

¶ 108 Defendant also relies on *People v. Stevens*, 2018 IL App (4th) 160138, 115 N.E.2d 1207. In *Stevens*, "the court never asked whether the jurors understood the State's burden to prove defendant guilty beyond a reasonable doubt or the fact that defendant was not required to present evidence on his own behalf, and thus the court committed error." *Id.* ¶ 26.

¶ 109 Unlike *Wilmington*, *Belknap*, and *Stevens*, the trial court here asked the jurors if they understood all four principles and if they would follow all four principles. The supreme court acknowledged that a court asking for disagreement would arguably be equivalent to juror acceptance of the principles, but ultimately concluded the failure to ask if jurors understood the principles was clear error. Here, the court did ask about jurors' understanding of the principles.

The court went on to ask whether the jurors would follow the principles, which is far closer to asking if the jurors accepted the principles than asking if they disagreed with the principles. Black's Law Dictionary defines the verb "follow" as "To conform to or comply with; to *accept* as authority." (Emphasis added.) Black's Law Dictionary 672 (8th ed. 2004). Here, the trial court asked the jurors if they would follow the principles, which, by definition, asked the jurors if they would accept the principles as authority. Indeed, this court has previously assumed the language was sufficient to comply with the requirement that jurors be asked if they accepted the principles. See *Willhite*, 399 Ill. App. 3d at 1197 (concluding the trial court complied with Rule 431(b) when it asked jurors if they understood and would follow the four principles). Accordingly, we conclude no error occurred here. *Piatkowski*, 225 Ill. 2d at 565 (the first step in plain-error analysis is to determine whether error occurred). Even so, before leaving this issue, we wish to encourage the use of best practices when conducting *voir dire*.

¶ 110 Although this court finds the trial court's admonishments and coverage of the *Zehr* principles are not violative of Rule 431(b) or the applicable case law, we believe it better practice for the court to actually inquire of the jurors rather than instruct them. By asking whether they understand and accept the principles, as opposed to stating so in an affirmative manner and then eliciting a response with a leading question, the court's question would seem less suggestive and more properly inquisitive. Such an inquiry adheres to Rule 431 and *Zehr* in ensuring each juror receives an opportunity to respond to specific questions concerning the *Zehr* principles.

¶ 111 D. *Krankel* Inquiry

¶ 112 "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*." *People v. Jolly*, 2014 IL 117142, ¶ 28,

25 N.E.2d 1127. Under *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, new counsel is not automatically appointed. *Id.* ¶ 29. Rather, the trial court should first examine the factual basis of the defendant's claims. *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). "If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.* at 78. Newly appointed counsel would represent the defendant at the hearing on the *pro se* claim of ineffective assistance of trial counsel. *Id.* "The [newly] appointed counsel can independently evaluate the defendant's claim and would avoid the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position." *Id.*

¶ 113 The supreme court has repeatedly recognized "the goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claims of ineffective assistance of trial counsel and thereby potentially limit issues on appeal." *Jolly*, 2014 IL 117142, ¶ 29. The concern for reviewing courts is whether the trial court's inquiry into the defendant's *pro se* allegations of ineffective assistance of trial counsel was adequate. *Moore*, 207 Ill. 2d at 78. During the preliminary inquiry, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary ***." *Id.* A trial court's brief discussion with the defendant may be sufficient. *Id.* A trial court may base its *Krankel* decision on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 22, 960 N.E.2d 27.

