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NATURE OF THE CASE

Following a jury trial, defendant was convicted of home invasion and criminal sexual abuse and sentenced to eight years in prison. He claimed on appeal that the trial court mistakenly phrased one of the four *voir dire* questions required by Supreme Court Rule 431(b). The appellate court agreed and held that the trial court committed plain error because the evidence was closely balanced. The People appeal the appellate court's judgment reversing defendant's convictions. No question is raised concerning the charging instrument.

ISSUES PRESENTED FOR REVIEW

Supreme Court Rule 431(b), as amended in 2012, requires trial courts to ask prospective jurors whether they understand and accept "that if a defendant does not testify it cannot be held against him or her"; in this case, the court asked jurors if they understood and accepted "that the defendant's failure to testify cannot be held against him," as the pre-amended rule provided. The issues presented are:

1. Whether the trial court's phrasing of the fourth *Zehr* principle constitutes invited error, such that defendant cannot claim plain error, when defense counsel acquiesced to the language the trial court used.
2. Whether defendant has failed to demonstrate that the trial court committed plain error where (1) the court substantially complied with Rule 431(b); and (2) the evidence was not closely balanced.

JURISDICTION

This Court allowed leave to appeal on January 28, 2026. Its jurisdiction lies under Supreme Court Rules 315 and 612(b)(2).

SUPREME COURT RULE INVOLVED

Rule 431 (Voir Dire Examination) (2024).

(a) The court shall conduct voir dire examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors.

(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section.

STATEMENT OF FACTS

Defendant was charged with multiple counts, two of which proceeded to trial. *See* C56-60, 114-19; R166-68.¹ The first count alleged that defendant committed home invasion, in that he “knowingly and without authority entered the dwelling place of C.B., knowing or having reason to know C.B. was present, and defendant then committed . . . criminal sexual abuse” of C.B. C118; R167-68; *see* 720 ILCS 5/19-6(a)(6). The second count alleged criminal sexual abuse, “in that the defendant committed an act of sexual conduct against C.B.” and “knew that C.B. was unable to give knowing consent to the act,” when he “knowingly touched and rubbed against the back of C.B. with his penis through the clothing while C.B. was sleeping and coming out of a sleep state.” C115; R167-68; *see* 720 ILCS 5/11-1.50(a)(2).

A. With defendant’s acquiescence, the trial court asks prospective jurors about the four *Zehr* principles.

In *People v. Zehr*, this Court found it was “essential to the qualification of jurors” that they both understand and accept “that a defendant is presumed innocent, that he is not required to offer any evidence in his own behalf, that he must be proved guilty beyond a reasonable doubt, and that his failure to testify in his own behalf cannot be held against him.” 103 Ill. 2d 472, 477 (1984). Eventually, this Court amended Rule 431(b) to require a

¹ “C_,” “R_,” “E_,” and “A_” refer, respectively, to the common law record, report of proceedings, exhibits, and this brief’s appendix.

trial court to ask in every case whether prospective jurors “understand[] and accept[]” these fundamental principles. *See* Rule 431, 2007 amendment.

Three principles are mandatory: the court must ask whether jurors understand and accept that (1) “the defendant is presumed innocent”; (2) “the State must prove the defendant guilty beyond a reasonable doubt”; and (3) “the defendant is not required to offer any evidence.” Ill. S. Ct. R. 431(b) (2024). The fourth principle, concerning a defendant’s decision not to testify, is given only if defendant agrees. *See id.* (“No inquiry of a prospective juror shall be made into the defendant’s decision not to testify when the defendant objects.”). Currently, Rule 431(b) phrases the fourth *Zehr* principle as “if a defendant does not testify it cannot be held against him or her.” *Id.* Prior to 2012, the rule used the language of *Zehr*, phrasing the principle as “the defendant’s failure to testify cannot be held against him or her.” Ill. S. Ct. R. 431(b) (2010).

In this case, the trial court asked defense counsel if the court should question prospective jurors about “the fourth *Zehr* principle,” which the court articulated as, “that the defendant’s failure to testify cannot be held against him.” A29. Defendant’s counsel responded, “Yes.” *Id.*

After introductory remarks, the trial court read the charges and informed the prospective jurors that defendant had pleaded not guilty. R188-94. The court then recited that “[e]very defendant . . . is presumed innocent”; “[t]he State has the burden of proving the guilt of the defendant beyond a

reasonable doubt”; “[a] defendant is not required to prove his innocence, nor . . . to present any evidence at all”; and “a defendant has a constitutional right not to testify, and the jury may not draw any inference of guilt if the defendant does not testify.” A30-31.

When the trial court returned to these principles a short time later, it articulated the fourth principle as it had previewed:

First, that the defendant is presumed innocent of the charges against him. Second, that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt. Third, that the defendant is not required to offer any evidence on his own . . . behalf[.] [A]nd four[th], that the defendant’s failure to testify cannot be held against him.

A32-33. The court then called each prospective juror “by name individually” to ask whether they “underst[oo]d and accept[ed] each of those four legal principles.” A33. Each juror, when called by name, responded affirmatively. A33-37.

B. C.B. testifies that defendant invaded her home and sexually abused her.

C.B. testified that she met defendant met in late 2020 at the Finish Line bar in Chenoa, Illinois, where C.B. worked as a bartender. R342. The two started dating in November 2020, but by January 2021, C.B. began “to see characteristics [in defendant] that [she] didn’t like.” R343-44. She broke up with defendant, but the two reconciled, and that pattern repeated itself over the next several weeks. R344-45, 439-62.

On February 19, 2021, C.B. told defendant that the relationship was “no more” and she was “done-done.” R344-46. C.B. never again invited

defendant to her home. R347. Defendant continued to show up at the Finish Line on most nights that C.B. worked, even though C.B. had told him not to, and called and texted C.B. incessantly “trying to get [her] to come back to him.” R347, 352.

Between February 26 and February 28, defendant sent 22 unanswered text messages to C.B., in which he apologized, professed his love, described suicidal thoughts, and said he “just drove by [her] house” and knew he had “been replaced.” R357-60; E60-62. Between March 1 and March 14, defendant sent 56 more text messages to C.B. R360-65; E55-60. C.B. responded to one message in which defendant asked about an insurance matter by telling defendant to call his insurance agent. R362; E59. And she responded to several messages that defendant sent in the middle of the night by telling him that she did not “appreciate [him] waking [her] up at 3am,” asking him to “leave [her] the fuck alone,” and insisting “WE ARE DONE AND OVER.” E55; R365-66.

Defendant sent nine more text messages to C.B. on March 16. R366; E54-55. In response, C.B. told defendant to “[l]eave me the fuck alone . . . before I get an order of protection.” E54. When defendant sent three more text messages the next day, C.B. reiterated that if defendant “[t]ext[ed] [her] anymore,” she would “go[] to [her] cop friend to get an order of protection.” E54. And she once again pleaded for defendant to “LEAVE ME THE FUCK ALONE!!!” *Id.*

Defendant sent C.B. another text message on March 21, to which C.B. did not respond. R368; E54. Defendant then sent eight more text messages to C.B. on March 23 and March 24, in which he said he had left C.B. a \$20 tip under an ashtray at the Finish Line. R368-69; E53-54. C.B. responded that she did not receive the money and that someone else had taken it. E54. Defendant sent two final messages on March 25, referencing his stepfather's funeral, to which C.B. did not respond. R369; E53.

On the night of March 27, 2021, C.B. went out with friends to several bars. R374. The group ended up at the Finish Line. R378. Around midnight, C.B. saw defendant across the bar and decided to leave without talking to him. R379-80. C.B. confirmed that her friends did not need a ride and then drove home by herself. R381. C.B. arrived at her house in Colfax, Illinois, around 12:30 a.m., let her dog outside, and went to bed. R382-84. C.B. admitted in her testimony that she "[h]ardly ever" locked her doors and that she was expecting "another friend [to] com[e] over that night." R342, 437-38.

As seen on footage from C.B.'s Ring security camera, at 1:45 a.m., defendant pulled his truck into C.B.'s driveway, approached the house, and entered through an unlocked side door. R383-85, 400-02. C.B. acknowledged that in January, when she and defendant were still dating, she occasionally told him that she would leave the door unlocked for him. R434-36. But she

testified that she did not invite, and was not expecting, defendant to come over on the night in question. R426-27, 438.

C.B. was asleep in her upstairs bedroom when defendant arrived and did not know that he had entered her house. R402-03. She became aware of his presence sometime after 2 a.m., when she woke to find him “laying next to [her] in [her] bed trying to stick his hands down [her] pants” while “rubbing” and “grinding” his erect penis against her back and buttocks. R404-05.

C.B. rolled onto her stomach to protect herself and then got out of bed and screamed at defendant to leave. R406. After a few minutes, defendant left the bedroom and went downstairs. R407. C.B. locked the bedroom door, loaded her shotgun, and called 911 around 3 a.m. R408-10, 478-79. While she waited for the police, C.B. heard her bedroom door rattling and suspected that defendant was trying to force his way back into the room. R410-11. C.B. yelled that if defendant entered the bedroom, she would shoot him. R412. Defendant did not say anything in response, but the rattling at the door stopped. *Id.* Police arrived around 3:30 a.m. R410.

C. Responding police officers testify that C.B. was hysterical in a locked room and defendant was in her kitchen.

Officer Jacob Shepard testified that he could hear C.B. “screaming and crying” from a second-story window as he approached the house. R311-12. When officers entered the house, they found defendant in the kitchen, noticeably intoxicated, and placed him under arrest. R313-16.

Deputy Seth Wiseman went upstairs and found C.B. in her bedroom. R526-27. He testified that C.B. was “hysterically crying and very visibly upset” and “did not seem intoxicated.” R527-29. Wiseman unloaded and secured C.B.’s shotgun, spoke with her briefly, and took her downstairs after defendant had been transported to the police station. R316-18, 527. C.B. told the officers what had happened, showed them the messages on her phone, and gave them her security camera footage. R528-29.

Later that afternoon, C.B. called the police again after she discovered a bent butter knife in the hallway outside her bedroom. R417-18; E13-15, 51. An officer returned to C.B.’s house and photographed and collected the knife. R418, 546. The officer also photographed C.B.’s bedroom door, documenting damage to the door jamb, which C.B. testified was not there the day before. R419-21, 549; E11-12, 50. Footage from the body camera of one of the initial responding officers showed that the butter knife was in the same location in the upstairs hallway (but was not collected) when officers first arrived on the scene at 3:30 a.m. R563-67; PE5, 5A. A forensic scientist concluded that a palmprint found on the knife matched defendant’s palmprint standard. R584-86, 599-600.

D. Defendant’s friend testifies that C.B. invited defendant over.

The defense called defendant’s longtime friend, Steven Tjarks, who testified that he was at the Finish Line with defendant on the night of March 28, 2021. R618-20. Tjarks could not remember what day of the week it was,

but he thought it was a weekend. R634-35. Nor could he remember what time he arrived at the bar, but he estimated that it was sometime after 8 p.m. R620, 635.

