No. 126729

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. KELVIN T. HARTFIELD, Defendant-Appellee.	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-17-0787 There on Appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 16 CF 1055 The Honorable Thomas J. Difanis, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Defendant was convicted by a jury of one count of armed robbery under 720 ILCS 5/18-2(a)(2) and four counts of aggravated discharge of a firearm under 720 ILCS 5/24-1.2(a)(3). The Illinois Appellate Court, Fourth District, vacated three of the aggravated discharge convictions because the charging instruments did not differentiate between the shots defendant fired at each officer. The People now appeal from that judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether 720 ILCS 5/24-1.2(a)(3) authorizes multiple convictions when multiple officers were in the line of fire of a single discharge of a firearm.

2. Whether defendant's multiple convictions should stand even if 720 ILCS 5/24-1.2(a)(3) requires one shot for each conviction of aggravated discharge of a firearm.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a), 604(a)(2), and 612(b)(2). On January 27, 2021, this Court allowed the People's petition for leave to appeal.

STATUTE INVOLVED

720 ILCS 5/24-1.2:

> (a) A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:

* * *

> (3) Discharges a firearm in the direction of a person he or she knows to be a peace officer, a community policing volunteer, a correctional institution employee, or a fireman while the officer, volunteer, employee or fireman is engaged in the execution of any of his or her official duties, or to prevent the officer, volunteer, employee or fireman from performing his or her official duties, or in retaliation for the officer, volunteer, employee or fireman performing his or her official duties;

STATEMENT OF FACTS

A. The charges

After defendant and an accomplice robbed a gas station, defendant fled and fired multiple shots at the pursuing officers. *See* A5-6, ¶¶ 17-20. In addition to armed robbery, defendant was charged with four counts of aggravated discharge of a firearm, with each count charging that "on July 26, 2016, in Champaign County, Kelvin D. Hartfield committed the offense of AGGRAVATED DISCHARGE OF A FIREARM[,] Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION[,] in that the said defendant knowingly discharged a firearm in the direction of [the officer], a person he knew to be a peace officer and, at the time, [the officer] was engaged in the execution of his official duties"; each count named an individual police officer as a victim: Joshua Demko, Richard Ferriman, Casey Donovan, and Rob Derouchie. A35-38.[1]

---

[1] "C_," "SupC_," R_," and "A_" refer to the common law record, the supplemental common law record, the report of proceedings, and the appendix to this brief, respectively.

B. Trial evidence

The evidence at trial showed that defendant and another man entered a gas station in Urbana, Illinois, in the middle of the night, and one of them was waving a gun. R179. They stole cash and cartons of cigarettes, R182, then drove off in a tan Buick, R189.

Officer Joshua Demko, a deputy with the Champaign County Sheriff's Office, saw a tan Buick that matched the description of the vehicle used in the reported robbery pull into a parking spot near a mobile home park. R271. Demko communicated with fellow deputies Richard Ferriman, Casey Donovan, and Robert Derouchie, and they agreed to try to get closer in order to get a better view of the vehicle. R274.

Demko and Derouchie parked their vehicles near the entrance to the mobile home park and approached the Buick on foot. R221, R274. A Hyundai, which was parked next to the Buick, had its trunk open. R221-22, 277-78.

As Ferriman and Donovan approached from a different direction, they shone their flashlights on the Hyundai, and defendant got out and began walking away, ignoring the commands of Ferriman and Donovan to stop; instead, he quickened his pace. R222-25, 293-94, 279-80, 292 307-09. Demko and Derouchie, who also had been following defendant, emerged from between two trailers near him. R282, 297, 310.

Defendant ran. R282. The officers gave chase, and when Demko was about four feet away, defendant turned and extended his right arm, at which point Demko saw "muzzle flashes" and heard "two loud bangs." *Id.* The other officers were behind Demko. R284. Derouchie thought that three to five shots had been fired, R226, Ferriman thought two to three shots had been fired, R297-98, and Donovan heard "at least three shots," R310-11.

Derouchie took cover behind a nearby trailer, then went with Donovan to focus on the passenger still in the Hyundai, while Demko and Ferriman followed defendant. R226-28. Ferriman continued to chase defendant, who then fired another shot at Ferriman, R299, before he escaped, R287.

