2021 IL App (2d) 190256-U
No. 2-19-0256
Order filed August 31, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 13CF-2014
MYRON D. ESTER,	)	Honorable Brian F. Telander,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices McLAREN and HUTCHINSON concurred in the judgment.

ORDER

¶ 1 *Held*: The plain-error rule did not excuse forfeiture of defendant's claim that the trial court erred in failing to question two jurors per Supreme Court Rule 431(b). The evidence at defendant's first-degree-murder trial was not closely balanced. Defendant's claim that he killed the female victim in self-defense was refuted by (1) his testimony that he stabbed her with her knife after disarming her, *i.e.*, after she was no longer a threat, and (2) evidence that he planned the killing in retaliation for the victim's infidelity and that the victim was stabbed or slashed 39 times, including through the eye.

¶ 2 After a jury trial, defendant, Myron D. Ester was convicted of one count of first-degree murder on alternative theories (720 ILCS 5/9-1(a)(1), (a)(2) (West 2012)) and one count of concealment of a homicidal death (*id.* § 9-3.4(a))) and sentenced to consecutive prison terms of

life and five years, respectively. The life sentence was based on the jury's independently sufficient findings that the murder was committed in a cold, calculated, and premeditated manner according to a preconceived plan to take a human life by unlawful means (*id.* § 9-1(b)(11)) and that it was accompanied by exceptionally brutal or heinous conduct indicative of wanton cruelty (730 ILCS 5/5-8-1(a)(1)(b) (West 2012)), either finding being sufficient to support a life sentence. On appeal, defendant contends that the trial court committed plain error by failing to question, per Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), two people who later sat on the jury. The State contends that the error was not reversible, because the evidence was not closely balanced. We agree with the State. Accordingly, we affirm.

¶ 3 I. BACKGROUND

¶ 4 As pertinent here, Rule 431(b) states:

> "The court [during *voir dire* examination] 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." *Id.*

¶ 5 The trial court followed Rule 431(b) in questioning prospective jurors individually, except that two eventual jurors were not questioned at all.

¶ 6 Five counts of the indictment against defendant charged him with murdering Linda Valez by stabbing her. They alleged respectively that (1) he intended to kill Valez; (2) he intended to do great bodily harm to her; (3) he knew his acts would cause her death; (4) he knew that his acts

created a strong probability of her death; and (5) he knew that his acts created a strong probability of great bodily harm to her. We turn to the evidence at trial.

¶ 7 Emanuel Berger testified as follows. In September 2013, he was a Glen Ellyn police officer and participated in investigating the disappearance of Valez, who was homeless. On September 28, 2013, he conducted a foot patrol in Panfish Park. Homeless people often slept in the woods in the southeast portion of the park. Entering the woods from the south, Berger walked along the footpath and saw another path that he had not seen before, apparently created by someone dragging something. This path started out going south and eventually turned southwest. Berger followed it to the end, about 75 yards or more. There, a large amount of dirt had been overturned. More officers were called to the scene. Berger identified numerous photographs depicting the entrance to the park, the drag path, and its terminus.

¶ 8 Troy Agema testified as follows. In September 2013, he was assigned to the forensics investigations unit of the Du Page County Sheriff's Office. On September 28, 2013, he assisted in collecting evidence in Panfish Park. In the grassy area just north of the woods were two sections of damaged turf, one west of the north entrance to the woods and the other just north of the entrance. Both sections had red stains. More red stains trailed from the north entrance south along a small dirt path with drag marks. The path, with more drag marks and red stains, continued south and turned southwest to a clearing. In the clearing was recently stirred soil with a minor leaf covering. Agema and some officers photographed the clearing and excavated it. In all, the hole was about 1½ feet deep. In it was the body of Valez, lying face-down, and clothing. The officers removed the body, turned it over, and discovered injuries to the chest and face. The court admitted photographs of Valez's body and a diagram of where it was found.

¶ 9 Gloria Araujo testified that Valez was her daughter. In September 2013, Valez had long been homeless. On September 25, 2013, Araujo could not locate her. She called defendant, whom he knew to be Valez's boyfriend, and asked him whether Valez was with him. He said no and added that Valez had left with "Darius." The next day, Araujo tried unsuccessfully to contact defendant. Later, he texted her, telling her to stop asking about Valez. Araujo reported to the police that Valez was missing. On September 27, 2013, Araujo called defendant again and asked about Valez. He was agitated and said that "he wanted to forget about her like she had forgotten about him."

¶ 10 The court admitted, per stipulation, surveillance videos from an Ace Hardware store at 465 Roosevelt Road in Glen Ellyn, a McDonald's restaurant at 445 Roosevelt Road, and a Jewel/Osco at 599 Roosevelt Road. Roosevelt Road was a block north of Panfish Park. All of the videos were from September 24, 2013.

¶ 11 Dr. Mitra Kalelkar, a forensic pathologist, testified on direct examination as follows. On September 29, 2013, she performed the autopsy on Valez. Kalelkar began the autopsy with an external examination. The body was clothed in blue pajama pants, red underwear, and a bra that had been pulled above the left breast. Valez was 5 feet 7 inches tall and weighed 230 pounds.

¶ 12 Kalelkar testified that an "incised wound" is relatively shallow compared to its length on the surface of the skin. A "stab wound" is deeper. There were numerous wounds on the body. One was an incised wound, but the remainder were stab wounds. Kalelkar identified and described 20 photographs of these wounds and documented them on four body charts.