At some point that evening, a woman came over and thanked defendant for something. R623. Tjarks did not know who the woman was and had never seen her before. *Id.* Tjarks walked away from the conversation but nevertheless overheard the woman, as she appeared to be getting ready to leave, tell defendant that “the door would be unlocked for him to come over.” R624. After the woman walked away, Tjarks resumed his conversation with defendant; he soon left and defendant remained at the bar. R626. At the time, Tjarks had no reason to believe that this interaction was significant. R633.

Tjarks next saw defendant a year and a half later. R626-27. He testified that he asked defendant about defendant’s arrest, which Tjarks had heard about, and defendant said the accuser was “the same girl from the Finish Line.” R627-28, 636-39. After that conversation, a defense investigator showed Tjarks photographs of C.B. — but no one else — and asked Tjarks if the woman in the photographs was the woman Tjarks had seen talking to defendant at the Finish Line; Tjarks said it was. R628-32, 639-40. In a subsequent conversation with a police detective, Tjarks conceded that he probably would not have recognized the woman if he saw her after the night in question. R640-41.

E. Defendant is convicted and sentenced.

Following closing arguments, the trial court again instructed the jury that “[t]he fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict.” R720. The jury returned verdicts of guilty on both counts. R736-40. The trial court found that the count of sexual abuse merged, R758, and it imposed a sentence of eight years for home invasion, R780-71; A27. Defendant filed a motion to reconsider sentence, C319, which the trial court denied, R794; C22, and defendant timely appealed, A26.

F. The appellate court reverses the judgment.

On appeal, defendant argued that the trial court had failed to correctly phrase the fourth *Zehr* question and thus committed reversible error. A16, ¶ 50. Defendant acknowledged that he had forfeited this claim by failing to object and argued that he was entitled to relief under the first prong of the plain-error doctrine. *Id.*, ¶¶ 50-51.

The appellate court agreed. It first held that the trial court clearly or obviously erred by asking prospective jurors whether they understood and accepted that “the defendant’s failure to testify cannot be held against him,” rather than “if a defendant does not testify it cannot be held against him,” A16-17, ¶¶ 51-52; *see* A20, ¶ 56. The appellate court acknowledged that this Court has never held that the principles articulated in Rule 431(b) must be read “verbatim.” A18, ¶ 54. But the appellate court reasoned that verbatim recitation of the current rule’s “does not testify” language *is* required because,

in the appellate court’s view, this Court would not have made the 2012 amendment if “the language was interchangeable.” A20, ¶ 56.

The appellate court further held that the evidence was closely balanced. A24, ¶ 65. The appellate court found the case to be a “credibility contest” between “C.B.’s testimony that defendant entered her home without authority and [sexually abused her] while she slept” and Tjarks’s testimony that “C.B. invited defendant over to her house on the night in question.” A21-22, ¶¶ 60-61.

Accordingly, the appellate court reversed defendant’s convictions and remanded for a new trial.

STANDARDS OF REVIEW

This Court reviews *de novo* whether defendant acquiesced to the trial court’s phrasing of the fourth Rule 431(b) admonishment or merely forfeited his claim. *See People v. Custer*, 2019 IL 123339, ¶ 17 (forfeiture presents question of law reviewed *de novo*). If the claim was forfeited, this Court reviews *de novo* whether the trial court committed plain error. *People v. Marcum*, 2024 IL 128687, ¶ 28.

ARGUMENT

I. Defendant Acquiesced to the Trial Court’s Phrasing of the Fourth *Zehr* Principle, Precluding Plain Error Review.

At the outset, the appellate court erred by finding “plain error” because defendant acquiesced to the alleged error, so plain error review is unavailable.

“[I]nvited error or acquiescence does not raise a mere forfeiture to which the plain-error exception might apply; it creates an estoppel that precludes plain-error analysis.” *People v. Quezada*, 2024 IL 128805, ¶ 59. “Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented,” for “it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings.” *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004). Thus, where a defendant “affirmatively acquiesced to [the court’s] style of questioning” jurors under Rule 431(b), he cannot claim plain error on appeal. *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 32.

The trial court could not question prospective jurors about the fourth *Zehr* principle without defendant’s consent. *See* Ill. S. Ct. R. 431(b) (“no inquiry of a prospective juror shall be made into the defendant’s decision not to testify when the defendant objects”). Accordingly, the trial court asked defense counsel whether it should question prospective jurors about “the fourth *Zehr* principle,” which the court articulated as “the defendant’s failure to testify cannot be held against him.” A29. Defendant’s counsel responded, “Yes.” *Id.* The court then asked the prospective jurors this precise question. A33.

The trial court correctly described the fourth *Zehr* principle, as stated in *Zehr* itself. *See People v. Zehr*, 103 Ill. 2d 472, 477 (1984). However, defendant’s claim on appeal rests on the premise that the court’s formulation

was so clearly and obviously wrong as to constitute plain error. Accepting that premise, defendant was required to object when the trial court notified him of the precise question it intended to ask, but defendant instead agreed that it should pose that question. Because defendant “affirmatively acquiesced to [the court’s] style of questioning,” *McGuire*, 2017 IL App (4th) 150695, ¶ 32, he invited the alleged error, precluding plain error review.

II. Even If Defendant Merely Forfeited His Challenge, He Cannot Establish Plain Error.

Acquiescence aside, defendant’s Rule 431(b) claim is forfeited, as he conceded in the appellate court. Although he could obtain relief through the “narrow and limited” plain-error doctrine, *People v. Hillier*, 237 Ill. 2d 539, 545 (2010), defendant cannot bear his “burden of establishing” that the trial court committed “clear or obvious error,” *People v. Johnson*, 2025 IL 130447, ¶ 34; *see* Part II.A, *infra*. And even if he could show clear or obvious error, defendant cannot show either (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant”; or (2) “the error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process.” *Johnson*, 2025 IL 130447, ¶ 34. The evidence was not closely balanced, as discussed in Part II.B, *infra*, and a violation of Rule 431(b) does not constitute second-prong plain error, *People v. Birge*, 2021 IL 125644, ¶ 24 (collecting cases), so defendant is not entitled to relief.

A. No clear or obvious error occurred because the trial court substantially complied with Rule 431(b).

“[T]he first step in plain error analysis is to determine whether a clear or obvious error occurred.” *Johnson*, 2025 IL 130447, ¶ 34. Defendant’s claim fails at this step. Trial courts must ask prospective jurors whether they “understand[] and accept[]” “that if a defendant does not testify it cannot be held against him.” Ill. S. Ct. R. 431(b). Here, the trial court asked prospective jurors whether they understood and accepted “that the defendant’s failure to testify cannot be held against him.” A33. Although the trial court did not read the current version of Rule 431(b) “strict[ly] verbatim,” this substantial compliance sufficed, *People v. Hietschold*, 2025 IL 130716, ¶ 20 (quotation marks omitted), and no error, much less clear or obvious error, occurred.

1. Substantial compliance with Rule 431(b) is sufficient.

“This [C]ourt has observed that trials cannot be conducted without error, and that perfection in trial procedure is virtually unattainable.” *People v. Bull*, 185 Ill. 2d 179, 214 (1998). “Thus, it is fundamental that a defendant in a criminal case is entitled to a fair trial, not a perfect one.” *Id.*

In accordance with this principle, a trial court generally need only “substantially comply” with statutes and court rules to avoid committing reversible error. *See Hietschold*, 2025 IL 130716 (court need only substantially comply with statute requiring pretrial admonishments about trial *in absentia*, 725 ILCS 5/113-4(e)); *People v. Wright*, 2017 IL 119561, ¶ 41

(court need only substantially comply with admonishments set forth in Supreme Court Rule 401(a) before accepting waiver of right to counsel); *People v. Dominguez*, 2012 IL 111336, ¶ 11 (court need only “substantially’ advise[]” defendant of admonishments set forth in Supreme Court Rule 605(c) governing negotiated guilty pleas) (quoting Ill. S. Ct. R. 605(c)). That is especially so where the statutes or rules prescribe admonitions that are not constitutionally compelled. *See People v. Ratliff*, 2024 IL 129356, ¶ 44 (“[n]othing in the federal or state constitutions requires any admonitions before a defendant may waive the right to counsel, which explains why we have repeatedly held that the trial court need only substantially comply with” Rule 401(a)).

This Court has never stated that a trial court must strictly comply with Rule 431(b), and the appellate court has held, in numerous cases, that a trial court need only substantially comply with the wording of the four *Zehr* principles. *See, e.g., People v. Kidd*, 2014 IL App (1st) 112854, ¶ 36 (“Rule 431(b) does not require that the specific language of the rule be used”); *People v. Ware*, 407 Ill. App. 3d 315, 366 (1st Dist. 2011) (“we do not believe there is special magic language that needs to be used to show whether a prospective juror understands and accepts the four *Zehr* principles”); *People v. Chester*, 409 Ill. App. 3d 442, 447 (4th Dist. 2011) (“[a]s Rule 431(b) does not require the court to recite the principles verbatim, the court’s language was sufficient to comply with the rule” when court paraphrased third principle); *People v.*

Atherton, 406 Ill. App. 3d 598, 611 (2d Dist. 2010) (“Rule 431(b) does not require the trial court to recite the principles therein verbatim.”).

In a single case prior to this one, the appellate court instructed trial courts to read the principles verbatim, but it did not find reversible error. *See McGuire*, 2017 IL App (4th) 150695, ¶¶ 32, 35 (finding no reversible error because defendant acquiesced to court’s framing of *Zehr* principle, but stressing that “[o]ur conclusion does not lift the requirement that trial judges must strictly comply with Rule 431(b),” and that “[t]rial courts must exercise diligence when instructing the jury of the *Zehr* principles as codified in Rule 431(b) and must not deviate in any way from the precise language chosen by the Illinois Supreme Court to be in that rule”). In this case, for the first time, the appellate court required Rule 431(b) to be read verbatim and held that the failure to do so amounted to plain error.

This holding was erroneous, and prior appellate court cases requiring only substantial compliance were correct. Here, the appellate court reasoned that the *Zehr* principles must be read verbatim because, in its view, this Court “has stringently applied Rule 431(b)” and “singled out Rule 431(b) to require stricter compliance than other rules.” A17-18, ¶ 53. In addition, the appellate court stated, this Court “expressly addressed the precise wording of the fourth *Zehr* principle through the rulemaking process” and “it is presumed that every amendment is made for some purpose, and effect must be given to the amended law in a manner consistent with the amendment.”

A19, ¶ 55 (quoting *People v. Burge*, 2021 IL 125642, ¶ 33 (internal alterations omitted)). Both of these premises are flawed.

