

**NOTICE**

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

**FILED**

December 5, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 141097-U

NO. 4-14-1097

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Cumberland County
NORMAN J. STANTON,	)	No. 13CF54
Defendant-Appellant.	)	
	)	Honorable
	)	Millard S. Everhart,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Harris and Appleton concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed defendant’s convictions and sentences but vacated those fines improperly imposed by the circuit clerk and remanded for the circuit clerk to correct the fines, fees, and cost order to reflect a full credit against the properly imposed \$200 domestic violence fine.
- ¶ 2 In February 2014, a jury convicted defendant, Norman J. Stanton, of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)) and disorderly conduct (720 ILCS 5/26-1(a)(4) (West 2012)). In April 2014, the trial court sentenced defendant, respectively, to concurrent terms of six years’ and five years’ imprisonment. Defendant appealed, arguing the (1) trial court failed to properly admonish the jury of the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (2) trial court failed to obtain a waiver of counsel prior to considering his *pro se* motion to reduce his sentence, and (3) circuit clerk failed to apply pretrial sentencing

credit and improperly imposed fines against him.

¶ 3 On September 7, 2017, this court filed a Rule 23 order, affirming defendant's convictions but vacating the trial court's denial of his *pro se* motion to reduce his sentence and remanding for a new hearing on that motion. Because we concluded it was necessary to remand for a new hearing on defendant's motion to reduce his sentence, we found it unnecessary to address defendant's arguments relating to his pretrial sentencing credit and the fines imposed against him.

¶ 4 After issuing our decision, defendant filed a petition for rehearing. In his petition, defendant asserts he was paroled in February 2017, now lives in Kentucky, and no longer wishes to travel to Cumberland County to pursue his motion to reduce his sentence. Defendant requests we grant rehearing to allow him to withdraw his request for a new hearing on his *pro se* motion to reduce his sentence and to address the merits of his arguments relating to his pretrial sentencing credit and the fines imposed against him. The State responded it does not oppose defendant's request. See Ill. S. Ct. R. 367(d) (eff. Nov. 1, 2017). We grant defendant's petition for rehearing. We now affirm in part, vacate in part, and remand with directions.

¶ 5 I. BACKGROUND

¶ 6 A. Information

¶ 7 In August 2013, the State charged defendant by information with aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)), domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)), and disorderly conduct (720 ILCS 5/26-1(a)(4) (West 2012)). Defendant was appointed counsel to represent him.

¶ 8 B. Motion *in Limine* To Admit Evidence of Prior

## Incidents of Domestic Violence

¶ 9 In November 2013, the State filed a motion *in limine* seeking to admit evidence of prior incidents of domestic violence under section 115-7.4 of the Code of Criminal Procedure of 2012 (Criminal Code) (725 ILCS 115-7.4 (West 2012)). Specifically, the State sought to introduce evidence of two prior incidents between defendant and Cassandra Beccue, which resulted in defendant pleading guilty to aggravated domestic battery and unlawful restraint. The trial court initially denied the State's motion but, after the State filed a motion to reconsider, the court vacated its prior decision and granted the State's motion.

¶ 10 C. Jury Trial

¶ 11 In February 2014, the trial court conducted a jury trial.

¶ 12 1. Voir Dire

¶ 13 During *voir dire*, the trial court initially admonished the jury pool as to the principles enumerated in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012):

“There are certain fundamental principles of law which govern this trial. Under the law, a defendant is presumed innocent of the charges against him. This presumption remains throughout every stage of the trial.

The [d]efendant is not required to prove his innocence or present any evidence in his own behalf. If the [d]efendant does not testify, this cannot be held against him. He is not required to present any evidence at all.

The State is required to prove the [d]efendant guilty beyond

a reasonable doubt. That burden is on the State of Illinois, People of the State of Illinois.

The [j]ury and [j]udge are required to be fair and impartial toward both the [d]efendant and the People of the State of Illinois. Neither sympathy nor prejudice can play any part in these proceedings.”

¶ 14 The trial court then questioned potential jurors in panels of four. During its questioning, the court did not address all of the principles outlined in Rule 431(b) with each juror. It briefly covered the burden of proof and presumption of innocence with certain jurors and concluded by asking those jurors if they were “comfortable with,” “appreciate[d],” “quarrel[ed] with,” had “[a]ny complaint” with, or had “[a]ny concerns” with those concepts. The court did not ask the jurors whether they understood and accepted the principles outlined in Rule 431(b).