¶ 13 Kalelkar testified that the injuries to Valez's face included the incised wound, on the right temple, where the skin had avulsed ("flopped over"), and four stab wounds near or in the right eye. The incised wound was 1½ inches long. The largest stab wound was 1½ inches long and totally

collapsed the eye globe; the instrument that caused it had gone through the eye into the skull and brain.

¶ 14 Kalelkar testified that she found two stab wounds to the right breast, both penetrating the breast tissue about two inches deep. There were five stab wounds to the left breast. One went "all the way through the body into the lung." There were six more stab wounds to the chest and abdomen. One to the side penetrated the skin and muscles, fractured a rib, and penetrated the left lung. Another wound entered the chest cavity and perforated the superior vena cava, causing hemorrhaging in the pericardial cavity.

¶ 15 Kalelkar testified that she found four stab wounds to the left shoulder area. Two were "through and through," *i.e.*, the instrument that caused them "went through [the] wound and came out." There were nine more wounds to the left shoulder, upper arm, elbow armpit, and forearm. With several, the instrument went through the flesh and came out the other side. The arm wounds were defensive: Valez incurred them while trying to ward off an attacker or protect her body.

¶ 16 Kalelkar testified next about the internal examination. There was blood in the left chest cavity because the lungs had been perforated by two stab wounds. There was blood in the pericardial cavity, as noted. In the cranial cavity, there was a stab wound to the right temporal lobe of the brain, caused by the same knife thrust that had gone through the eye. The brain was swollen. This meant that Valez "had some breaths left in her. *** [T]he brain had enough time to become hypoxic." Thus, "[Valez] did not die immediately after sustaining all these injuries. It took her a little while to die."

¶ 17 Kalelkar testified that she observed a total of 39 wounds on Valez's body. In her opinion, Valez died as a result of "multiple stab wounds." Kalelkar also testified that no alcohol or controlled substances were detected in Valez's system.

¶ 18 Kalelkar testified on cross-examination as follows. She did not know in which order Valez had sustained the wounds. The cause of death was a combination of wounds, not one by itself. Kalelkar could not be positive that any of the wounds on Valez's left arm were defensive, as she did not know the position of Valez's body when the wounds were inflicted.

¶ 19 Kalelkar described defendant's exhibit No. 4 as a photograph of someone's right-hand ring finger with two lacerations; one wound had three stitches and the other had four or five. (This was defendant's finger, though Kalelkar was not asked to identify it.) Kalelkar opined that these were consistent with defensive wounds but also with "offensive" wounds.

¶ 20 Violeta Toral testified that in September 2013, she was a department manager at McDonald's on Roosevelt Road, where Valez worked. On September 24, Valez punched in at 12:05 p.m., took a break from 2:28 p.m. to 3:10 p.m., and left at 8 p.m.

¶ 21 Kienta Johnson testified that, in September 2013, she was a cashier at McDonald's. Before September 24, 2013, Valez had been working there for a short time. Three or four times in the preceding week, Johnson saw defendant sitting in the restaurant for long periods. On September 24, 2013, at about 2:30 p.m., Johnson went there to pick up her paycheck. Valez was standing just outside, by herself. Johnson entered, got her paycheck, and exited. Valez was now sitting outside with defendant, holding flowers, and conversing with him.

¶ 22 Nayeli Carrazco-Salazar testified that, in September 2013, she was a department manager at McDonald's. Valez was one of her employees. On September 24, 2013, Valez worked from about noon to 8 p.m. During most of that shift, defendant was there and sometimes spoke with Valez. During her half-hour break, Valez went to the patio, where she spoke with defendant and he gave her flowers. Later, Valez returned to her shift and defendant was at the restaurant "at times."

¶ 23 A cashier and an office manager who worked at the Ace Hardware on Roosevelt Road on September 24, 2013, reviewed surveillance videos from that day. They testified that the videos showed defendant purchasing a shovel at about 12:25 p.m. The office manager identified a sales receipt for the shovel.

¶ 24 Lawrence Cox and Jerry Hemphill testified that, at about 2 or 2:15 a.m. on September 25, 2013, they were on duty at the Glen Ellyn fire station at Main and Pennsylvania Streets. Defendant showed up and said that he had cut his hand and needed help. The tip of defendant's right ring finger had a laceration and the bottom third had an avulsion. The wounds were depicted in defendant's exhibit No. 4. Defendant said that he had had a nightmare, woke up, and grabbed something sharp. Cox and Hemphill bandaged the wounds and drove defendant to the hospital.

¶ 25 Donald Comstock testified that he was a detective with the Du Page County Sheriff's Office. On September 29, 2013, he helped to process items that the Glen Ellyn police had recovered from defendant that day. These included a black backpack that contained a cellphone, a blue knit cap, and a black bag. Another item was a larger black backpack with a red stripe down each side; inside this bag was another cellphone and various personal items. From defendant's person, Comstock retrieved a black cap and black tennis shoes.

¶ 26 Lynette Hooper testified on direct examination as follows. In spring 2013, she was living in a PADS shelter in Wheaton, where she met Valez. They became best friends and searched together for housing. Late in September 2013, they visited an apartment and spoke with the landlord about moving in along with Lester Nevels. Valez was excited. At the time, Hooper knew that Valez was in a relationship with defendant and worked at McDonald's.

¶ 27 Hooper testified that, on September 24, 2013, she drove Valez to work. She saw defendant there. Hooper and Valez planned to meet up the next day to meet with the landlord and finalize

the rental agreement. Hooper and Nevels spent the night in her car. Hooper received a call from Valez's cellphone number but did not answer it. Later, Nevels received a call from Valez's phone, but he was asleep and did not answer. On September 25, Valez failed to show for the meeting. Hooper searched for her, then accompanied some of Valez's family members to the Wheaton police station to report Valez missing. Hooper canceled the meeting with the landlord.