First, this Court has never stated that it requires strict compliance with Rule 431(b). Rather, it has simply held, on multiple occasions, that trial courts erred by omitting essential components from *voir dire*. In doing so, the Court illustrated what compliance with Rule 431(b) means: the trial court must ask whether prospective jurors both “understand” and “accept” the *Zehr* principles, and it must address all four principles. *See People v. Sebby*, 2017 IL 119445, ¶ 49 (Rule 431(b) “requires the trial court to ask potential jurors whether they understand and accept the four *Zehr* principles. Here, the trial court asked jurors whether they ‘had any problems with’ or ‘believed in’ those principles. That was a clear error.”); *People v. Wilmington*, 2013 IL 112938, ¶ 32 (trial court violated Rule 431(b) because it failed to ask whether jurors “understood” principles and “did not even inquire regarding the jury’s understanding and acceptance of the principle that defendant’s failure to testify could not be held against him”); *People v. Thompson*, 238 Ill. 2d 598, 607 (2010) (“the trial court did not question any of the prospective jurors on the third principle, whether they understood and accepted that defendant was not required to produce any evidence on his own behalf,” and “Rule 431(b) requires trial courts to address each of the enumerated principles”). None of those cases suggested that the four *Zehr* principles must be read verbatim as written in Rule 431(b). Rather, they demonstrate that a trial

court may comply with Rule 431(b) by addressing the four principles and ensuring that each juror understands and accepts them. In other words, substantial, not strict, compliance with the rule is required.

Second, the appellate court was incorrect to believe that the rule's amendment compelled verbatim recitation of the fourth *Zehr* principle. To the contrary, the amendment confirms that strict compliance is *not* required. In 2012, this Court altered the wording of the fourth *Zehr* principle, but it did *not* act to correct recent appellate precedent holding that verbatim recitation of the four principles was not required, *see Ware*, 407 Ill. App. 3d at 366; *Chester*, 409 Ill. App. 3d at 447; *Atherton*, 406 Ill. App. 3d at 611, by amending the rule to require “verbatim” recitation or “strict” compliance. If the Court had intended through its amendment to require strict, verbatim compliance, then the Court would have said so directly, correcting the appellate court's misapprehension. Instead, this Court acquiesced in the appellate court's interpretation, showing that it did not intend for strict compliance. *See People v. Marker*, 233 Ill. 2d 158, 177-78 (2009) (principle of acquiescence applies to court rules as well as statutes).

In sum, substantial compliance with this Court's rules generally suffices, and Rule 431(b) is no exception.

2. The trial court substantially complied with Rule 431(b) by communicating the rule’s essence and verifying that jurors were qualified to serve.

Substantial compliance turns on the “essence” of the rule in question. *Hietschold*, 2025 IL 130716, ¶ 32 (“[S]ubstantial compliance requires communicating the [rule’s] essence, rather than wholly what is specified in the [rule].”); *Dominguez*, 2012 IL 111336, ¶ 19 (“substantially” means “the court must impart to a defendant largely that which is specified in the rule, or the rule’s ‘essence,’ as opposed to ‘wholly’ what is specified in the rule”) (quoting Merriam-Webster’s Collegiate Dictionary 1174 (10th ed. 1998) (defining “substantial”) and Black’s Law Dictionary 1595 (9th ed. 2009) (defining “substance”)).

Rule 431 is titled “voir dire examination” and its purpose is to ensure that questions are asked of prospective jurors in criminal cases to confirm that they are qualified to serve. Most questions are discretionary: “[t]he court shall conduct voir dire examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial.” Ill. S. Ct. R. 431(a). Subsection (b) prescribes four specific admonishments and questions about constitutional principles governing criminal trials.

As this Court has explained, “Rule 431(b), therefore, mandates a specific question and response process,” in which “[t]he trial court must ask each potential juror whether he or she understands and accepts each of the

principles in the rule.” *Thompson*, 238 Ill. 2d at 607. “The questioning may be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles.” *Id.* The trial court did that here: after reading the four principles, the court called upon each prospective juror by name to verify that he or she understood and accepted the four principles. A33-37. All of them responded affirmatively. *Id.* Thus, the court complied with the essence of the rule.

Indeed, the trial court used the language of *Zehr* itself when communicating the fourth *Zehr* principle to the prospective jurors. The fourth principle concerns the Fifth Amendment right against self-incrimination; Rule 431(b) requires that the trial court confirm that prospective jurors understand and accept that principle. This function is served equally well whether the court asks if the juror understands and accepts “that if a defendant does not testify it cannot be held against him,” or whether it frames the principle as “that the defendant’s failure to testify cannot be held against him.” Any juror who either fails to understand or refuses to accept the right against self-incrimination set forth in the Fifth Amendment would be prompted to express that disagreement regardless of the framing used. In fact, Rule 431(b) was intended to codify the holding of *Zehr*, see Ill. S. Ct. R. 431 Committee Comments, which itself framed the relevant principle as a defendant’s “failure to testify in his own behalf cannot

be held against him,” 103 Ill. 2d at 477. It cannot be the case that the trial court, by using the precise language of *Zehr*, failed to substantially comply with Rule 431(b)’s intended codification of *Zehr*.

Because the trial court substantially complied with Rule 431(b), no error occurred, and defendant failed to meet his burden under plain error review.

B. The evidence was not closely balanced because C.B.’s testimony that defendant lacked permission to enter her home was extensively corroborated and Tjark’s account was implausible.

Even if an error occurred, defendant failed to show that the evidence was “so closely balanced that [any Rule 431(b)] error alone threatened to tip the scales of justice against [him].” *Johnson*, 2025 IL 130447, ¶ 34. “In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Sebbby*, 2017 IL 119445, ¶ 53. This requires “an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses’ credibility.” *Id.*

There was no competing testimony presented on the charge of criminal sexual abuse. C.B. testified that defendant rubbed his erect penis against her back while she was sleeping and unable to knowingly consent; that testimony was uncontradicted. The only charge for which there was competing evidence was home invasion, on whether defendant entered C.B.’s

home “without authority.” *See* 720 ILCS 5/19-6(a). Defendant called Tjarks to testify that C.B. invited defendant to her home that night, such that he entered with authority. *See People v. Witherspoon*, 2019 IL 123092, ¶ 26 (“The phrase ‘without authority’ means either a violation of a court order or a denial of consent to entry from the occupant.”).

But a “commonsense assessment” makes clear that the evidence was not “closely balanced” on whether defendant had permission from C.B. to enter. Even where there is ostensibly competing evidence, “courts have found no ‘credibility contest’ when one party’s version of the events was either unrefuted, implausible, or corroborated by other evidence.” *People v. Montgomery*, 2018 IL App (2d) 160541, ¶ 31. Applying that test here, C.B.’s account of evidence was “corroborated by other evidence,” while Tjark’s account was “implausible.” Thus, the evidence was not closely balanced.

Indeed, overwhelming evidence corroborated C.B.’s testimony that defendant entered her home without permission after stalking her for weeks and refusing to take “no” for an answer. Text messages and call logs showed defendant’s repeated unwanted communications, despite C.B.’s insistence that defendant “leave [her] the fuck alone,” and that “WE ARE DONE AND OVER.” E55; R365-66. In the four days leading up to the home invasion, C.B. told defendant to “[l]eave me the fuck alone . . . before I get an order of protection”; reiterated that if defendant “[t]ext[ed] [her] anymore,” she would “go[] to [her] cop friend to get an order of protection”; and pleaded for

defendant to “LEAVE ME THE FUCK ALONE!!!” E54. No friendly, cordial messages walked back that sentiment before surveillance video captured defendant arriving alone at C.B.’s house alone and entering through an unlocked door.

Further corroborating C.B.’s account is what happened next: within the next hour, C.B. called 911 to report that defendant had sexually abused her and refused to leave her house. Responding officers found C.B. “screaming and crying” for help, seeming “hysterical,” and hiding behind a locked door while defendant was in her kitchen, all of which further supported that defendant’s entry was an unwelcome surprise and that defendant had refused to leave when she asked. A bent butter knife bearing defendant’s prints, found outside of C.B.’s damaged bedroom door, corroborated C.B.’s testimony that defendant had tried to force open her bedroom door while she was locked inside. Put simply, neither C.B.’s hysterical reaction nor defendant’s remaining in her house long after she asked him to leave are consistent with C.B. having invited him over, as Tjarks claimed. That he remained in her kitchen until police arrived confirms that defendant was instead forcing himself on C.B. regardless of her wishes, as he had through his insistent text messages and unanswered phone calls.

Weighed against C.B.’s compelling and corroborated account is the testimony of Tjarks, defendant’s longtime friend and a complete stranger to

C.B. In short, Tjarks's account that he remembered C.B. approaching defendant at the Finish Line and inviting him over is implausible on every level.

First, the interaction that Tjarks claims to have witnessed is implausible when viewed against C.B.'s and defendant's history of communications. It is implausible that, as Tjarks claimed, C.B. would approach defendant to invite him over without addressing her repeated, hostile messages to him. By Tjarks's account, C.B. simply invited defendant over, and he asked no questions, even though objective records show that C.B. had been pleading with him for weeks to "LEAVE ME THE FUCK ALONE!!!" and threatening to seek an order of protection. E54. Tjarks's account of events is exceedingly unlikely.

Second, it is implausible that Tjarks would have paid attention to this interaction and remembered it, or C.B., 18 months later. Tjarks did not know C.B. and had no reason to think that this conversation with defendant would be significant. R633. Tjarks claimed that he did not see defendant for a year and a half and then asked about his arrest, and defendant said the accuser was "the same girl from the Finish Line." R627-28, 636-39. Based on that statement from defendant, Tjarks purported to recall an interaction between petitioner and an unknown woman which would have had no obvious significance at the time he witnessed it 18 months earlier. And Tjarks's identification of C.B. was tainted by a suggestive procedure in which he was

shown photos of C.B. — and only C.B. — by a defense investigator. As Tjarks admitted to police, he would not have recognized C.B. if he had seen her on the street.

Accordingly, the evidence in this case was not closely balanced between two equally plausible accounts. C.B.'s testimony that she did not invite defendant over was the only account that made sense in light of C.B.'s previous interactions with defendant, her 911 call, and the fact that officers found her hysterical and hiding in a locked room from defendant with a loaded shotgun. As defendant failed to demonstrate his burden of showing first-prong plain error, this Court should reverse.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the trial court's judgment.

June 16, 2026

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ERIN M. O'CONNELL
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7126
eserve.criminalappeals@ilag.gov

*Counsel for Plaintiff-Appellant
People of the State of Illinois*

RULE 341(c) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

/s/ Erin M. O'Connell

ERIN M. O'CONNELL

Assistant Attorney General

APPENDIX

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NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2025 IL App (4th) 240933-U

NO. 4-24-0933

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 29, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
BRENT J. BURTON,	)	No. 21CF374
Defendant-Appellant.	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Knecht and Grischow concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed defendant's convictions and remanded the cause for a new trial where the trial court's failure to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during jury selection was a clear and obvious error and the evidence at trial was closely balanced.