¶ 15 *2. Evidence at Trial*

¶ 16 a. Ashley McElroy

¶ 17 Ashlee McElroy testified, on the evening of August 16, 2013, she attended a party at Mike and Scott Lemons’ residence, where she met Cassandra Beccue and defendant. Around 3 a.m., McElroy went with Cassandra and defendant to their trailer to get cigarettes. Upon arriving at the trailer, McElroy and Cassandra smoked marijuana provided by defendant. Defendant asked McElroy whether she had ever had a threesome and placed his hand on the back of her pants, which caused McElroy to feel uncomfortable and want to leave. McElroy asked Cassandra if she wanted to leave with her, but Cassandra did not respond. McElroy left and called her sister, who was at the Lemons’ party.

¶ 18 McElroy's sister, Alexis Kemper, Tyler Moreno, and Tyler Dowd picked McElroy up and took her back to the party. McElroy explained to the group the questions defendant was asking her and expressed concern for Cassandra. After returning to the party, McElroy spoke with Mike Lemons about defendant and again expressed concern for Cassandra. While speaking with Mike, McElroy realized Kemper had left. McElroy left to find Kemper and, while walking in the direction of defendant and Cassandra's trailer, she heard Kemper screaming.

¶ 19 McElroy followed the screams to defendant and Cassandra's trailer, where she saw Cassandra, unconscious and bloody, lying on the ground outside wearing only a bra and underwear. Kemper, Moreno, and Dowd were also present outside. Defendant, who appeared injured, was hunched over Cassandra. McElroy became angry at defendant for what he had done and struck him once on the side of his body. McElroy's sister called the police, and McElroy left to go to a friend's house.

¶ 20 The next day, McElroy gave a statement to Police Chief Bill Cline. McElroy acknowledged she did not indicate in her statement (1) defendant made advances toward her, or (2) she struck defendant. McElroy testified these omissions occurred because she wanted to go home and felt uncomfortable about the situation.

¶ 21 McElroy acknowledged she did not see how Cassandra and defendant sustained their injuries. She also testified no one named Jason was present that evening. McElroy, who was 18 years old, admitted she consumed alcohol and became intoxicated at the party.

¶ 22 b. Alexis Kemper

¶ 23 Kemper testified she attended the party at the Lemons' residence, where both

defendant and Cassandra were present. Kemper observed defendant drinking and being “very loud, stumbly, [and] couldn’t really keep his balance.”

¶ 24 At some point, Kemper realized McElroy was no longer present at the party. Kemper went with McElroy’s sister, Dowd, and Moreno to pick up McElroy. Kemper noticed McElroy was acting strangely, laughing and then crying. Kemper and the others became concerned for Cassandra.

¶ 25 Kemper and Dowd decided to walk to defendant and Cassandra’s trailer to check on Cassandra. Upon reaching the trailer, Kemper and Dowd walked past a bedroom window, where Kemper observed Cassandra lying “on the bed on the floor” and looking “very out of it.” The only light coming from the trailer was from a television in the bedroom area. Dowd knocked on the front door and requested to speak with Cassandra, which defendant refused to allow. Kemper and Dowd then walked back to the window and noticed Cassandra’s eye was swollen and had a bandage on it. They then returned to the front door, and Dowd demanded he be allowed to speak with Cassandra. Defendant was angered and told Kemper and Dowd to leave. Kemper and Dowd walked to the window a third time and observed defendant straddling Cassandra and trying to pick her up. Dowd grabbed the screen off the window. Defendant then broke the window with a flashlight and exited the trailer through the window. A physical altercation transpired between Dowd and defendant.

¶ 26 During the altercation, Cassandra, who had blood on her face and was wearing only a bra and underwear, exited the trailer through the front door. Cassandra walked two or three steps outside and then collapsed. Kemper went to Cassandra’s aid. Cassandra was going in and out of consciousness and shaking. At one point, Cassandra’s eyes were rolling to the back of

her head. Kemper thought Cassandra was having a seizure.

¶ 27 Defendant eventually retreated from the altercation with Dowd and approached Cassandra and Kemper. Defendant told Kemper to get away from Cassandra. He then started to pick Cassandra up, which caused her to hit a tree root on the ground. Kemper demonstrated for the jury defendant's movements, raising her arms up about six to eight inches and lowering them repeatedly. At this point, Kemper started to scream, "He's hitting her!"