¶ 28 Hooper testified that, at about 4 p.m. on September 9, 2013, she drove Valez and two other people in her truck to a church that was a PADS shelter for the night. Hooper parked nearby and the four people waited for the church to open. Defendant approached and motioned Valez to come over and talk with him. Valez and defendant went a few feet away and started arguing loudly. Valez turned and headed back to the truck, but defendant grabbed her ponytail and pulled her back toward him. Valez turned, got away, and ran past the truck, yelling at Hooper to call 911. Defendant ran toward Valez but did not reach the truck. Hooper dialed 911 and started the truck.

¶ 29 Hooper testified on cross-examination that, in the six months that they knew each other, Valez did not have a "violent temper." Valez's temper was "moderate. Mostly on the defense ***. She was a fighter." Valez did drink, sometimes to excess. On redirect, when asked whether she had known Valez to fight with people, she responded, "Only with [defendant]."

¶ 30 Suzan Kurubas testified as follows. On May 19, 2013, she lived in a motel room in Glen Ellyn. Valez and defendant came over that night. Both were intoxicated. The three sat around a table. At some point, defendant called someone on his phone and asked the person to "come and pick [him] up" or he would "kill somebody tonight." Defendant was extremely angry. He got up from the table, bent down, and punched Valez twice hard. Kurubas grabbed him and got him to stop. Valez looked shocked and very frightened. When defendant and Valez went outside, Kurubas called the police. The police arrived, and Kurubas left the room. When the police left, Kurubas

reentered the room. Defendant and Valez were having sex. They stayed over and fought no more. Three or four days later, Valez showed up again. Valez's face was "black and blue all over with the marks" in the same places where defendant struck her on May 19.

¶ 31 The parties stipulated to the phone numbers as of September 2013 for defendant, Valez, Hooper, and defendant's friend Arlinda Shaw. They also stipulated to the admission of records of calls, texts, and messages to and from defendant's number and Valez's number for September 21-28, 2013.

¶ 32 Jim Monson, a Glen Ellyn police detective, testified as follows. In 2013, he belonged to a task force investigating the death of Valez. After the body was found in Panfish Park, Monson went there with other task force members to search the park and surrounding areas. They also obtained surveillance videos from Jewel/Osco, McDonald's, and Ace Hardware. Panfish Park was about half a mile from the Jewel/Osco and about a mile from McDonald's.

¶ 33 Monson testified that the task force never found the shovel that defendant had bought at Ace Hardware. On September 29, 2013, the police located defendant at the home of Shaw in Naperville and drove him to the Glen Ellyn police station. He took along some personal items, including the blue hat, the black cap, the black and red backpack, and two cellphones.

¶ 34 Monson testified about a series of still photos taken from the surveillance tapes. The first series showed defendant inside McDonald's. The next series showed him riding his bicycle into the Ace Hardware parking lot and then entering the store, buying the shovel, and riding his bike, with the shovel on it, out of the lot. This series ended at about 12:44 p.m. The third series started at 2:32 p.m. and showed defendant inside the Jewel carrying the flowers, then heading to the exit door. The fourth series started at 2:46 p.m. and showed defendant entering McDonald's, getting a drink at a vending machine, and going back out the door, with Valez standing behind the counter.

Between then and 8 p.m., defendant approached the counter several times. At 8:41 p.m., defendant and Valez were walking through the Jewel parking lot, with Valez carrying the flowers and pushing the handlebars of defendant's bicycle.

¶ 35 Monson testified about activity on Valez's cellphone on September 24-25, 2013. At 8:31 a.m. on September 24, there was a call to defendant's number. At 8:24 p.m., there was another call to defendant's number. At 8:37 and 8:38 p.m., voicemails were checked. Between 9:15 p.m. and 9:20 p.m., there were calls to a number with the 717-area code and one with the 331-area code (the code for Araujo's phone), and a call from an unspecified area code. At 9:22 p.m. there was an outgoing call, and 35 seconds later there was an incoming call from the 331-area code. At 9:30 p.m., there was another outgoing call. The next outgoing call from Valez's phone was made at 1:21 a.m. on September 25. There was an incoming call nine seconds later. The calls made before 10 p.m. hit off a cell tower in the area that included the park and the stores. The call made at 1:21 a.m. hit off the tower in the area that included the fire station.

¶ 36 Monson testified that, on September 24, 2013, at 7:54 p.m. defendant's phone sent was a text message to Valez's phone. It hit off the tower encompassing the park and the stores. At 3:11 a.m. a text was sent to defendant's phone. The phone was not used between these times.

¶ 37 Monson testified that Valez's cellphone was never recovered. Neither were her backpack, her purse, or the shirt she wore when she was last seen at McDonald's. No object that might have been used to effect Valez's death was ever found.

¶ 38 Thomas Brown, a Du Page County sheriff's detective, testified as follows. He extracted information from defendant's cellphone. Valez's and Shaw's numbers were contacts but had been deleted. A text message from defendant's phone to Valez's had been deleted: it was dated September 23, 2013. As quoted by Brown, it read, " 'Already got her dummy. Stop t-x-n ** and

waitin' [*sic*] yo time. *** I'm done with you, and you deserved everything I did to you.' " Underneath this message was a message to Araujo, reading, "Please stop asking me about her cuz I just wanna forget, with a four, about her, and move da same as she did." The message had been deleted. On September 26, 2013, another message was sent to Araujo; it had been deleted.