¶ 2 On January 19, 2024, a jury found defendant, Brent J. Burton, guilty of home invasion (720 ILCS 5/19-6(a)(6) (West 2020)) and criminal sexual abuse (720 ILCS 5/11-1.50(a)(2) (West 2020)). The trial court sentenced defendant to eight years in prison. He appeals, arguing that the court failed to properly admonish prospective jurors during *voir dire* in accordance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). For the following reasons, we reverse and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 On April 7, 2021, the State charged defendant with residential burglary (720 ILCS

5/19-3(a) (West 2020)), three counts of criminal sexual abuse (720 ILCS 5/11-1.50(a)(1), (2) (West 2020)), and aggravated driving under the influence while his driver's license was revoked (625 ILCS 5/11-501(a), (d)(1)(G) (West 2020)). On March 15, 2023, the State brought six additional charges: four counts of home invasion (720 ILCS 5/19-6(a)(6) (West 2020)) and two counts of criminal sexual abuse (720 ILCS 5/11-1.50(a)(2) (West 2020)). Ultimately, the State proceeded to trial only on one count of home invasion and one count of criminal sexual abuse. The State alleged that on or about March 28, 2021, defendant entered the residence of C.B. without authority, knowing C.B. to be present, then committed criminal sexual abuse against C.B. when he "touched and rubbed against the back of C.B. with his penis through the clothing while C.B. was sleeping" and could not give knowing consent.

¶ 5

A. *Voir Dire*

¶ 6

The jury trial began on January 16, 2024. The trial court started by summarizing the charges against defendant to the venire. The court then stated, "A defendant is not required to prove his innocence, nor is the defendant required to present any evidence at all. Moreover, a defendant has a constitutional right not to testify, and the jury may not draw any inference of guilt if the defendant does not testify." Once *voir dire* began, the court provided more details about these principles:

"So I'm now going to read to you a series of four legal principles. These are called the *Zehr* principles [(see *People v. Zehr*, 103 Ill. 2d 472 (1984))]. Z-e-h-r, *Zehr* principles. After I read these I'm going to come to each one of you by name individually and ask whether you understand and accept each of these four legal principles.

Do each of you understand and accept each of the four legal principles.

First, that the defendant is presumed innocent of the charges against him. Second, that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt. Third, that the defendant is not required to offer any evidence on his own—I'm sorry. That the defendant is not required to offer any evidence on his own behalf, and four, that the defendant's failure to testify cannot be held against him.

Do each of you understand and accept each of those four legal principles?"

Each prospective juror individually confirmed that they understood and accepted these principles.

¶ 7 The trial court gave the State, then defendant, the opportunity to ask further questions of the prospective jurors. Defense counsel began by saying,

"Good morning, ladies and gentlemen. I want to first start with what the Court had admonished you earlier, and those are the *Zehr* principles, because they are the foundation of the criminal justice system. The Judge read those principles to you, but I want to repeat them again.

First of all, as you all understand, you have all already heard from the Court that there is—in our system there is a presumption of innocence that is attached to anyone who is accused of a crime. The second principle is that before the State, before the State can convict—I'm sorry. Before the defendant can be convicted the State must prove its case beyond a reasonable doubt. The third principle, the *Zehr* principles, is that an accused is not required to present any evidence, and the last principle, an accused is not required to testify, and if he chooses not to, you cannot hold that against them. All of you were asked if you understood and agreed with the principles, and all of you acknowledged that you would."

¶ 8 Once the jury was selected and sworn, the trial began and continued until January 19, 2024. The following evidence was presented.

¶ 9 B. C.B.'s Testimony

¶ 10 C.B. testified that she had lived in her house in Colfax, Illinois, since November 2001. She explained that she “[h]ardly ever” locked her door “unless [she] was gone for several days.” She stated that she met defendant in the fall of 2020 through her work as a bartender at Finish Line Sports Bar (Finish Line), then hired him to cut some of the trees in her front yard and helped him file his taxes. Their friendship eventually developed into a romantic relationship around the end of October or beginning of November 2020. She said they dated for about three to four months. When asked about when the relationship ended, C.B. testified that “it started in January when [she] started trying to get [defendant] to leave [her] alone” because she “was starting to see characteristics that [she] didn’t like.” However, she would then “find forgiveness and try again.”

¶ 11 1. *The Events of January 2 and 3, 2021*

¶ 12 C.B. testified that she tried ending the relationship with defendant multiple times. She also confirmed that she and defendant had “ups and downs” starting in December and during each “down phase,” defendant would call and text her excessively. One such example occurred on the night of January 2, 2021, and continued into the morning hours of January 3. C.B. stated that defendant entered her house uninvited that night. At 11:05 p.m., C.B. texted defendant, “Where r u??” She testified that this was an invitation to come to Finish Line. Defendant then texted C.B. at 12:48 a.m., asking if he could come over; though she testified that she told him he could not, there was no such text in the record. C.B.’s call log shows an accepted call from defendant at 12:55 a.m. that lasted nine seconds. She testified that she did not invite him to her house during that call.

¶ 13 After C.B. finished her shift at Finish Line around 1 a.m., she and her friend went to a bar. She noticed that defendant's truck followed her but turned when C.B. and her friend got to Colfax and continued to another bar. When C.B. and her friend returned to C.B.'s house, they found defendant's truck in her driveway and defendant in the kitchen. She testified that she left her door unlocked that night for herself, not for him. C.B. confronted defendant and "started yelling at him asking him what are you doing here, why are you here." Defendant said he wanted to see her and then "started calling [her] a bunch of names" and left. Defendant called C.B. eight times between 1:59 a.m. and 2:06 a.m., and C.B. did not answer. At 2:20 a.m., defendant texted, "where did the 6 rubber [sic] go that you had in your dresser." C.B. texted defendant at 2:22 a.m., "I was pissed cause u didn't let grace out, there were skittles all over my kitchen floor, cigarette butt on my step." At 2:24 a.m., she texted, "I'm NOT answering your calls!!!!" and at 2:36 a.m., she texted, "Just leave me the f*** alone *** why the f*** would I have a relationship with you? I'm NOT a f*** hypocrite." Defendant called C.B. 18 times between 2:53 a.m. and 10:09 a.m. and continued to text her between 2:38 a.m. and 8:36 p.m., but she did not answer. C.B. testified that this was "[o]ne of the times [she] tried breaking up with [defendant]." C.B. clarified that they were not in a relationship at that time but that they did later work on their relationship.

¶ 14 *2. C.B. and Defendant's Interactions Between January 5, 2021,
and February 18, 2021*

¶ 15 C.B. texted defendant on January 5, 2021, stating: "I don't want you in my life and especially, I dont want you in [my son's] life" and "Im f*** done." C.B. characterized this as "[a]nother attempt" to break up with defendant. C.B. agreed that there were several text messages from defendant in January 2021 to which she did not respond. She then reinitiated contact with defendant on January 6 and explained why she had been in a bad mood the day before. She testified

that she and defendant argued again at the end of January. On January 28, 2021, C.B. texted, (1) “F*** you you stupid mother f***! Leave me the f*** alone. I’ll be damned if I support another worthless mother f***” and (2) “All I said was I can’t have you living at my house for free and especially on nights I have my son, im breaking my custody.. and you get pissed. Shows your true f***colors and intentions. F*** off. Keep texting and calling, I will go to the cops.” She testified this was her fourth time trying to break up with defendant.

¶ 16 C.B. and defendant texted back and forth again starting on February 3, 2021. She invited him over on February 4. On February 6, she texted, “After tonight, I am DONE. I dont need a man in my life, and you f*** proved it to me” and “Leave me alone.” Defendant texted her multiple times between February 7 and 9, and she did not respond. She began responding again on February 9. Defendant went to her house around February 12. They appeared to have another falling out around February 15. Defendant sent many unanswered text messages between February 15 and 18. On February 18, C.B. texted, “I dont want a relationship. Period” and “Stop texting and calling.” Defendant said, “Ok all I need to know we r done then,” and C.B. replied, “Yes! Bye!”

¶ 17 *3. C.B. Purportedly Ends the Relationship Permanently*

¶ 18 C.B. stated that the “back and forth” with defendant ended on February 19, 2021. C.B. testified that she and defendant had a conversation on Valentine’s Day where she “was affirmative that [she] was done-done” and “[t]here was no more.” She stated that she never invited defendant over to her house again after that date and she only communicated with him to facilitate the return of her belongings, though defendant “would text all the time, or call all the time, and [she] wouldn’t respond.”

¶ 19 *4. Continued Interaction Between C.B. and Defendant*

Up to March 27, 2021

¶ 20 Nevertheless, C.B. testified that between February 19 and March 28, 2021, she saw defendant when he would come into Finish Line. She said he came into the bar about 80% of the nights that she worked. He never came to her house after work during that period of time. She testified that defendant would “text [her] nonsense all the time trying to get [her] to come back to him.” She texted defendant on February 22 and 23 to arrange the return of her belongings and told defendant that she was not going to his shop at night because she “didn’t want to be around him at night after he had been drinking and doing God knows what.” She wanted him to put her belongings outside so she could pick them up without seeing him. He asked her for help with his taxes, and she “told him flat out no.” She also told him not to come to Finish Line while she was working.

¶ 21 Defendant sent 22 texts to C.B. between February 26 and 28, 2021, in which defendant professed his love for her, described his suicidal thoughts, apologized for calling her, and referenced the fact that he “just drove by [her] house” and he “know[s] [he has] been replaced.” C.B. did not respond to any of those messages.

¶ 22 Defendant sent C.B. 56 text messages between March 1 and March 14, 2021. C.B. responded once on March 5, when defendant asked about a “certificate of insurance,” and indicated she sent it to defendant’s agent, whom he should call. The next time C.B. responded to defendant’s texts was on March 14:

“[C.B.]: I don’t appreciate you waking me up at 3am. Seriously, get your shit together and leave me the f*** alone.

[Defendant]: Ok i figure i was a dead beat bum i will

[Defendant]: Im sry I just had to get out of my soul ill never be good enough for anyone om just a loser and will never have anything cant afford a window so

have worry about a pot to piss in because I don't have a window to throw it out of goodnight

[C.B.]: Yup, leave me alone. On nights I don't have [my son], I can't even have my volume up because you are going to text or call me. LEAVE ME ALONE.

[C.B.]: I want to sleep and here you are bothering me!!! Wow. LEAVE ME ALONE. WE ARE DONE AND OVER. BYE!!”

Defendant texted C.B. again 9 times on March 16, 2021. C.B. responded, “Leave me the f*** alone. Christ! Last warning before I get an order of protection on you're a***.”

¶ 23 On March 8, 2021, defendant wrote C.B. a check for \$500. Though C.B. initially denied in her testimony that the check was for taxes, the check's memo said, “taxes.” On March 16, defendant texted C.B., “Im glad you cashed it's only money I told you that I would help you out.”