¶ 28 After Kemper started to scream, Moreno arrived and tried to get defendant off Cassandra. This caused a physical altercation to occur between Moreno, Dowd, and defendant. Soon thereafter, McElroy, McElroy's sister, and another friend arrived. At some point, someone struck a nearby trailer, which made a loud noise and caused an older gentleman to come outside. Defendant and the gentleman carried Cassandra into the trailer, and McElroy's sister called the police. Kemper, who was 16 years old, did not stay after the police were called because she drank approximately two beers that evening and did not want to get in trouble.

¶ 29 The next day, Kemper gave a statement to Chief Cline. Kemper acknowledged she did not indicate in her statement defendant broke out the window with the flashlight.

¶ 30 Kemper did not see how Cassandra sustained her injuries. She also did not see or meet anyone named Jason that evening.

¶ 31 c. Sheriff's Deputy Larry Wicke

¶ 32 Sheriff's Deputy Larry Wicke testified defendant indicated somebody had broken into his trailer and caused the injuries sustained by him and Cassandra. Defendant provided the names of possible suspects. Deputy Wicke observed two empty vodka bottles inside defendant's trailer.

¶ 33

d. Police Chief Bill Cline

¶ 34 Chief Cline testified, in the early morning hours of August 17, 2013, he reported to the trailer of defendant's mother and stepfather, Georgia and Kelly Shoulders. Chief Cline observed Cassandra lying in the Shoulders' bathtub, bleeding profusely from her head and going in and out of consciousness. Chief Cline spoke with defendant, who indicated two or three men broke into his trailer through the bedroom window and caused the injuries sustained by him and Cassandra. After Cassandra was transported to a hospital, Chief Cline surveyed the area and later spoke with Kemper and others who were present during the incident.

¶ 35 Chief Cline obtained an oral statement from Cassandra after she was transported to the hospital. The statement was witnessed by an emergency room technician, Nikki McMullen. The statement was later transcribed by Chief Cline and signed by Cassandra and McMullen. Chief Cline also photographed Cassandra's injuries. Those photographs were admitted into evidence and published to the jury.

¶ 36 Chief Cline examined defendant and Cassandra's trailer. He determined a fight occurred in the bedroom, based on the amount of blood found therein. He discovered both the glass from the bedroom window and the curtains were outside the trailer, which he noted was inconsistent with the defendant's initial statement indicating the men broke into the trailer through the window. Photographs of the bedroom and bedroom window were admitted into evidence and published to the jury. The photographs showed blood spattered throughout the bedroom and the curtains hanging outside the window. Chief Cline acknowledged he discovered an empty rum bottle in the bedroom but did not include that finding in his police report. Chief Cline did not come across a person named Jason during his investigation.



¶ 37 On August 20, 2013, defendant was arrested. Chief Cline testified defendant provided a written statement while in custody, which was admitted into evidence and published to the jury. In his written statement, defendant indicated, around 3:30 a.m., he heard a noise in his living room. He entered the living room to discover two men yelling for a person named Melissa. Defendant told the men to get out of his house. The men then repeatedly hit defendant in the head. Defendant fought the men out the door. Approximately 30 minutes later, the men returned. At this point, defendant was in the bedroom and Cassandra was standing behind him. One of the men pushed Cassandra into him, knocking him out the bedroom window. Cassandra then fell out the window and landed on top of him. Three individuals then repeatedly hit defendant while he was trying to protect Cassandra. Defendant picked up Cassandra and carried her into the Shoulders' trailer. The individuals ran off after Kelly Shoulders ran outside.

¶ 38 Chief Cline described his involvement in the investigation of a November 11, 2012, report of domestic violence between defendant and Cassandra. Chief Cline responded to a convenience store, where he observed Cassandra lying on the pavement unconscious with red marks around her throat. While waiting for the emergency services to arrive, Cassandra stopped breathing and had to be administered cardiopulmonary resuscitation.

¶ 39 Chief Cline acknowledged he was in the process of investigating a September 2012 forgery reportedly committed by Cassandra. The allegation was raised by defendant after he was arrested on the charges in this case. Chief Cline also acknowledged being involved in a previous sexual relationship with Cassandra.