¶ 39 Giesele Mershon testified on direct examination as follows. She met Valez at PADS in spring 2013. Early in September 2013, she and Valez were sitting on a bench at the Glen Ellyn train station. Defendant approached, grabbed Valez by the throat, and pulled her off the bench. Valez tried to push him away and told him, " '[G]et the F away from me, I don't want to talk to you, I'm with somebody else.' " Defendant slapped Valez in the face. Finally, he let her go.

¶ 40 Mershon testified that, early in the morning of September 22, 2013, she, Valez, and other PADS people took a bus ride to a church in Glen Ellyn. As they exited into the parking lot, defendant approached and told Valez to go to the driveway to talk. Valez complied. From about 20 feet away, Mershon heard them arguing. Defendant told Valez loudly and clearly that "if he couldn't have her, he'd kill her." She repeatedly told him that she was "with somebody else" and wanted to "get her life together." Valez walked away and entered the church with Mershon.

¶ 41 Mershon testified on cross-examination that, on September 29 and October 1, 2013, she told detective Andrew Uhlir about the incidents. She did not recall whether she said that Valez told defendant that she was with somebody else. On October 1, 2019, Mershon testified before a grand jury. She did not recall whether she testified that Valez told defendant that she was with somebody else.

¶ 42 Shaw testified on direct examination as follows. She had been subpoenaed to testify and was doing so reluctantly. She and defendant had been friends for more than 30 years. Shaw allowed him to stay at her home whenever he needed. On September 25, 2013, at about 8 a.m., while she

was at work, she received a phone call from a number that she did not recognize. She did not answer. After getting several more calls from the same number, she answered. Defendant was on the line. He said that they needed to talk. She agreed to meet him at her home after work.

¶ 43 Shaw testified that, when she arrived home, defendant was waiting for her. He said in her ear, " 'I killed the bitch.' " Shaw thought that he was joking and told him to stop playing. Defendant said that he was serious and wanted to talk inside the house. They went inside. Defendant told Shaw, " 'I killed the bitch.' " Shaw knew he meant Valez, as he always referred to her that way. Shaw asked him why he did it. He told her that Valez "was fucking with some nigger he called him. She had been fucking with some nigger on him all that time, and he caught her." Defendant gave the man's name but Shaw did not immediately recall it. Shaw told him that, if he was serious, they could call Crime Stoppers and split the reward money. Defendant asked whether she was serious; she said yes. He said that he "didn't do that" and was "just joking."

¶ 44 Shaw testified that she then went to pick her son up from school. When she returned with her son, she and defendant did not talk anymore about Valez. She let him stay overnight. The next morning, he told her that Araujo had called and asked where Valez was and he had told Araujo that he and Valez had gotten into a fight and he had not seen her. Defendant stayed with Shaw for a few days until the police came for him. During his stay, he asked her: If he took the battery out of his phone, could someone still find him?

¶ 45 Shaw testified on cross-examination that, when she first saw defendant at her house, his right ring finger was bandaged. He started to unwrap the bandage; she saw stitches but paid little attention. Shaw knew that defendant's relationship with Valez was volatile. Once, she asked him why he did not just leave Valez, and he said he couldn't; she replied jokingly that Valez "must have put some voodoo" on him. Defendant responded that he tried to leave but could not.

¶ 46 Shaw testified that on the day that defendant came to her home, he told her that Valez was having an affair with someone named Darius. Shaw never asked him about it again. Defendant did not remove the battery from his phone until the day that the police arrived to arrest him.

¶ 47 The State rested.

¶ 48 Defendant testified on direct examination as follows. On the evening of September 23, 2013, he argued with Valez but did not spend the night with her. On the morning of September 24, Valez called him. He went to McDonald's to wait for her, and he spent most of the day there. He left several times to drink, buy a shovel "to make a fire pit for the night" for Valez and him, and to buy flowers.

¶ 49 Defendant testified that, after Valez got off work and changed into her pajamas, they left for the park, where they had often slept before. They planned to go to the wooded area to sleep and "make up for the bad times [they] had been having the days before." He had already dug the fire pit right after buying the shovel. As they walked to the park, they drank some vodka.

¶ 50 Defendant testified that, when he and Valez got to the park, they started arguing. He could not remember the "exact nature of the argument," but "for some strange reason," Valez started screaming at him. At some point, she pulled a knife out of her purse and started swinging it at defendant. As he tried to take the knife away from her, he sustained injuries to his right ring finger. Defendant's testimony continued:

> "A. I snatched the knife from her hand. My hand was bleeding, so I grabbed her left hand, the exact—I think it was—I think it was—no, her right hand with my left hand. I stabbed her like maybe, I say, four, five times on the left-hand side of her body.
>
> * * *

A. I tripped her because she was pulling me. As I tripped her, she pulled me down. I fell on top of her with the knife directly in her face.

You want to know more?

Q. Yes.

A. She made like a gurgling sound; and as I looked at her, just—I knew it was over from there. I just—I knew I made a mistake. It was an accident falling on her in the face and all that, and I tried to cover it up."

¶ 51 Defendant testified that he dragged Valez's body to where they had intended to sleep and put the body into the fire pit, then covered it up. The fire pit was far from the scene of the fight, although defendant could not say how many yards. Defendant threw away the blankets, the shovel, and the knife into a dumpster "across from the Jewels [*sic*]." He returned to the park and spent some time thinking about what had happened. He left the park and went to the fire station, then to the hospital. Next, defendant returned to the fire department, retrieved his bike and other personal items, and rode around for a couple of hours. He then started calling Shaw. Sometime in the afternoon, he got through to her, and she let him stay at her house.