¶ 24 Defendant texted C.B. three times on March 17, 2021. C.B. responded: “For f*** sakes, LEAVE ME THE F*** ALONE!!! Once f*** again, I have to turn my phone on silent cause your a*** is going to keep bothering me. F*** ridiculous. I can't even have my volume up on my phone cause of YOU and your psychotic a***. God, I hope there is no emergency with [my son] cause I will miss it all because of YOU and your f*** lack of respect for me and my f*** wishes. Text me anymore, im going to my Livingston County cop friend to get an order of protection. I already talked about it with a chenoa cop, showed him all the proof and the 50 f*** voicemails from you, he told me it would be easy to get.”

On March 23, defendant texted C.B. seven times. He told C.B. he left her a tip of \$20 “under the ashtray in the backroom.” C.B. responded to say the money was not there. On March 25, defendant texted C.B. twice, and she did not respond.

¶ 25 C.B. provided police with her phone’s call log between January 3 and March 23, 2021. C.B. had 26 missed calls from defendant between 1:59 a.m. and 10:09 a.m. on January 3. Between January 5 and February 14, defendant and C.B. talked on the phone many times, with each call lasting less than 10 minutes and most lasting less than 2 minutes. Between February 15 and March 5, defendant called C.B. 26 times, and C.B. did not answer. C.B. called defendant once on March 6 at 6:34 p.m., but defendant did not answer. C.B. testified that she did not pick up defendant’s calls because she did not want to talk to him. Defendant left C.B. many voicemail messages, to which she did not respond. C.B. stated that she did not do or say anything to defendant between February 19 and March 28 about the possibility of resuming their relationship.

¶ 26 *5. The Events of March 27 and 28, 2021*

¶ 27 C.B. then testified about the events of March 27 and 28, 2021, which were the basis for the charges against defendant. On March 27, C.B. met some friends around 5 p.m. and spent about three hours between three different bars and restaurants before going to Finish Line. She and her friends stayed there for about three hours, doing karaoke and talking. C.B. drank four beers throughout the course of the evening. When she saw defendant at Finish Line around midnight, she decided to leave. She testified that she did not walk past him to leave, did not talk to him, did not text him, and did not tell him he could come over. She returned home, let her dog out, and went to bed. The door to her house was not locked when she got home. She had a Ring security camera installed outside her house, which showed that she arrived at her house at 12:34 a.m.

¶ 28 The Ring camera showed that defendant arrived at C.B.'s house at 1:45 a.m. and parked in her driveway. At 1:46 a.m., he walked into the side door of her house. At 2:58 a.m., the Ring camera showed that her dog was let outside. C.B. testified that when defendant arrived, she was sleeping and was not aware that defendant had entered her house. She was not the one who let her dog out. C.B. stated that she woke up after 2 a.m. to defendant "laying next to [her] trying to stick his hands down [her] pants." She explained that she was lying on her side and he began rubbing himself on her back with his erect penis and kept saying, "I'm sorry, I'm sorry, I'm sorry." At that point, she "rolled over on [her] stomach to protect [her]self and [she] still acted like [she] was sleeping." She then "jumped up out of bed, and [she] just started screaming," saying "[W]hat in the F are you doing here." Defendant apparently said, "[Y]ou brought me here," to which C.B. responded, "[T]hat's not true, you need to get out of my house, you need to leave." After "yelling at him to get out" for what felt like "three to four minutes," defendant said, "I can tell you're mad, I'll let you cool off," then left her bedroom angrily, slammed her door, and went downstairs. She was later asked to demonstrate how much time had passed between her waking up, yelling at defendant, and him leaving her bedroom, and it was approximately 30 seconds.

¶ 29 C.B. then called 911, locked her bedroom door, and loaded her shotgun. She testified that she was not sure what time she called the police, but it might have been around 3 a.m. She acknowledged that there was about an hour-long gap between defendant arriving at her house at 1:45 a.m. and her call to the police at around 3 a.m. but denied having any recollection of what happened until defendant woke her up by entering her bed. She denied having a conversation with him during that time. She said that after she called the police, she waited "25 minutes maybe" for them to arrive. While she was waiting for officers to arrive, she "heard [defendant] outside [her] bedroom door trying to open [her] door again" and heard banging, her doorknob shaking, the door

rattling, and “something *** trying to force [her] door open.” She then yelled, “[I]f you set foot in my F’ing bedroom again I’m going to shoot you,” and the commotion outside her door stopped. She then opened her bedroom window and “kind of hung halfway out of [her] front window in [her] bedroom” and started yelling, “help, help, help,” when she saw a police officer arrive. Police officers then entered her bedroom, unloaded her gun, and talked to her. She testified that at around 3 a.m., she went downstairs and sat with one of the officers at the kitchen table.

¶ 30 According to footage from Corporal Robert King’s body-worn camera, officers talked to C.B. in her bedroom at 3:28 a.m. The footage also showed that C.B. denied that defendant had been trying to enter her bedroom again after she told him to leave. A photo taken at 3:27 a.m. showed two cups in the sink, but C.B. denied that they were hers and defendant’s; rather, she explained that they were hers and her son’s. She testified that her state of mind that night was “[c]loudy” and she “couldn’t get [her] thoughts together” because her “anxiety was getting the best of [her].” While the officers were talking with her, she did not “know if [she] was hearing every single word they were saying.” She said she remembered the details about defendant rattling her bedroom door “later that morning.”

¶ 31 In the afternoon on March 28, 2021, C.B. found a butter knife in her upstairs hallway. She did not move the knife but called the police again, who arrived to take pictures of the knife and collect it. Photos showed the bent knife and damage to C.B.’s bedroom door jamb, which C.B. testified was not there before March 28. King’s body-worn camera footage showed the knife in the same place when officers first arrived at around 3 a.m.

¶ 32 On March 30, 2021, C.B. filed a petition for an order of protection against defendant. The trial court granted the motion on April 16, 2021.

¶ 33 On cross-examination, defense counsel referred to C.B.'s prior testimony that she rarely locked the door to her house. C.B. admitted that she remembered telling one of the police officers on March 28, 2021, that she "forgot to lock the door." She denied that this statement meant that she normally locked her door and explained that she was just "embarrassed that [she] didn't lock the doors." Defense counsel referred to several texts between C.B. and defendant. On January 7, 2021, C.B. texted, "I am taking [my son] to bed around 730, if you're not here by then, Ill leave the door unlocked." On January 11, 2021, defendant texted, "Im b there in 15," and C.B. responded, "Lock the door when you get here." However, C.B. testified that (1) she did not only leave her door unlocked for defendant to come over and (2) she did occasionally lock the doors, except when expecting friends. She stated that she was expecting a friend to come over on the night of March 27, so she did not lock her door that night.

¶ 34 C. Testimony of Responding Police Officers and Fingerprint Examiner

¶ 35 Officer Jacob Shepard, a deputy with the McLean County Sheriff's Office at the time of the events of this case, testified that he responded to C.B.'s 911 call on March 28, 2021. His attention was called to C.B.'s residence "by the screaming and crying that [he] could hear," and he subsequently saw "the upper half of a woman's body like hanging out the second story window screaming at [him]." Shepard observed a white Ford F-250 truck in the driveway. When he and two other officers from the Le Roy Police Department entered the residence through the side door, they observed "a skinny white male" in the kitchen wearing socks but no shoes. The officers held him at gunpoint, commanded him to put his hands in the air, and placed him in custody. Shepard observed that the man was swaying side-to-side, omitting "an incredibly strong odor of an alcoholic beverage," and his eyes were "very bloodshot and glassy." Shepard identified defendant as the man he saw in the residence.

¶ 36 Corporal Robert King of the Le Roy Police Department testified that he responded to C.B.'s 911 call on March 28, 2021. He stated that his body-worn camera showed the butter knife in the upstairs hallway that night.

¶ 37 Deputy Aaron King of the McLean County Sheriff's Office testified that he went to C.B.'s residence after March 28, 2021, and collected the butter knife that C.B. found in her hallway. He dusted the knife for fingerprints.

¶ 38 Robert Reneau of the Illinois State Police, a forensic scientist, was certified as an expert in latent fingerprints. He testified that he concluded that one of the two latent fingerprints on the butter knife found in C.B.'s hallway belonged to defendant. He stated that he did not know how long the print was on the knife and that it could have been left if the knife was sitting on the counter and someone placed their hand on it.

¶ 39 Detective Evan Henkel of the McLean County Sheriff's Office testified that C.B. called him to her home on January 13, 2022, to report previous phone harassment by defendant. C.B. provided Henkel with voicemails, missed calls, and text messages from January, February, and March 2021. In the incident report that he prepared on January 14, 2022, Henkel opined that defendant's text about the "rubbers" on January 3, 2021, "give[s] credibility to [C.B.'s] statement that [defendant] was inside her house and went through her belongings" when he entered her house that night. C.B. told Henkel that her relationship with defendant ended on January 1, 2021.

¶ 40 D. Steven Tjarks's Testimony

¶ 41 Steven Tjarks, defendant's friend, testified for the defense. He explained that defendant was a regular customer at Finish Line and that he and defendant would meet up there sometimes. When defense counsel asked Tjarks whether he saw defendant at Finish Line on March 28, 2021, he confirmed that he did. On cross-examination, he likewise testified that it was March

28, 2021, when he was “out with the defendant.” He stated that he did not remember what day of the week it was but that he “would say it was a weekend.” He did not remember what time he saw defendant at Finish Line. He testified that while he was talking with defendant, he saw a woman come up to defendant and thank him for something. She then said to defendant that “the door would be unlocked for [defendant] to come over.” Tjarks observed that the woman “appeared to have been drinking” and that defendant was also intoxicated. Tjarks testified that he had never met or seen the woman before, either alone or with defendant, and did not know her name.

¶ 42 Tjarks testified that he did not see defendant again for another year or year and a half. When he saw defendant again, he asked about defendant’s arrest, which led to a discussion of the events of March 28, 2021. The following exchange occurred during cross-examination:

“[THE STATE]: So when you’re having that conversation with [defendant] you ask him about the case that he was arrested on, right?

[TJARKS]: Uh-huh.

Q. And while you were talking to [defendant] on that day he told you that it was the girl from the Finish Line, didn’t he?

A. Oh, I assume so, yeah, that it was the same situation.

Q. Because he told you that it was, correct?

A. Well, I don’t remember how the conversation went.”

He later confirmed that defendant “could have” told him that it was the same woman.

¶ 43 Tjarks testified that shortly after their meeting, he was contacted by an investigator, who asked if he could identify the woman who had spoken to defendant at Finish Line that night. The investigator sent Tjarks a photo of C.B., and Tjarks confirmed she was the woman who he had seen talking to defendant at Finish Line on March 28, 2021. The only photos that the

investigator sent to Tjarks were of C.B.; he was not shown a photo lineup with several different women and asked to choose between them. A few days after that, Detective Henkel called Tjarks to discuss the case. Tjarks testified that he told Henkel that he had never seen the woman before and that he “probably” told Henkel during that conversation that he would not have recognized that woman if he saw her again after that night.