¶ 40 e. Cassandra Beccue

¶ 41 Cassandra testified she and defendant had been in an on-and-off relationship for

over 10 years, during which time she lived with defendant in a trailer she referred to as her own. They had children together who no longer resided with them due to issues in their relationship.

¶ 42 In May 2012, an incident of domestic violence occurred between defendant and Cassandra. Cassandra left their trailer and went outside to a vehicle. Defendant, who had been using drugs, followed Cassandra outside and dragged her out of the vehicle and back into the trailer. Cassandra escaped defendant's control and ran to a friend's home. Defendant followed Cassandra to her friend's home, let himself into that home, and proceeded to the bedroom where Cassandra and her friend were located. Defendant shut the bedroom door and prevented anyone from leaving. Defendant was convicted of unlawful restraint.

¶ 43 In November 2012, another incident of domestic violence occurred between defendant and Cassandra. Following an argument, Cassandra left and went to stay at a friend's house. After Cassandra's friend went to sleep, defendant let himself inside, choked Cassandra, and then ran off. Cassandra left and began walking to a convenience store. She started having problems with swallowing and breathing, and then she did not recall what happened after she arrived at the convenience store. Cassandra was hospitalized for four days. Defendant was convicted of aggravated domestic battery.

¶ 44 On August 16, 2013, Cassandra went to a party with defendant. At some point, she left with defendant and a girl she met at the party to go back to their trailer. Upon arriving at the trailer, Cassandra began rolling cigarettes in her bedroom, with both defendant and the girl present. Defendant asked Cassandra and the girl to have a threesome. Cassandra went to the bathroom and the girl left.

¶ 45 Defendant became "very angry" when the girl left. He struck Cassandra in the

face approximately five or six times with his fists while she was seated on the bed. Following this attack, Cassandra remembered lying in the yard and hearing people screaming and fighting. Cassandra's injuries required five or six stitches and continued to cause her severe migraines. Cassandra admitted she was intoxicated that evening but maintained she had not consumed "a large quantity" of rum or used illegal drugs.

¶ 46 While at the hospital, Cassandra gave a statement to Chief Cline. Cassandra admitted she was still under the influence when she gave the statement. In the statement, Cassandra indicated defendant punched her in the head five times, punched through the window, dragged her outside, and threw her on the ground. She also indicated the incident occurred because defendant wanted to have a threesome with a person named Jason. Cassandra acknowledged she did not know who Jason was.

¶ 47 After being discharged from the hospital, Cassandra stayed with defendant, Kelly, and Georgia at the Shoulders' home. At that time, Cassandra did not have family in the area, a car, a job, money, friends, or another place to stay. Cassandra indicated she felt comfortable staying at the Shoulders' residence. She slept on a couch, and defendant slept in a recliner.

¶ 48 On September 8, 2013, Cassandra prepared a written statement while at the Shoulders' home. In the statement, Cassandra indicated she did not know what happened, she was not afraid, and defendant did not hurt her. Prior to writing the statement, Georgia told Cassandra what the statement should include. At the time the statement was written, both Georgia and Kelly were present. Georgia maintained custody of the written statement.

¶ 49 Defendant contacted Cassandra multiple times by phone after he was incarcerated. On occasion, Cassandra would speak with defendant. Defendant indicated he

wanted her to lie about what happened and state people broke into their trailer, threw him out the bedroom window, threw her out the bedroom window, and then tried dragging her off.

Defendant promised things would get better if the charges were dropped. Defendant also asked Cassandra to make sexual harassment allegations against Chief Cline. Cassandra testified Chief Cline never sexually harassed her. Cassandra eventually spoke with the State's Attorney's office to block defendant's phone calls.

¶ 50 Cassandra later obtained employment and new housing. She acknowledged she was on probation for possession of a controlled substance.

¶ 51 f. Officer Ed Applegate

¶ 52 Officer Ed Applegate testified defendant indicated he and Cassandra were attacked in their trailer and identified possible suspects involved in the attack. Officer Applegate spoke with the suspects, all of whom denied involvement, were uninjured, did not have blood on them, and provided alibis.

¶ 53 g. Patricia Corder

¶ 54 Patricia Corder, a paramedic, testified she cared for Cassandra while she was being transferred by ambulance to the hospital. Defendant rode in the ambulance with Cassandra and kept trying to touch Cassandra and explain how much he loved her. Corder thought his behavior was "overkill." Corder did not observe any glass on Cassandra or in the ambulance.