¶ 52 Defendant testified that, after Shaw met him outside her house, he unwrapped the bandage on his hand, showed her his injuries, and said that he needed to talk to her. Defendant's attorney asked him, "[D]id you tell [Shaw] that you killed [Valez] because she brought another man into the house?" Defendant testified that he did not. After staying at Shaw's house for four days, he was taken to the police station and then to jail.

¶ 53 Defendant testified on cross-examination as follows. When he met Shaw at her home and they went inside, he told her that Valez had pulled a knife on him. He tried to show her his injuries, but she said that she did not want to see them. Defendant then tried to tell Shaw what had happened.

He testified, "I think I said 'I think I killed her.' " Shaw thought that he was joking and told him to get out. He said nothing more.

¶ 54 The prosecutor asked defendant to specify the part of the conversation when he told Shaw that Valez had pulled a knife on him. Defendant responded, "I told you that before. That started before I said that." He agreed with the prosecutor that "that started before when [defendant] first got into the kitchen." However, he then testified that he made the remark at the beginning of his one conversation with Shaw, in the kitchen. Asked what his "exact words" were, defendant testified, "My exact words I never got words out about it. I was trying to unravel my hand and show her the cut and tell her what happened, but she didn't want to hear about it." Asked again what words he used when he told Shaw that Valez had stabbed him, defendant testified, "I tried to tell her about this, but as I was unraveling my hand, she would not let me get it out." Defendant denied that he used the word "bitch" when he told Shaw that he thought he had killed Valez.

¶ 55 Defendant denied that he and Valez had had a "nasty fight" late on September 23, 2013; it was "more of an argument," the type they had had many times before. Asked what the argument was about, he testified, "I don't remember." When Valez called him on September 24, 2013, she asked him whether he would like to come to her workplace and wait for her. He asked whether she meant the whole day, and she said yes. They did not discuss the previous night's argument. Defendant rode his bicycle to McDonald's.

¶ 56 Defendant testified that, at McDonald's, he had two conversations with Valez, when she was on her breaks. The first time, they spoke about finding a place to sleep and getting some blankets; defendant said that he had found a place in Panfish Park. The second conversation was in the evening after defendant had bought the shovel and dug the fire pit at the park. He dug the

fire pit because it was cold. The prosecutor asked whether he recalled that it was in the 70s that day; defendant could not recall how cold it was that night.

¶ 57 The prosecutor asked defendant how long he took to dig the fire pit. Defendant could not remember, but he said that the pit was only a foot deep. Reminded that Agema had said that the pit was 18 inches deep, defendant responded, "If that's a foot, then yes." He could not remember the length or width of the pit.

¶ 58 Defendant testified that he did not remember what time Valez got off work. They walked to the park, drinking from a bottle of vodka. Valez drank about half the bottle. Asked what time they arrived at the park, defendant testified that he did not remember. They went to a bench close to the street and finished drinking. They did not talk much, because "there was nothing really to talk about." He did not remember how long they sat on the bench. They arose to go to sleep in the area of the fire pit. Valez had her backpack, her purse, and the flowers. They never made it to the fire pit. Defendant explained that Valez "had a way of getting agitated quick when she drank." Asked what she was agitated about, defendant testified, "I have no idea." Valez started raising her voice and cursing at him. Defendant responded, but he could not recall what he said. Asked whether Valez was agitated about a past argument, he testified that he did not remember.

¶ 59 Defendant testified that he tried to calm Valez down by grabbing her arms with his arms. Valez pulled away but did not calm down. She reached into her purse, grabbed a knife, and started swinging it at defendant as she hollered at him. Both of them dropped what they had been carrying. Asked what the knife looked like, defendant testified, "I don't know." He then testified, "I guess it was a silver shiny object being swung at me." Asked whether Valez said anything when she swung the knife at him, defendant testified, "Don't remember." Asked how many times Valez swung the knife at him, defendant testified, "A multiple of times." Asked to be more specific, he

testified, "I can't give you a number." He could not recall whether it was more than 10 times. Defendant testified that Valez was directly in front of him. Asked to estimate the distance between them, he testified that he could not. He stated that he tried to block the knife with his hand and eventually grabbed the knife from Valez. The first time that Valez swung the knife, it did not make contact with him. He could not remember when he got cut.

¶ 60 Defendant testified that he grabbed the blade of the knife and took it from Valez. She had no other weapons. Defendant held her right hand with his left hand and stabbed her four or five times with his right hand. He then purposely tripped her, which resulted in her pulling him down on top of her. As he fell, the knife, which was still in his right hand, went directly into her face and became stuck there. Valez made a gurgling sound and defendant realized what had happened.

¶ 61 The prosecutor asked defendant how Valez received "the other 33, 34 stab wounds on her." Defendant initially referred to "that forensic lady, in those pictures." Asked the question again, he said that he did not stab Valez 33 times, but only 4 or 5 before he fell on her.

¶ 62 Defendant conceded that he did not try to give Valez CPR, look or call for help, or call the police. He dragged the body into the fire pit and went to dumpsters outside the park, where he threw away the knife, the shovel, the flowers, Valez's backpack, and their bloody shirts. He kept Valez's cellphone but later threw it away.

¶ 63 Defendant testified that the incident at the train station never happened. Mershon fabricated it. The incident at the church was "somewhat close to the truth."

¶ 64 Defendant denied that, in the week before her death, Valez was getting an apartment with Hooper and Lester. They had been talking about the possibility, but they never pursued it.

¶ 65 On redirect, defendant stated that, when Valez was swinging the knife at him, he feared for his life. On cross-examination, when asked whether he still feared for his life after he took the knife from Valez, defendant testified, "All of that was instinct and it happened extremely fast."