¶ 44 E. Jury Instructions and Deliberations

¶ 45 The parties presented their closing arguments beginning at 1:30 p.m. on January 18, 2024. Afterwards, the trial court instructed the jury, “The fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict,” mirroring Illinois Pattern Jury Instructions, Criminal, No. 2.04 (approved Dec. 8, 2011) (hereinafter IPI Criminal No. 2.04), as defense counsel requested. The jury deliberated until 5 p.m. on January 18 and resumed their deliberations in the morning on January 19. At 1:22 p.m. on January 19, the court received a note from the jury, asking, “What constitutes reasonable doubt?” The parties agreed to respond, “[I]t is for the jury to decide what constitutes a reasonable doubt. You have been given the instructions on the law in this case, and should rely on those instructions.” Shortly before 3:30 p.m., the jury returned a verdict of guilty on both counts.

¶ 46 F. Posttrial Proceedings

¶ 47 On February 6, 2024, defendant filed a motion for judgment notwithstanding the verdict. At a hearing on March 27, the trial court denied defendant’s motion and subsequently sentenced defendant to eight years in the Illinois Department of Corrections. Defendant filed a motion to reconsider his sentence, which the court denied on June 26, 2024.

¶ 48 This appeal followed.

¶ 49

II. ANALYSIS

¶ 50 On appeal, defendant argues that (1) the trial court erred in admonishing potential jurors under Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) when it improperly phrased the fourth principle enumerated in that rule and (2) alternatively, his trial counsel was ineffective to the extent that she acquiesced in the court's failure to strictly comply with Rule 431(b). Defendant acknowledges that he failed to preserve this issue for appeal through a timely objection or posttrial motion but contends that this court may consider his claim under plain-error review. In turn, the State argues that no error occurred—or alternatively, that any error was cured—because shortly after the court's statements, defense counsel repeated all four Rule 431(b) principles using the proper language.

¶ 51 Defendant admits he did not preserve this issue for appeal but contends that we may review it under the first prong of the plain-error doctrine. See *People v. Birge*, 2021 IL 125644, ¶ 23. An unpreserved error may be considered on appeal under the plain-error doctrine if (1) “a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) “a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *Birge*, 2021 IL 125644, ¶ 24. The defendant bears the burden of persuasion under both prongs. *Birge*, 2021 IL 125644, ¶ 24. However, the Illinois Supreme Court has held that a “Rule 431(b) violation is not cognizable under the second prong of the plain error doctrine, absent evidence that the violation produced a biased jury.” *People v. Sebby*, 2017 IL 119445, ¶ 52. The first step under the plain-error doctrine is determining whether a clear or obvious

error occurred. *Birge*, 2021 IL 125644, ¶ 24. We review the trial court’s compliance with Rule 431(b) *de novo*. *People v. Thompson*, 238 Ill. 2d 598, 606 (2010).

¶ 52 Rule 431(b) was adopted to ensure compliance with the requirements of *Zehr*. See Ill. S. Ct. R. 431(b), Committee Comments (rev. July 1, 2012). The rule establishes:

“The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her.” Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 53 The supreme court has stringently applied Rule 431(b), finding that the rule “mandates a specific question and response process.” *Thompson*, 238 Ill. 2d at 607. In *People v. Wilmington*, 2013 IL 112938, ¶ 28, the trial court asked prospective jurors whether they “disagree[d]” with the *Zehr* principles, as opposed to whether they understood and accepted them. The supreme court held that was insufficient under Rule 431(b) and noted, “While it may be arguable that the court’s asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court’s failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself.” (Emphases in original). *Wilmington*, 2013 IL 112938, ¶ 32; see *Thompson*, 238 Ill. 2d at 607 (finding a clear violation of Rule 431(b) where the trial court asked potential jurors if they understood, but not if they accepted, the presumption of innocence). More recently, the supreme court found a clear error where the court asked prospective jurors “whether they ‘had any problems with’ or ‘believed in’ [the *Zehr*] principles” rather than

whether they “understood” and “accepted” them. *Sebby*, 2017 IL 119445, ¶ 49. Though *Wilmington* suggested that asking whether jurors disagreed with the *Zehr* principles may be acceptably equivalent to asking whether prospective jurors accepted them, *Sebby* suggests that Rule 431(b) mandates the trial court to ask, verbatim, whether the jurors both “understand” and “accept” each of the four principles. The supreme court thus seems to have singled out Rule 431(b) to require stricter compliance than other rules. See, e.g., *People v. Brown*, 2023 IL App (3d) 210181, ¶ 51 (holding substantial compliance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), addressing admonishments about waiver of counsel, is sufficient); *People v. Dominguez*, 2012 IL 111336, ¶¶ 15-19 (discussing that the language of Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) requiring the court to “advise the defendant *substantially* as follows” requires imparting only the rule’s essence, not reading it verbatim (emphasis in original)); *People v. Newman*, 365 Ill. App. 3d 285, 288 (2006) (“Substantial compliance with [Illinois Supreme Court] Rule 402 [(eff. July 1, 1997)] [addressing admonishments before accepting a guilty plea] is sufficient to establish due process.”).

¶ 54 Though the supreme court has addressed verbatim questioning under Rule 431(b), it has not yet addressed whether the principles themselves must be read verbatim. Appellate courts appear to be split on this issue. See *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 38 (holding that the statement that “ ‘[t]he defendant is not required to prove his [*sic*] innocence’ ” sufficiently conveyed the third principle that “the defendant was not obligated to present evidence on her behalf”); *People v. Atherton*, 406 Ill. App. 3d 598, 611 (2d Dist. 2010) (holding that the instruction that the “ ‘defendant does not have the burden of proving himself innocent’ ” sufficiently conveyed the third principle); *People v. Chester*, 409 Ill. App. 3d 442, 447 (4th Dist. 2011) (“Rule 431(b) does not require the court to recite the principles verbatim,” and the trial court’s “statement that

‘defendant is not required to prove his innocence’ would be interpreted by a reasonable jury” to convey the third principle because “if defendant is not required to prove his innocence, he has no reason to present evidence.”); but see *People v. Raymond*, 404 Ill. App. 3d 1028, 1055 (1st Dist. 2010) (“[T]here is a difference between stating that a defendant is not required to *prove* his innocence—indicating that the burden of proof is on the State—and explaining that defendant was not required to produce *any* evidence.” (Emphases in original.)); *People v. McGuire*, 2017 IL App (4th) 150695, ¶¶ 32, 35 (noting that “courts must exercise diligence when instructing the jury of the *Zehr* principles as codified in Rule 431(b) and must not deviate in any way from the precise language chosen by the Illinois Supreme Court to be in that rule” but ultimately finding that the defendant was barred from challenging the Rule 431(b) admonishments under the invited-error doctrine).

¶ 55 The supreme court has, however, expressly addressed the precise wording of the fourth *Zehr* principle through the rulemaking process. Under the prior version of Rule 431(b), the fourth principle read: “the defendant’s failure to testify cannot be held against him or her.” Ill. S. Ct. R. 431(b) (eff. May 1, 2007). On April 26, 2012, the supreme court amended this rule to its current language: “if a defendant does not testify it cannot be held against him or her.” Ill. S. Ct. R. 431(b) (eff. July 1, 2012). With supreme court rules, as with statutes, “[i]t is presumed that every amendment *** is made for some purpose, and effect must be given to the amended law in a manner consistent with the amendment.” (Internal quotation marks omitted.) *People v. Burge*, 2021 IL 125642, ¶ 33; see *Thompson*, 238 Ill. 2d at 606 (“The interpretation of this court’s rules is controlled by the same principles applicable to the construction of statutes.”). The only change the supreme court made to Rule 431(b) that year was to remove the word “failure” and restructure

the sentence correspondingly. Thus, we must presume that the supreme court made this change intentionally.

¶ 56 With these principles in mind, the trial court’s use of the 2007 version of Rule 431(b)—“failure to testify”—constitutes clear and obvious error. The court was required to apply the current version of the rule using the amended language. See *People v. Hammonds*, 409 Ill. App. 3d 838, 858 (2011) (“There is no question that, in the case at bar, the trial court erred. The 2007 version applied to the case at bar, and the trial court failed to implement the changed version.”). If the supreme court believed the language was interchangeable, it would not have amended the rule specifically to replace those three words. This finding is also in accordance with this court’s decision in *People v. Neal*, 2020 IL App (4th) 170869, ¶¶ 172, 174, where we accepted the State’s concession of error in instructing potential jurors using the preamendment language, “ ‘failure to testify.’ ”; but see *Beacham v. Walker*, 231 Ill. 2d 51, 60 (2008) (stating a reviewing court is not bound by a party’s concession of error).

¶ 57 The State argues that any error made by the trial court was cured by defense counsel’s restatement of the correct principle soon thereafter. Yet the State concedes that a violation of Rule 431(b) during *voir dire* cannot later be cured by using a proper instruction, such as IPI Criminal No. 2.04, prior to jury deliberations. *Sebby*, 2017 IL 119445, ¶¶ 73-77. Likewise, this court has found that defense counsel cannot cure the court’s error by properly reciting a *Zehr* principle during *voir dire*, as “the court itself is required to address this principle.” *Chester*, 409 Ill. App. 3d at 447. Thus, any error could not have been cured by defense counsel’s restatement of the fourth *Zehr* principle during *voir dire* or by the posttrial instruction given to the jury.

¶ 58 Though defendant argues that the use of the word “failure” had negative and prejudicial connotations, we need not address whether defendant was prejudiced in this exact way.

The core of first-prong-plain-error jurisprudence dictates that “whether a Rule 431(b) violation is trivial or *de minimis*—and we have repeatedly stated that it is neither—is simply the wrong inquiry,” as “prejudice rests not upon the seriousness of the error but upon the closeness of the evidence.” *Sebby*, 2017 IL 119445, ¶¶ 68-69.

¶ 59 Having determined that a clear and obvious error occurred, defendant is entitled to a new trial if the evidence at trial was closely balanced. In determining whether the evidence is closely balanced, “a reviewing court must make a commonsense assessment of the evidence within the context of the circumstances of the individual case.” *People v. Belknap*, 2014 IL 117094, ¶ 52. This analysis “does not involve the sufficiency of close evidence but rather the closeness of sufficient evidence.” *Sebby*, 2017 IL 119445, ¶ 60. “For purposes of plain-error analysis, ‘closely balanced’ means that the key testimony is uncorroborated by extrinsic evidence and the testimony presents a choice between competing and plausible accounts.” *People v. Saulsberry*, 2021 IL App (2d) 181027, ¶ 103.