¶ 55 h. Nikki McMullen

¶ 56 McMullen testified she assisted in the treatment of Cassandra at the hospital. She did not observe any glass on Cassandra. While at the hospital, Cassandra requested defendant not be allowed in her room. Cassandra appeared upset, but not confused, when she provided a

statement to the police.

¶ 57 i. Kelly Shoulders

¶ 58 Kelly testified, on August 17, 2013, at approximately 2 a.m., he was awakened by the noise of individuals speaking inside his trailer. Kelly saw two men walking toward his bedroom, asking for defendant. Kelly walked the two men out of his trailer with his hands placed on the back of their necks and then went back to bed. Kelly neither locked the door after he escorted the men out of his trailer nor called the police.

¶ 59 Around 4 a.m., Kelly was awakened by defendant entering his trailer and yelling for help. Defendant was trying to protect Cassandra and prevent others from entering. Kelly recognized one of the men trying to enter as the same one he saw inside his trailer earlier that morning. Kelly went outside and told everyone to leave, and defendant took Cassandra into the bathroom. Kelly initially indicated defendant then “came outside to let [him] know what went on” but “was constantly keep [sic] going back and forth.” Kelly later testified defendant stayed in the bathroom. Kelly testified a final time, stating defendant came back outside only once. At that time, Kelly indicated the men pushed defendant into the side of his trailer, and he then chased the men away. Kelly did not give the police a detailed description of the men he observed.

¶ 60 Kelly testified Cassandra never appeared fearful of defendant. Kelly noted the height of the bedroom window on defendant’s trailer did not prevent him from seeing the floor inside, but rather, a box usually placed in front of the window would block such a view. Kelly acknowledged a photograph of the window taken after the incident showed the box was not in front of the window. Kelly acknowledged he had a 2009 theft conviction.

¶ 61 j. Defendant

¶ 62 Defendant testified he previously pleaded guilty to both aggravated domestic battery and unlawful restraint. Defendant maintained he did not plead guilty in the present case because he did not commit the charged offenses.

¶ 63 In August 2013, defendant and Cassandra were “working on things” in their relationship. At that time, Cassandra would occasionally stay the night at other places. Defendant referred to the trailer as “our home.”

¶ 64 On August 16, 2013, defendant and Cassandra began the evening by going to the “Legion,” where they consumed alcohol. Defendant acknowledged he was also taking prescribed medication that evening but maintained he had not taken any illegal drugs. Defendant and Cassandra stayed at the “Legion” until it closed. They then went to the Lemons’ party, where defendant drank socially. At the party, defendant observed marijuana, underage drinking, and individuals smoking something off of foil and snorting crushed-up pills. Defendant was uncomfortable with the fact he, Cassandra, and the Lemons brothers were the only adults present.

¶ 65 While at the party, defendant observed Cassandra and McElroy go into the bathroom together for about 10 to 15 minutes and then exit holding hands and embracing each other. Defendant was not threatened by Cassandra showing interest in another person. Defendant, Cassandra, and McElroy eventually left the party together.

¶ 66 While walking back to their trailer, Moreno ran up and grabbed McElroy by the shoulder and asked why she was going with defendant and Cassandra. A “shoving match” then occurred between Moreno and McElroy. Defendant stepped in and put his hand on Moreno’s shoulder to let him know McElroy was in good hands and he needed to back off. Moreno left but

called McElroy by phone at least six times in the half-block walk to defendant and Cassandra's trailer.

¶ 67 After arriving at the trailer, defendant went next door to the Shoulders' residence to charge his phone. At some point, McElroy left. When defendant returned, he observed Cassandra dressed in only her underwear and suffering from what he believed was an alcoholic seizure. Cassandra's toes were curled under and her eyes were rolled back in her head. Defendant obtained a wet rag to put on her forehead, and he then noticed she already had blood there. The seizure lasted about five minutes. After she came out of it, Cassandra began fighting defendant and flailing her hands. Once she realized it was defendant helping her, Cassandra stopped.

¶ 68 After Cassandra came out of the seizure, defendant heard a floorboard creak in the living room, and he went to see what caused it. When he entered the living room, defendant observed the silhouettes of two men leaving the trailer. He acknowledged, however, this testimony was contrary to the account he provided in his written statement indicating the men were screaming and yelling for a person named Melissa. Defendant testified when he wrote "Melissa," he in fact meant McElroy. Defendant testified his memory was better at trial because he had time to recuperate, and his written statement was not an attempt to list every detail of what occurred.