¶ 66 Cecelia O'Neill testified as follows. In September 2013, she was a case manager at the PADS shelter where Valez regularly slept. Valez's reputation was that she could be boisterous and sometimes intoxicated. Once, somewhere in Glen Ellyn, Valez and defendant got into a confrontation. O'Neill called the police on Valez. Asked what the problem with Valez had been, O'Neill could not remember. Asked whether she had told a defense investigator that she remembered Valez to have been a violent person, O'Neill testified, "I may have. That was quite a while ago." On cross-examination, however, she claimed that she would never have told the investigator that Valez was "violent." Valez was "a really, really nice person."

¶ 67 Cox testified that he had known Valez and had seen her several times. Among his professional associates, Valez's reputation was that "[s]he could be verbally abusive, uncooperative, resistant, forthcoming. Nothing physical though." On September 25, 2013, he told some task force officers that Valez was cooperative with paramedics but combative with others.

¶ 68 David Rivkin testified that, in September 2013, he was on the task force that investigated Valez's death. At an initial briefing, he was told that she had a reputation for being "explosive." Later on, he learned that she had a reputation for being aggressive, combative, and violent.

¶ 69 Uhlir testified that Mershon told him about the church incident and the train station incident. Mershon did not say that Valez ever told defendant that she was with another man. During his investigation, Uhlir learned that Valez had a reputation for drinking often, sometimes to excess. There were reports that she had engaged in aggressive or violent behavior.

¶ 70 Brian Clark testified that Valez was his son's mother. Asked whether he filed a domestic violence report against her in 2006, Clark said that he did not recall having done so or telling an officer that Valez had struck him. Wheaton police officer Brad Caliendo testified that, in April 2006, Clark came to the police station and told him that, on that evening, Valez came home, started yelling at him, and repeatedly struck him with her purse, then slapped him in the face and neck.

¶ 71 Kyle Ressinger testified that he was a criminal investigator for defendant's attorneys. On September 12, 2018, he spoke with O'Neill. She told him that, among Du Page PADS staff, Valez was known to be a violent person. O'Neill said that Valez "could be an aggressor as well as an abused individual."

¶ 72 Samuel Colon testified that, in 2002, he and Valez lived in Carol Stream with their two children. One evening in September, they got into an argument outside because she did not want him to drive downtown to buy drugs. Inside their apartment, she had the children call the police. The officers saw injuries to Colon and arrested Valez. Colon did not ask them to arrest Valez. He never knew Valez to have weapons, and she was never violent toward him. Clark Beckley testified that he was one of the officers who responded to a third person's call about the disturbance. Colon's arm had minor injuries. Because of the injuries, department policy required an arrest.

¶ 73 The parties stipulated that a court reporter would testify that Mershon never testified to the grand jury that she heard Valez tell defendant that she was with someone else.

¶ 74 The parties stipulated that, on September 14, 2012, a police officer was dispatched to a disturbance involving Valez and Ron Menard; that Menard signed a statement that recited that he lived at PADS and that Valez told his wife, Jessica Walker, that she would take his child; and that, after Menard said, "bitch, please," Valez slapped and punched him at least 15 times and ran. The

parties also stipulated that, on September 14, 2012, Walker signed a statement essentially corroborating Menard's statement and adding that the police were called.

¶ 75 James Craig testified as follows. On August 12, 2013, while on patrol as a police officer, he responded to a report that a person at the Wheaton public library refused to leave the property. Arriving there, he saw that Valez was sitting on a bench. She looked intoxicated. He told her twice that she had to leave, but she refused and started "shooting snot" at his feet. When a backup officer arrived, defendant stood up, put her finger and fist in Craig's face, and started cursing. He arrested Valez on several charges. Valez never touched Craig and was unarmed.

¶ 76 In arguing that defendant was guilty of first-degree murder, the State also contended that it had proven both statutory aggravating factors that would support a life sentence. In his closing argument and through the trial court's instructions, defendant raised the affirmative defense of self-defense (720 ILCS 5/7-1 (West 2012)) and second-degree murder, which requires the State to prove the elements of first-degree murder and then requires the defendant to prove by a preponderance of the evidence that either (1) he acted under a sudden and intense passion resulting from serious provocation by the deceased or (2) he unreasonably believed that the circumstances justified the use of deadly force (*id.* § 9-2). Using a single verdict form, the jury found defendant guilty of first-degree murder. The jury also found both aggravating factors that would support a life sentence but neither mitigating factor that would support second-degree murder. Finally, the jury found defendant guilty of concealing a homicidal death. Based on the aggravating factors, the trial court sentenced defendant to life imprisonment on the first count of first-degree murder, merging the other counts, and imposed a consecutive 5-year term for concealment of a homicidal death. He timely appealed.

¶ 77 II. ANALYSIS

¶ 78 On appeal, defendant contends that the trial court erred in failing to question two of the eventual jurors per Rule 431(b). Defendant concedes that he forfeited the issue by failing to raise it at the trial level, either contemporaneously or in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186-88 (1988). However, he asks us to review his contention as plain error. The State concedes that the trial court failed to follow Rule 431(b), but it contends that defendant did not satisfy the plain-error rule.

¶ 79 To prevail on a claim of plain error, a defendant must establish that "clear or obvious error" occurred and that either (1) the evidence was closely balanced or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2009). Defendant contends that the evidence was closely balanced because the parties presented differing versions of the crucial events and the case thus turned on credibility. The State counters that its evidence was largely undisputed; that some of the conflicts consisted of defendant's vague denials of specific and otherwise unrebutted evidence; and that much of his testimony was inherently incredible or inculpatory. Thus, the State reasons, this was not a close case. We agree with the State in all respects.