¶ 60 Several facts lead us to conclude that the evidence in this case was closely balanced. The case hinged on the credibility of C.B.’s testimony that defendant entered her home without authority and rubbed her back through her clothes with his penis while she slept. Defendant relied on the testimony of Tjarks to show that C.B. invited defendant over to her house on the night in question, thus generally undermining C.B.’s allegations. There were only a few pieces of nontestimonial evidence—the front door being unlocked, the photos from C.B.’s Ring camera, the photo of two cups in the sink, the bent butter knife with defendant’s fingerprints—and they did not directly corroborate or conflict with either C.B.’s or Tjarks’s testimony. C.B.’s front door was unlocked that night; however, it was unclear from her testimony whether she routinely left it unlocked or left it unlocked only when she was expecting defendant or a different friend to come

over. Either way, the fact that the door was unlocked that night does not conclusively support either account. The hour-long gap between defendant's arrival at C.B.'s house and C.B.'s call to the police, as well as the photo of the two cups in the sink, could or could not imply that C.B. and defendant had a conversation during that time. The bent butter knife with defendant's fingerprints seems to corroborate C.B.'s account of defendant's attempt to unlock her bedroom door after she told him to leave (and after the events giving rise to the charges) but is ultimately not conclusive of whether he was invited to her house that night in the first place or whether he sexually assaulted her.

¶ 61 As there was no conclusive nontestimonial evidence presented at trial, the case hinged entirely on a credibility contest between C.B. and Tjarks. C.B.'s testimony and text messages showed that she "tried" to break up with defendant at least four times but reinitiated the relationship repeatedly. Each time after she attempted to end the relationship, she texted defendant to leave her alone and even threatened, on January 28, 2021, to "go to the cops." However, just a few days later, she invited defendant to come to her house again. Though she testified that the relationship was "done-done" after February 19, 2021—and the texts and call logs confirm that she did not reply to any of defendant's calls or most of his texts after that date—there was no nontestimonial evidence that directly contradicted Tjarks's testimony that C.B. invited defendant to her house on March 27, 2021, when she saw him at Finish Line that night.

¶ 62 Tjarks's testimony certainly presented credibility issues, as (1) his comment to Henkel that he probably would not have recognized C.B. after that night seems to undermine his ability to identify C.B. in a photo, (2) he testified that he saw defendant on March 28, though the events at issue in this case occurred on March 27, and (3) his identification of C.B. as the woman at the bar is less reliable given that defendant likely told him that the woman he saw in the bar that

night was the same as the one involved in the criminal case. However, his account was still plausible, and it is for a jury, not this court, to make credibility determinations about the key disputed issue in a criminal case.

¶ 63 Overall, the key testimony was uncorroborated by nontestimonial evidence and presented a choice between C.B.’s and Tjarks’s competing and plausible versions of events. See *Saulsberry*, 2021 IL App (2d) 181027, ¶ 103. Because the outcome of the case depended on a credibility contest between C.B. and Tjarks, the evidence presented at trial was closely balanced.

¶ 64 The length of jury deliberations supports this conclusion. We acknowledge that the length of jury deliberations “is not always an accurate indicator of whether the evidence was closely balanced.” *People v. Walker*, 211 Ill. 2d 317, 342 (2004); see *Wilmington*, 2013 IL 112938, ¶ 35 (“[A]lthough the jury sent notes to the judge during the deliberative process, there is no indication in the record that the jury at any time had reached an impasse or that the jurors themselves considered this a close case.”). However, “in certain cases, a lengthy deliberation accompanied by a note from the jury demonstrates the closeness of the evidence.” *People v. Scott*, 2015 IL App (4th) 130222, ¶ 37 (finding the lengthy deliberation and notes from the jury were inconsequential where the evidence against the defendant was overwhelming). Here, it was not a particularly lengthy trial necessitating intense deliberations. See *People v. Bliefnick*, 2024 IL App (4th) 230707, ¶ 280 (“[F]ive hours of deliberations following a week-long murder trial is hardly unexpected.”). Yet the jury began their deliberations in the afternoon of January 18, 2024, and did not deliver their verdict until around 3:30 p.m. on January 19. After deliberating for several hours, the jury sent a note to the trial court at 1:30 p.m. on January 19, 2024, asking about the definition of reasonable doubt. The evidence against defendant was certainly not overwhelming. Moreover, the jury note suggests that jurors were uncertain about how confident they had to be to convict

defendant. The length of deliberations and the jury note thus support an inference that the jurors themselves believed the evidence to be close.

¶ 65 Because defendant has demonstrated that there was a clear and obvious error in the trial court's Rule 431(b) admonishments and that the evidence was closely balanced, defendant is entitled to relief under the first prong of the plain-error doctrine. Under these circumstances, it is possible that the trial court's failure to comply with Rule 431(b) tipped the scales and prejudiced defendant. See *Sebby*, 2017 IL 119445, ¶ 78 ("It is not inevitable that a jury who receives faulty instructions on the *Zehr* principles is biased [citations], but it is possible. And if it is possible, it is also possible that those faulty instructions contributed to the result.").

¶ 66 Trial courts must exercise diligence when admonishing potential jurors under Rule 431(b), especially in those cases involving charges and rights as serious as those at issue here. The easiest way to ensure compliance with the rule is to recite the precise language chosen by the Illinois Supreme Court. See *Neal*, 2020 IL App (4th) 170869, ¶¶ 188-89 (acknowledging that "[b]eing a trial judge can be a difficult job, often requiring careful study to properly apply difficult legal concepts and to ensure that a jury is properly instructed on the law" but emphasizing that "there is no excuse for a trial judge to not strictly comply with the clear and explicit directions the supreme court has provided for trial courts when admonishing prospective jurors"). Likewise, both defense counsel and prosecutors must be aware of the strict requirements of Rule 431(b) so that they can object to any improper deviation from the rule and allow the court to immediately rectify the error.

¶ 67 For the reasons stated, we reverse defendant's convictions and remand for a new trial. As a result, we need not address defendant's alternate argument that his trial counsel was ineffective. While we reverse defendant's convictions, we find the evidence was sufficient to prove

defendant guilty beyond a reasonable doubt. The jury was tasked with making a credibility determination between C.B. and Tjarks and ultimately gave more credence to C.B.'s testimony. Thus, we find there is no double jeopardy impediment to a new trial. However, we reach no conclusion regarding defendant's guilt that would be binding on retrial. See *People v. Naylor*, 229 Ill. 2d 584, 611 (2008).

¶ 68

III. CONCLUSION

¶ 69 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 70 Reversed and remanded.

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS**

THE PEOPLE OF THE STATE OF ILLINOIS

VS.

BRENT J. BURTON

CASE NO: 2021 CF 374

JUDGE: WILLIAM YODER

NOTICE OF APPEAL

Joining Prior Appeal / **Separate Appeal** / Cross Appeal
(circle one)

An Appeal is taken from the order or judgment described below:

1. Court to which Appeal is taken:
**ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
201 W. MONROE ST
SPRINGFIELD, IL 62704**

Email:

McLEAN

FILED

JUL 03 2024

COUNTY

CIRCUIT CLERK

2. Name of Appellant and address to which Notices shall be sent:
**HILL CORRECTIONAL CENTER
BRENT J. BURTON #Y62883
P. O. BOX 1700
GALESBURG, IL 61402**

N/A

3. Name and address of appellant's attorney on appeal:
**ILLINOIS APPELLATE DEFENDER
JAMES E. CHADD
400 WEST MONROE, SUITE 303
SPRINGFIELD, IL 62705-5240**

Email:

4thDistrict@osad.state.il.us

If appellant is indigent and has no attorney, does he want one appointed? **YES**

4. Date of order of judgment: **06/26/2024**
5. Offense of which convicted: **CT1: HOME INVASION**
6. Sentence: **CT1: 8YRS IN IDOC**
7. If appeal is not from a conviction, nature of order appealed from: **CONVICTION, SENTENCE, & DENIAL OF MOTION TO RECONSIDER**
8. If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

Don R. Everhart Jr.
Don R. Everhart, Jr., Circuit Clerk

Maribela Canillo
Deputy

IN THE CIRCUIT COURT OF McLEAN COUNTY, ILLINOIS
ELEVENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

Vs.

Brent Burton

Defendant

Case No. 21-CF-374Date of Sentence 3/27/24Date of Birth 5/14/1974

(Defendant)

FILED

MAR 27 2024

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF	STATUTORY CITATION	CLASS	SENTENCE	MSR
<u>1</u>	<u>Home Invasion</u>	<u>3/28/21</u>	<u>720 ILCS 5/9-6(a)(6)</u>	<u>X</u>	<u>8</u> Yrs. <u>0</u> Mos. <u>1</u> Yrs. <u>60</u> Mos.	
To run (concurrent with) (consecutively to) count(s) _____ and served at (50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3) Per PRB, MSR up to 12 Mos.						
To run (concurrent with) (consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3 Per PRB, MSR up to 12 Mos.						
To run (concurrent with) (consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3 Per PRB, MSR up to 12 Mos.						

This Court finds that the defendant is:

- ☐ Convicted of a class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95.
- ☐ Convicted of a Class 3 or 4 offense (other than a violent crime as defined in Section 3 of the Rights of Crime Victims & Witnesses Act)
- ☐ 4 or more months remaining _____ fewer than 4 months remaining 730 ILCS 5/5-4-1(c-7) (effective 7/1/21 P.A. 101-652)

X The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 72 days as of the date of this order) from (specify dates) 3/28/21 - 3/21/21 & 1/19/24 - 3/24/24 and/or credit for time served on electronic monitoring, GPS monitoring, or home confinement (of _____ days as of the date of this order) from (specify dates) _____. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until the defendant is received at the Illinois Department of Corrections.

_____ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii))

_____ The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a))

_____ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a))

_____ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program _____ Educational/Vocational _____ Substance Abuse _____ Behavior Modification _____ Life Skills _____ Re-Entry Planning -- provided by the county jail while held in pre-trial detention prior to this commitment and if eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded one day of sentence credit for each day in which the Defendant is engaged in the activities, _____ days, if not previously awarded. (effective 7/1/21 P.A. 101-652)

_____ The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 90 days of additional sentence credit, if not previously awarded.

_____ The Court further finds that the Defendant served _____ days engaged in a self-improvement program, volunteer work, or work assignments, and shall receive 0.5 days of sentence credit for each day the Defendant was engaged in activities for a total of _____. (730 ILCS 5/3-6-3(a)(4.2))

_____ The Court further finds that the Defendant has been advised of and given a copy of the financial obligations and statutory fines, fees and assessments pursuant to SCR 452.

_____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.

X IT IS FURTHER ORDERED that Defendant is subject to 10 years sex offender registration. The Clerk of the Court shall deliver a certified copy of this order to the sheriff. The Sheriff shall take the defendant into custody and deliver the defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (X effective immediately) (_____ stayed until _____).