¶ 69 After observing the two men, one of them, who defendant later discovered was Dowd, attacked him with an object, breaking his nose. Defendant then punched Dowd, knocking the lens out of his glasses. Defendant initially testified he also pushed the second man, who he later discovered was Moreno, out of his trailer and locked the door. Defendant later testified,

however, he only had to fight Dowd out of the trailer. Defendant acknowledged this testimony was contrary to the account he provided in his written statement indicating he fought both men out the door.

¶ 70 After clearing the trailer, defendant went back to check on Cassandra in the bedroom. At that point, contrary to what he previously testified, defendant indicated Cassandra was coming out of her seizure and began to flail and fight him. Approximately 30 seconds later, Dowd came up outside the bedroom window and tore the screen off and then took a swing at the window, causing it to splinter. Defendant acknowledged, however, this testimony was contrary to the account he provided in his written statement indicating the men returned to his home 30 minutes after the first encounter.

¶ 71 After the screen was removed, someone came up behind defendant and shoved him, which knocked some things over and caused him to fall through the window. After falling through the window, defendant felt like he was hit by a bag of sand and then saw Cassandra outside and calling his name.

¶ 72 After defendant began to get off the ground, Moreno came from behind and struck him twice in the head with a paving brick. The strikes caused defendant to lose his glasses, preventing him from being able to see clearly. Girls from the party were outside and came up to defendant and asked if he needed help. The girls, however, left, and then Moreno and Dowd turned their attention to beating defendant. Defendant indicated he was struck between 7 and 10 times. Defendant eventually broke free, grabbed Cassandra, and then went to the Shoulders' trailer. When he was within six feet of the Shoulders' trailer, Moreno came running full speed and tackled defendant, and he continued to strike him in the face. Defendant eventually broke



free, grabbed Cassandra, and made it inside the Shoulders' trailer.

¶ 73 After entering the trailer, defendant yelled for Kelly. Dowd followed defendant a few steps inside but left after Kelly came charging at him. Defendant went back outside, told the men to leave, and then returned to care for Cassandra until the police and emergency services arrived.

¶ 74 Defendant and Cassandra were taken to a hospital in an ambulance together. Defendant indicated his injuries consisted of a concussion, a broken nose, a broken eye orbit, and a bruised groin. Photographs of defendant's injuries were admitted into evidence and published to the jury.

¶ 75 Defendant did not see who struck Cassandra. He did not recall being struck by McElroy. No one named Jason was present. Throughout the evening, defendant observed Cassandra smoke marijuana, consume a liter of rum, consume a liter of vodka, snort Xanax, and snort hydrocodone.

¶ 76 After the incident, defendant and Cassandra continued a dating relationship. At Cassandra's request, they maintained contact while he was incarcerated. During phone conversations, defendant never asked Cassandra to lie. Defendant noted, two to three days prior to the incident, Cassandra was at the trailer by herself and, when he returned, he observed dents in the door as if someone was trying to get in.

¶ 77 *3. Jury's Verdict*

¶ 78 The jury found defendant not guilty of aggravated domestic battery, guilty of domestic battery, and guilty of disorderly conduct.

¶ 79 *D. Sentencing*

¶ 80 Following an April 4, 2014, hearing, the trial court sentenced defendant to concurrent terms of six years' imprisonment for domestic battery and five years' imprisonment for disorderly conduct. It further awarded defendant credit for 228 days served in presentence custody and ordered "[t]he domestic violence fine of \$210 shall apply." (We note the \$210 amount consisted of the \$200 domestic violence fine and the \$10 domestic battery fine.) Following the entry of the sentence, defendant, through counsel, filed a notice of appeal and a motion for the appointment of appellate counsel. The court appointed appellate counsel, and, later that month, appellate counsel filed an amended notice of appeal.

¶ 81 E. *Pro Se* Motion for Reduction of Sentence

¶ 82 On May 2, 2014, defendant placed in the prison mail system a *pro se* motion to reduce his sentence. His motion was file-stamped on May 12, 2014.

¶ 83 F. Motion To Dismiss Appeal

¶ 84 In August 2014, defendant, through appellate counsel, filed a motion to dismiss his appeal to allow the trial court to rule on his motion to reduce his sentence, which this court granted.