¶ 114 Defendant argues the trial court conducted an inadequate preliminary inquiry into his claims of ineffective assistance of counsel by failing to specifically inquire into every single allegation. Defendant also argues the trial court erred by ruling on the merits of his ineffective assistance of counsel claims rather than determining whether it was possible defense counsel neglected his case. In support of his argument, defendant relies on *People v. Roddis*, 2018 IL App (4th) 170605, 119 N.E.2d 52. In *Roddis*, this court noted, "the function of the *Krankel* hearing remains simply to decide whether to appoint counsel—its 'narrow purpose' [citation]—and not to reach the merits of the ineffective assistance claims." *Id.* ¶ 52. However, this court determined there were four primary ways in which a court may conclude that an ineffective assistance of counsel claim lacks merit so that the court need not appoint new counsel to pursue the claim. *Id.* ¶ 65. "Those four primary ways are when the court determines that the defendant's ineffective assistance claim is (1) conclusory, (2) misleading, (3) legally immaterial, or (4) pertaining solely to an issue of trial strategy." *Id.* A misleading claim lacks merit where the record clearly contradicts or rebuts the substance of the allegations, showing the claim of ineffective assistance is unsupported. *Id.* ¶ 70. *Roddis* acknowledged that claims related solely to matters of trial strategy generally do not fall within the definition of ineffective assistance of counsel. *Id.* ¶ 75. However, *Roddis* noted some claims related to trial strategy could amount to ineffective assistance if counsel's actions were objectively unreasonable. *Id.* ¶ 76.

¶ 115 We conclude the trial court conducted an adequate inquiry into defendant's claims and did not improperly rule on the merits of his claims. The court began by addressing defendant's allegations related to his right to a speedy trial and found the allegations meritless because the court had previously ruled on the claim at the hearing on the motion to dismiss the charges. As discussed above, we agree with this conclusion. We further find this claim fits

within *Roddis*'s four primary ways a trial court may conclude an ineffective assistance of counsel claim lacks merit so that the court need not appoint new counsel. The record contradicts defendant's claim that counsel was ineffective for failing to raise the alleged speedy trial violation. The record shows counsel filed a motion to dismiss the charges based on the alleged speedy trial violation.

¶ 116 The trial court also addressed defendant's allegation that counsel was deficient for failing to file a motion to suppress. The court appropriately asked defense counsel about this allegation and counsel informed the court the officers sought a search warrant based on defendant's statements. The court also found defendant's allegations regarding jury selection and counsel's failure to object to the State's alleged mischaracterization of evidence were tactical decisions that did not form the basis for a claim of ineffective assistance of counsel. Defendant's complaints about juror Nos. 140 and 149 are also misleading where the record shows there were no juror Nos. 140 or 149. Moreover, defendant's claims about juror Nos. 127, 140, and 149 pertain to counsel's conduct during *voir dire* that is generally not subject to *Strickland* review. *People v. Banks*, 237 Ill. 2d 154, 215-16, 934 N.E.2d 435, 469 (2010).

¶ 117 Finally, the trial court addressed defendant's allegation that counsel failed to introduce the Vermilion County interrogation video. The court asked what that video was, and the State informed the court it was an interrogation video following defendant's arrest "in Vermilion County in a vehicle with Treshaun Jake with another gun." The court began to ask another question when defendant interrupted to again raise his speedy-trial claim. While the State may not take an adversarial role against a *pro se* defendant during the preliminary *Krankel* inquiry, we conclude the State's participation here was *de minimis*. See *Jolly*, 2014 IL 117142, ¶ 38. The State took no position on defendant's claims of ineffective assistance of counsel. The

State merely informed the court what the referenced video was and did not even speak to the contents of the video itself. Moreover, the defendant interrupted to again raise his speedy-trial claim, effectively abandoning his allegation regarding the Vermilion County interrogation video.

¶ 118 We conclude the trial court adequately addressed defendant's claims of ineffective assistance of counsel and found them either meritless because the court previously ruled on the claim or to be matters pertaining to trial strategy. The court gave defendant the opportunity to raise his allegations of ineffective assistance of counsel, and defendant repeatedly returned to his speedy-trial claim. It was not unreasonable for the court to conclude defendant abandoned his other allegations. Accordingly, we conclude the trial court conducted an adequate preliminary inquiry into defendant's claims of ineffective assistance of counsel. Accordingly, we affirm the judgment of the circuit court.

¶ 119 III. CONCLUSION

¶ 120 For the reasons stated, we affirm the trial court's judgment.

¶ 121 Affirmed.