DATE: 3/27/24ENTER: William Yoder

(PLEASE PRINT JUDGE'S NAME HERE)

IN THE ELEVENTH JUDICIAL CIRCUIT OF THE
STATE OF ILLINOIS -- MCLEAN COUNTY

THE PEOPLE OF THE)
STATE OF ILLINOIS,)
)
 Plaintiff,)
)
 vs.) No. 21-CF-374
)
BRENT BURTON,)
)
 Defendant.)

REPORT OF THE JURY TRIAL PROCEEDINGS
before the HONORABLE WILLIAM YODER, on the 16th
day of January, 2024.

APPEARANCES:

MS. ASHLEY SCARBOROUGH -- Assistant State's
Attorney, on behalf of the plaintiff;
MS. STEPHANIE WONG -- Attorney at law,
on behalf of the defendant.

Reported by:

Donna F. Banks, CSR.
License #084-003612.

1 ask for your input on when you want that
2 presented, if you want it presented immediately
3 before the testimony, immediately after the
4 testimony. I'm going to ask counsel, both of
5 you to prepare an appropriate jury instruction
6 for that, or cooperate on that. If there is no
7 agreement reached as to what the appropriate
8 instruction is, then we'll address that prior
9 to the testimony being tendered.

10 Ms. Wong, in relation to the fourth
11 Zehr principle that the defendant's failure to
12 testify cannot be held against him, do you wish
13 to have that principle read?

14 MS. WONG: Yes.

15 THE COURT: I will give the fourth Zehr
16 principle.

17 Any motions for directed verdict,
18 motions for mistrial are not to be made in
19 front of the jury. If either party wishes to
20 make such a motion let me know, I will send the
21 jury out of the courtroom, and then we will
22 address that motion. Those are not to be made
23 in front of the jury.

24 Objections I would like to have a

1 or gratification. The defendant has pleaded
2 not guilty to these charges.

3 The indictment is the formal method of
4 charging an offense. Again, the defendant has
5 pleaded not guilty. I will caution you now
6 that the charges are not to be considered by
7 you as any evidence against the defendant. You
8 may not draw any inference or presumption of
9 guilt against the defendant just because he has
10 been charged. In fact, under the laws of this
11 country the presumption is exactly the
12 opposite. Every defendant in our country is
13 presumed innocent of the charges. This
14 presumption remains with the defendant
15 throughout every stage of the trial, even
16 through your deliberations on your verdict, and
17 is not overcome unless from all of the evidence
18 in this case you are convinced beyond a
19 reasonable doubt that the defendant is guilty.

20 The State has the burden of proving
21 the guilt of the defendant beyond a reasonable
22 doubt, and this burden remains on the State
23 throughout the case. A defendant is not
24 required to prove his innocence, nor is the

1 defendant required to present any evidence at
2 all. A defendant may simply rely on the
3 presumption of innocence. Moreover, a
4 defendant has a constitutional right not to
5 testify, and the jury may not draw any
6 inference of guilt if the defendant does not
7 testify.

8 I'm now going to read to you a list of
9 possible witnesses in this case. I'm going to
10 ask you listen carefully to this list because
11 in a few minutes I'm going to come back to each
12 of you and ask whether you recognize any of
13 these names.

14 MS. WONG: Your Honor, may we approach
15 briefly?

16 (Discussion held at the bench.)

17 MS. WONG: Your Honor, if we could verify
18 that people are sitting in the right position?
19 She doesn't look like Matthew and he doesn't
20 look like Wilma.

21 THE COURT: Thank you.

22 (Discussion at the bench concluded.)

23 THE COURT: Ladies and gentlemen, I'm
24 going to verify that everyone is seated in the

1 Mr. Stauter?

2 POTENTIAL JUROR MR. STAUTER: Yes, sir.

3 It was probably 40 years ago I was on two
4 cases. One was condemning a property and the
5 other one was theft.

6 THE COURT: So one of those is criminal,
7 one is not. The different burdens I believe,
8 I'm not exactly sure on the condemnation case,
9 but I believe that would be a preponderance of
10 the evidence burden which is a slight tipping
11 of the case. Nonetheless, the burden in this
12 case is proof beyond a reasonable doubt. Do
13 you understand the difference in those burdens?

14 POTENTIAL JUROR MR. STAUTER: Yes, sir.

15 THE COURT: Anything about your service on
16 either of those cases that would affect your
17 ability to be fair and impartial in this case?

18 POTENTIAL JUROR MR. STAUTER: No, sir.

19 THE COURT: Thank you.

20 Any other jury service on the left
21 side there? I see none. Thank you.

22 So I'm now going to read to you a
23 series of four legal principles. These are
24 called the Zehr principles. Z-e-h-r, Zehr

1 principles. After I read these I'm going to
2 come to each one of you by name individually
3 and ask whether you understand and accept each
4 of these four legal principles.

5 Do each of you understand and accept
6 each of the four legal principles. First, that
7 the defendant is presumed innocent of the
8 charges against him. Second, that before a
9 defendant can be convicted the State must prove
10 the defendant guilty beyond a reasonable doubt.
11 Third, that the defendant is not required to
12 offer any evidence on his own -- I'm sorry.
13 That the defendant is not required to offer any
14 evidence on his own behalf, and four, that the
15 defendant's failure to testify cannot be held
16 against him.

17 Do each of you understand and accept
18 each of those four legal principles?

19 Ms. Kulicke?

20 POTENTIAL JUROR MS. KULICKE: Yes, sir.

21 THE COURT: Mr. Mudiandambo?

22 POTENTIAL JUROR MR. MUDIANDAMBO: Yes.

23 THE COURT: Ms. Selman?

24 POTENTIAL JUROR MS. SELMAN: Yes.

1 THE COURT: Mr. Bork?

2 POTENTIAL JUROR MR. BORK: Yes, Your
3 Honor.

4 THE COURT: Mr. Wages?

5 POTENTIAL JUROR MS. WAGES: Yes.

6 THE COURT: Mr. Ross?

7 POTENTIAL JUROR MR. ROSS: Yes, Your
8 Honor.

9 THE COURT: Mr. Braman?

10 POTENTIAL JUROR MR. BRAMAN: Yes, Your
11 Honor.

12 THE COURT: Mr. Freeman?

13 POTENTIAL JUROR MR. FREEMAN: Yes, Your
14 Honor.

15 THE COURT: Mr. Bartosik?

16 POTENTIAL JUROR MR. BARTOSIK: Yes, Your
17 Honor.

18 THE COURT: Ms. Borkholder?

19 POTENTIAL JUROR MS. BORKHOLDER: Yes, Your
20 Honor.

21 THE COURT: Ms. Lewis?

22 POTENTIAL JUROR MS. LEWIS: Yes, Your
23 Honor.

24 THE COURT: Ms. Zeck?

1 POTENTIAL JUROR MS. ZECK: Yes, Your
2 Honor.

3 THE COURT: Ms. Rustemeyer?

4 POTENTIAL JUROR MS. RUSTEMEYER: Yes, Your
5 Honor.

6 THE COURT: Mr. Marcum?

7 POTENTIAL JUROR MR. MARCUM: Yes, Your
8 Honor.

9 THE COURT: Ms. Lerblanca?

10 POTENTIAL JUROR MS. LERBLANCA: Yes, Your
11 Honor.

12 THE COURT: Mr. Lyle?

13 POTENTIAL JUROR MR. LYLE: Yes, Your
14 Honor.

15 THE COURT: Mr. Jamerson?

16 POTENTIAL JUROR MR. JAMERSON: Yes, Your
17 Honor.

18 THE COURT: Mr. Milton?

19 POTENTIAL JUROR MR. MILTON: Yes, Your
20 Honor.

21 THE COURT: Ms. Lash?

22 POTENTIAL JUROR MS. LASH: Yes, Your
23 Honor.

24 THE COURT: Mr. Hopkins?

1 POTENTIAL JUROR MR. HOPKINS: Yes, Your
2 Honor.

3 THE COURT: Ms. Heinold?

4 POTENTIAL JUROR MS. HEINOLD: Yes, Your
5 Honor.

6 THE COURT: Ms. Heier?

7 POTENTIAL JUROR MS. HEIER: Yes, Your
8 Honor.

9 THE COURT: Mr. Stauter?

10 POTENTIAL JUROR MR. STAUTER: Yes, Your
11 Honor.

12 THE COURT: Mr. Arvin?

13 POTENTIAL JUROR MR. ARVIN: Yes, Your
14 Honor.

15 THE COURT: Mr. Osburn?

16 POTENTIAL JUROR MR. OSBURN: Yes, Your
17 Honor.

18 THE COURT: Ms. Ware?

19 POTENTIAL JUROR MS. WARE: Yes, Your
20 Honor.

21 THE COURT: Mr. Royalty?

22 POTENTIAL JUROR MR. ROYALTY: Yes, Your
23 Honor.

24 THE COURT: Ms. Meyer?

1 POTENTIAL JUROR MS. MEYER: Yes.

2 THE COURT: Mr. Pettit?

3 POTENTIAL JUROR MR. PETTIT: Yes.

4 THE COURT: Ms. Clark?

5 POTENTIAL JUROR MS. CLARK: Yes, Your
6 Honor.

7 THE COURT: Ms. Cable?

8 POTENTIAL JUROR MS. CABLE: Yes, Your
9 Honor.

10 THE COURT: Ms. Guither?

11 POTENTIAL JUROR MS. GUITHER: Yes, Your
12 Honor.

13 THE COURT: Ladies and gentlemen, my last
14 question to you, is there anything going on in
15 your lives right now, we're past the holidays,
16 we're in a pretty significant cold snap, but is
17 there anything going on in your life right now
18 that is so front and center in your mind that
19 you can't think of anything else other than
20 that such that you would not be able to sit
21 here, listen to the evidence in this case, and
22 be a fair and impartial juror? Whatever is
23 there is so dominating your thoughts that you
24 can't sit and function here in the courtroom.

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

Brent Burton

Plaintiff/Petitioner

Reviewing Court No: 4-24-0933

Circuit Court/Agency No: 2021CF000374

v.

Trial Judge/Hearing Officer: WILLIAM YODER

THE PEOPLE OF THE STATE OF ILLINOIS

Defendant/Respondent

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Seth Wiseman	R524	R530		
Evan Henkel	R531	R534	R542	R543
Aaron King	R545	R554		
Robert King	R561	R567		
Robert Reneau	R575	R600		
Defense Case-in-Chief				
Jacob Shepard	R612			
Steven Tjarks	R617	R634	R644	

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

Brent Burton

Plaintiff/Petitioner

Reviewing Court No: 4-24-0933

Circuit Court/Agency No: 2021CF000374

v.

Trial Judge/Hearing Officer: WILLIAM YODER

THE PEOPLE OF THE STATE OF ILLINOIS

Defendant/Respondent

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1/29/2026 9:05 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 16, 2026, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email address of the person named below:

Maria A. Harrigan
Office of the State Appellate Defender
400 West Monroe Street, Suite 303
Springfield, Illinois 62704
4thdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

/s/ Erin M. O'Connell

ERIN M. O'CONNELL

Assistant Attorney General