¶ 85 G. Hearing on Defendant's *Pro Se* Motion for Reduction of Sentence

¶ 86 Following a November 2014 hearing, the trial court denied defendant's *pro se* motion to reduce his sentence.

¶ 87 This appeal followed.

¶ 88 II. ANALYSIS

¶ 89 On appeal, defendant argues the (1) trial court failed to properly admonish the jury of the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) and (2)

circuit clerk failed to apply pretrial sentencing credit and improperly imposed fines against him.

¶ 90

#### A. Rule 431(b) Principles

¶ 91

Defendant asserts he is entitled to a new trial because the trial court failed to properly admonish the jury of the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Defendant acknowledges he did not preserve this issue for review but asserts the evidence was close, making the court's error first-prong plain error. The State concedes the court failed to comply with Rule 431(b) but asserts the error does not amount to plain error as the evidence was not close.

¶ 92

We are guided by our supreme court's recent decision in *People v. Sebbly*, 2017 IL 119445. Under the first prong of the plain-error doctrine, a reviewing court may exercise its discretion and excuse a defendant's forfeiture where it is shown (1) " 'a clear or obvious error occurred' "; and (2) " '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.' " *Id.* ¶ 48 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410 (2007)).

¶ 93

We begin with whether the trial court committed a clear or obvious error. *Id.* ¶ 49. Rule 431(b) "was designed to ensure that the defendant has a fair and impartial jury." *Id.* ¶ 67; see also *People v. Zehr*, 103 Ill. 2d 472, 469 N.E.2d 1062 (1984). Rule 431(b) requires the court to ask potential jurors whether they understand and accept those principles outlined in the rule. See *Sebbly*, 2017 IL 119445, ¶ 49; *People v. Wilmington*, 2013 IL 112938, ¶ 32, 983 N.E.2d 1015; *People v. Thompson*, 238 Ill. 2d 598, 607, 939 N.E.2d 403, 409-10 (2010). Here, the trial court's failure to ask the jurors whether they understood and accepted those principles was, by itself, clear error.

¶ 94 We next address whether “the defendant has shown that the evidence was so closely balanced the error alone severely threatened to tip the scales of justice.” *Sebby*, 2017 IL 119445, ¶ 51. In making this determination, we “must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Id.* ¶ 53. This inquiry “involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses’ credibility.” *Id.*

¶ 95 Defendant was charged, in part, with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)) and disorderly conduct (720 ILCS 5/26-1(a)(4) (West 2012)). Under section 12-3.2(a)(1) of the Criminal Code (720 ILCS 5/12-3.2(a)(1) (West 2012)), “[a] person commits domestic battery if he or she knowingly without legal justification by any means \*\*\* [c]auses bodily harm to any family or household member.” Under section 26-1(a)(4) of the Criminal Code (720 ILCS 5/26-1(a)(4) (West 2012)), “[a] person commits disorderly conduct when he or she knowingly \*\*\* [t]ransmits or causes to be transmitted in any manner to any peace officer, public officer or public employee a report to the effect that an offense will be committed, is being committed, or has been committed, knowing at the time of the transmission that there is no reasonable ground for believing that the offense will be committed, is being committed, or has been committed.”

¶ 96 Defendant asserts the evidence is close on whether he in fact caused Cassandra’s injuries and provided a false report to the police. Defendant contends this case turned on the jury’s assessment of the credibility of the witnesses because he denied the allegations against him and his testimony was neither inherently incredible nor severely self-contradictory. Defendant highlights none of the witnesses besides Cassandra attributed Cassandra’s injuries to

him.

¶ 97 Cassandra testified defendant inflicted her injuries. She testified defendant became “very angry” after his proposed threesome did not come to fruition and struck her in the face approximately five or six times while she was in the bedroom. Cassandra further testified defendant later asked her to lie about what actually happened. McElroy testified she left the trailer after defendant proposed a threesome, and she became concerned for Cassandra after doing so. Kemper testified defendant was enraged to the degree he broke his bedroom window, and Cassandra was already injured when she exited the trailer through the front door. Chief Cline testified he determined a fight occurred in the bedroom based on the amount of blood found therein. Photographs of the bedroom showed blood spattered throughout. Cassandra’s transcribed statement indicated defendant struck her in the head five times after his proposed threesome did not come to fruition. Finally, the jury heard testimony regarding two previous incidents of domestic violence defendant committed against Cassandra.