¶ 80 The State had the burden to prove that (1) defendant committed first-degree murder; (2) the affirmative defense of self-defense did not apply; and (3) (for the imposition of a sentence of natural life) one of the two statutory aggravating factors did apply. To obtain even a conviction of a reduced charge of second-degree murder, defendant had to prove either (1) that he acted under a sudden and intense passion based on serious provocation by Valez or (2) that he acted under an unreasonable belief in the need to use deadly force to defend himself. None of these issues was close.

¶ 81 We note that, in contending that the evidence was closely balanced, defendant barely discusses that evidence. Other than citations to general legal principles and case law of limited pertinence, the argument section of his brief comprises *less than one page* and is little more than a bare-bones summary of the parties' theories at trial, followed by the bald assertion that, because defendant presented evidence to support his theory, this was a close case. The trial record includes nearly a thousand pages of testimony and numerous physical exhibits. Based on defendant's minimal attempt to support his appeal with pertinent argument, we would be wholly justified to decide this appeal based on forfeiture. See *Meerbrey v. Marshall Field and Co.*, 139 Ill. 2d 455, 468-69 (1990); *People v. Rockey*, 322 Ill. App. 3d 832, 839 (2001). Given the gravity of this case, however, we address in some detail why this is not a close case on any major issue.

¶ 82 First, whether the State proved that defendant committed first-degree murder is not a close issue. Defendant admitted that he deliberately stabbed Valez four or five times, in the side. This testimony alone proved that defendant intentionally performed acts that he knew created a strong probability of bodily harm to Valez.

¶ 83 More important, of course, the State proved through Kalelkar's testimony, and the numerous autopsy photographs, that Valez suffered 39 wounds, all but one of which were stab wounds that defendant inflicted on her face, side, breasts, chest, abdomen, arms, and shoulders. Several were "through and through," such as two to her shoulder and several more to her arm. One knife thrust penetrated her eye, her skull, and part of her brain; another entered her pericardial cavity and severed her superior vena cava; and two more penetrated her flesh, fractured a rib, and damaged her lung. Taken cumulatively, they were overwhelming evidence that defendant acted with the requisite criminal knowledge or intent, under any of the five alternative counts of the indictment.

¶ 84 Defendant had no answer to this evidence. He simply denied it. He could not explain the vast majority of the wounds, including many of the most severe ones. The evidence of first-degree murder was overwhelming.

¶ 85 We turn to the next issue: self-defense. Defendant contended that Valez swung the knife at him and that he seized it from her, then stabbed her to protect himself. Given the applicable law and the evidence, this issue was not closely balanced.

¶ 86 Defendant would have been justified in using force against Valez when and to the extent that he reasonably believed it necessary to defend himself against her imminent use of unlawful force. See 720 ILCS 5/7-1(a) (West 2012). But he was justified in using force that was intended or likely to cause great bodily harm only if he reasonably believed that it was necessary to prevent imminent death or great bodily harm to himself or the commission of a forcible felony. *Id.*

¶ 87 One reason that self-defense was not a close issue is the extremely strong evidence that defendant was the aggressor. We shall address this matter when we discuss the first aggravating factor. But, even accepting defendant's testimony that Valez was the aggressor, his claim of self-defense was exceedingly weak.

¶ 88 As noted, defendant used force that was intended or likely to cause great bodily harm. His sole justification was that, when Valez swung the knife at him, he feared for his life. There are obvious problems with this account. First, the jury need not have believed that he reasonably feared for his life. At the most, Valez inflicted two modest cuts on defendant's finger—not exactly life-threatening. More important, even in defendant's account, he stabbed Valez *after* he had seized the knife and thus disarmed her. Deadly force is not justified after the antagonist has been disarmed. *People v. Ingram*, 114 Ill. App. 3d 740, 743 (1983). Defendant's explanation that he

acted on "instinct" did not satisfy the statutory requirements for self-defense, even if that testimony were credible. The issue of self-defense was not closely balanced.

¶ 89 We turn to the two aggravating factors: (1) the preconceived plan and (2) exceptionally brutal or heinous conduct. Either factor was sufficient to make defendant eligible for the life sentence that he eventually received. Both were supported by extremely strong evidence.

¶ 90 The State adduced considerable evidence that defendant planned Valez's murder well in advance and carried it out in cold-blooded, systematic style. First, there was evidence that defendant was furious at Valez for cheating on him and that he decided that she would pay the price. Both Araujo and Shaw testified that defendant was angry at Valez for seeing "Darius." According to Shaw, who was defendant's long-time friend and was not eager to testify against him, defendant said that he killed Valez because she was in a relationship with Darius. In his direct examination, defendant answered "No" when asked, "[D]id you tell [Shaw] that you killed [Valez] because she brought another man into the house?" His answer to this vague question was not inconsistent with Shaw's testimony that he admitted to killing Valez out of anger at her cheating. Shaw did not hear defendant say that Valez attacked him first, and defendant gave garbled and self-contradictory testimony on whether he told Shaw any such thing.

¶ 91 The events leading up to September 24, 2013, especially in the preceding week, corroborated the State's theory that defendant's jealousy motivated his acts. Defendant admitted to some of this evidence, failed to deny some of it, and did deny some, not necessarily plausibly. In May 2013, Kurubas directly witnessed defendant go into a rage and strike Valez and, a few days later, saw that Valez had facial bruises in the areas where defendant had struck her before. Twice in early September 2013, defendant attacked Valez in public in the presence of others. Defendant denied the first incident completely, but he was vague at best about the second. Mershon testified

that, on September 22, 2013, defendant angrily told Valez that "if he couldn't have her, he'd kill her." Defendant created a close issue as to whether Valez told defendant that she was with someone else, but he did not directly contest Mershon's testimony as to the threat.