¶ 98 Defendant testified he did not inflict Cassandra’s injuries and suggested a third party must have done so. He provided a detailed account of how he was violently attacked while both inside and outside of the trailer. Kelly testified two men were in his trailer earlier that morning asking for defendant.

¶ 99 The testimony of the State’s witnesses was largely consistent. Cassandra identified defendant, and defendant alone, as the one who inflicted her injuries. Her account was supported by the testimony from the State’s other witnesses, the photographic evidence, and her transcribed statement taken immediately after the incident. The prior incidents of domestic violence defendant committed against Cassandra further showed his propensity for committing

the instant domestic battery and supported the conclusion he lied in telling the police others did so. See 725 ILCS 5/115-7.4 (West 2012); *People v. Dabbs*, 239 Ill. 2d 277, 295, 940 N.E.2d 1088, 1099 (2010).

¶ 100 Conversely, defendant's testimony and prior statements were severely self-contradictory, inherently incredible, and unsupported by any corroborating evidence.

Defendant's testimony and statements to the police conflicted as to (1) when Cassandra came out of her seizure, (2) how the men entered the trailer, (3) how he discovered the men in the trailer, (4) how he made the men leave the trailer, (5) when the men returned to the trailer, and (6) how the bedroom window was broken. Defendant suggests his testimony was corroborated by the fact (1) photographs showed he had two black eyes, (2) he went to the hospital to receive treatment, and (3) the State's witnesses indicated a fight occurred outside the trailer. This evidence, however, only corroborates the undisputed fact a fight occurred outside the trailer between defendant and the other men. Defendant also suggests his testimony was corroborated by Kelly's testimony indicating he recognized one of the men as being at his trailer earlier that morning. Kelly's testimony, however, was also replete with inconsistencies, garnishing little, if any, support for defendant's suggestion Cassandra was injured by a third party.

¶ 101 After reviewing the totality of the evidence and conducting a qualitative, commonsense assessment of the evidence within the context of the case, we find the evidence was not closely balanced. Because the evidence was not closely balanced, defendant is not entitled to relief under the first prong of the plain-error doctrine.

¶ 102 B. Pretrial Sentencing Credit and Fines

¶ 103 Defendant complains—and the State concedes—the circuit clerk failed to apply

pretrial sentencing credit against the properly imposed \$200 domestic violence fine. See 725 ILCS 5/110-14(a) (West 2012) (“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant.”); *People v. Irvine*, 379 Ill. App. 3d 116, 132-33, 882 N.E.2d 1124, 1139-40 (2008) (finding the \$200 domestic violence fine is subject to the \$5-per-day credit). Because the \$200 domestic violence fine may be satisfied by pretrial sentencing credit, we accept the State’s concession and order the circuit clerk to correct the fines, fees, and costs order to reflect a full credit against this fine.

¶ 104 Defendant also complains—and the State concedes—the circuit clerk improperly imposed the following fines against him: (1) a \$50 court finance fine; (2) a \$10 State Police operations fine; (3) a \$10 arrestee’s medical fine; and (4) a \$10 lump sum surcharge fine. See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912 (“Although circuit clerks can have statutory authority to impose a fee, they lack authority to impose a fine, because the imposition of a fine is exclusively a judicial act.” (Emphasis omitted.)). Because these fines were improperly imposed by the circuit clerk, we accept the State’s concession and vacate them. We also note defendant—in his initial brief—complained of the circuit clerk’s imposition of a \$10 traffic/criminal surcharge. The State did not address this argument, and defendant did not address the State’s oversight in its reply brief. Because the surcharge is a fine improperly imposed by the circuit clerk, we vacate it. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 129, 55 N.E.3d 117.

¶ 105 As a final matter, defendant requests we depart from our decision in *Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117, which found the State’s Attorney

automation assessment is a fee, and follow *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, 64 N.E.3d 647, which found this assessment to be a fine. We decline defendant's invitation. The State's Attorney automation assessment was a fee properly assessed by the circuit clerk.

¶ 106

### III. CONCLUSION

¶ 107 We affirm defendant's convictions and sentences but vacate those fines improperly imposed by the circuit clerk and remand for the circuit clerk to correct the fines, fees, and costs in order to reflect a full credit against the properly imposed \$200 domestic violence fine. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 108 Affirmed in part and vacated in part; cause remanded with directions.