¶ 92 On September 23, 2013, defendant sent a hateful text message to Valez that included, "you deserved everything I did to you." Although the reference was not explained at trial, defendant was clearly stating that he had harmed Valez and had no remorse for it. In his testimony, defendant admitted that he and Valez had had an "argument" on September 23, 2013. Hooper testified that, on September 23, 2013, Valez had agreed to sign a lease that would give her a home with two people other than defendant. Defendant testified vaguely that the three prospective renters never pursued their plans, but he did not refute Hooper's specific testimony otherwise.

¶ 93 Defendant's conduct on the day of the killing was also highly probative of premeditation. During the daytime, he bought Valez flowers, which the State logically argued was intended to lure her into a trap. But far more probative was defendant's earlier purchase of the shovel and his prompt digging of the "fire pit." The pit was used as a grave for Valez, and the evidence strongly showed that it had been so intended. The pit was 18 inches deep and long and wide enough to hold the body of a woman who was 5'7" tall and obese. In his testimony, defendant first said that the pit was only a foot deep but then conceded that it was 18 inches deep. Asked how long and wide the pit was, he could not recall, or perhaps preferred not to recall.

¶ 94 The evidence of defendant's conduct after he left McDonald's with Valez was similarly one-sided. Conveniently dressed in black as the sun went down, he accompanied Valez to the park. Defendant did not recall how long they sat on the bench or what they talked about. He testified that she suddenly became hostile and aggressive. Yet, asked what they argued about, he could not

remember. He attributed Valez's mysterious outburst to alcohol intoxication, but Kalelkar testified that no alcohol or drugs were found in Valez's system.

¶ 95 Defendant's account of Valez's purported attack on him was contradicted by the evidence of premeditation and the multiplicity and severity of Valez's injuries. It was also contradicted by his own testimony, which was a mix of the vague and the inculpatory. Defendant could not (1) say how far apart he and Valez were when she pulled the knife, (2) describe the knife. (3) say how many times she swung it at him, and (4) recall whether Valez said anything as she swung the knife. Shaw testified that defendant did not tell her that Valez had attacked him first, although defendant managed to testify both ways on this point.

¶ 96 Defendant did testify, however, that after he finished stabbing Valez, he did not attempt CPR or seek help but did bury Valez, dispose of her bloody shirt and her other possessions, get rid of the knife and the shovel, and later dispose of Valez's cellphone. These admissions were highly credible, but they did not help his claim of self-defense. Neither did his conduct the next day, particularly his admission to Shaw that he "killed the bitch" because she had cheated on him. Defendant's responses to Araujo's inquiries about Valez similarly tended to show that he cold-bloodedly planned and carried out her murder. The premeditation issue was not closely balanced.

¶ 97 At least as one-sided was the "brutal or heinous" issue. Even were the murder not premeditated, defendant's manner of carrying it out was indicative of wanton cruelty. We need not repeat our recitation of the facts that established that defendant's attack on the unarmed Valez was prolonged, extensive, and sadistic. Valez was tortured and left to die from the cumulative effect of several dozen knife wounds. Indeed, defendant's conduct was not merely "indicative" of wanton cruelty (730 ILCS 5/5-8-1(a)(1)(b) (West 2012)); it *was* wanton cruelty. His conduct afterward was devoid of contrition. The evidence of this aggravating factor was overwhelming.

¶ 98 Having explained why the evidence of first-degree murder deserving of a life sentence was far from close, we need not dwell long on the evidence concerning the reduced offense of second-degree murder. There were two possible grounds for the reduction: (1) a sudden and intense passion resulting from serious provocation by the victim and (2) an unreasonable belief that the circumstances were such as to justify or exonerate the killing (720 ILCS 5/9-2(a)(1), (a)(2) (West 2012)). Defendant had the burden to prove either mitigating factor by a preponderance of the evidence. *Id.* § 9-2(c).

¶ 99 Defendant did not seriously pursue the first mitigating factor. In any event, the evidence that Valez provoked him into a sudden and intense passion was nonexistent. Defendant himself remembered nothing of what happened just before their encounter turned violent, other than they had been arguing. He did not even testify or argue that he acted out of a sudden and intense passion. The first mitigating factor was not even in play, much less closely balanced.

¶ 100 Defendant relied instead on the second mitigating factor, an unreasonable belief in circumstances that would have created a legally sufficient claim of self-defense. The evidence here was overwhelmingly against defendant. First, there was extremely strong evidence that he premeditated the attack and was the aggressor—as the jury found beyond a reasonable doubt. That by itself defeated the mitigating factor. Further, even under defendant's account, it was farfetched at best to find that he believed, even unreasonably, that the circumstances required him to use deadly force on Valez. The jury would have needed to accept his account of the circumstances preceding his stabbing of Valez *and* find that he believed that he was in imminent danger of death or great bodily harm from the unarmed victim. Moreover, his purported fears were hardly consistent with his response to that fear—extended and sadistic mutilation of the victim. The evidence on this mitigating factor was overwhelmingly against defendant.

¶ 101 In sum, the trial court's failure to question two eventual jurors per Rule 431(b) does not require the reversal of a judgment based on overwhelming evidence.

¶ 102 III. CONCLUSION

¶ 103 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 104 Affirmed.