Tierykah Wiley, the other passenger in the Hyundai, told police that she was in the Buick with defendant and another individual and then in the Hyundai while defendant was transferring the stolen items from the Buick to the Hyundai. *See* R251. Jamona Collier, Wiley's best friend, testified that later that night defendant called her looking for Wiley, and defendant told Collier that he had shot at police. R265. Also that night, defendant knocked on the window of his brother's best friend, whose mother, Lenore Smith, answered, and she then bandaged up a cut on defendant's arm. R320.

Police investigators found at least two holes at the scene that appeared to be the result of defendant's first round of shots. R288. A fingerprint on the Hyundai passenger window matched defendant's, R520, as did a print on the stolen cigarettes, R527.

Three weeks after the robbery, a man who lived near the trailer park found a revolver on his property while spraying for weeds and turned it over to the police. R212-15. The gun contained three spent shell casings and two live rounds. R367, 369.

C. Closing arguments, jury instructions, and deliberations

During closing argument, the prosecutor explained that "for each of those individual officers, there is an individual count of aggravated discharge of a firearm; that's why there's four of them." R554. In other words, there was "one count for shooting in the direction of Rob Derouchie, one for in the direction of Demko, one for in the direction of Donovan, and one for in the direction of Ferriman." *Id.* The People suggested that "logically, although obviously we don't, we can't know this, but it seems likely there were probably three shots fired by the Defendant." R565. Defense counsel neither objected to this framing of the issues during the People's argument nor presented a contrary account in his own closing argument. R565, 591-605.

For each aggravated discharge of a firearm count, the trial court instructed the jury that it had to find that defendant (1) "knowingly discharged a firearm" (2) "in the direction of [the officer]," (3) that defendant "knew that [the officer] was a peace officer," and (4) that "the peace officer was engaged in the execution of his official duties." 621-23. Defendant did not object to the jury instructions. R541-42.

During deliberations, the jury sent out a note to the trial court that asked:

> Does suspect need to know there were 4 cops on the scene in the area where gun was fired to be guilty of all four counts of aggravated discharge of [a] firearm?
>
> [T]hird proposition, that the defendant knew that _____ was [a] peace officer.

SupC3.

In the ensuing discussion between the trial court and attorneys, the trial court explained that the jury had to make a determination as to each specific officer, not the total number. R630-31. Defense counsel stated, "please note my objection to any -- I believe the appropriate response is, you've been instructed as to the law. Please note my objection to any -- anything beyond that." R632.

With the prosecutor's approval, the court sent the following written response to the jury:

> Question #1
> No[.]
>
> Question #2
> You must determine based on the evidence which officer or officers, if any, may have been in the line of fire when the firearm was discharged.

SupC4.

D. Guilty finding and sentencing

The jury found defendant guilty of armed robbery and all four aggravated discharge of a firearm convictions. R634. The trial court denied

defendant's post-trial motion, R641, which argued in relevant part that the court's response to the jury's note should have only instructed them to follow the law as previously instructed, C257.

The trial court sentenced defendant to concurrent terms of imprisonment of 10 years for the three aggravated discharge of a firearm convictions, and to two consecutive 40-year terms of imprisonment for the armed robbery and for the fourth aggravated discharge of a firearm conviction, because in committing that offense, defendant was not "shooting wildly" but "aimed" and almost hit Ferriman. R660-61; C274.

E. The appellate court ruling

The appellate court vacated three of the aggravated discharge convictions as statutorily unauthorized. A31 ¶ 94. The court reasoned that "there is one offense per 'discharge,' not one offense per person in the group toward which the firearm is discharged," A25 ¶ 78, and that in "the charging instrument, the State differentiated between peace officers instead of between discharges of the firearm in their direction," A30 ¶ 91.

STANDARDS OF REVIEW

This Court reviews de novo a question of law, including whether a statute authorizes separate convictions. *People v. Almond*, 2015 IL 113817, ¶ 34.

"Where a defendant challenges the sufficiency of an indictment or information for the first time on appeal, a reviewing court need only

determine whether the charging instrument apprised the defendant of the precise offense charged with enough specificity to prepare his or her defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. Phillips*, 215 Ill. 2d 554, 562 (2005).

ARGUMENT

The clear intent of subsection (a)(3) of the aggravated discharge of a firearm statute is to protect individual officers from personal harm while on duty. Under the plain language of the statute, defendant's discharge of a firearm in the direction of multiple officers permits multiple convictions. That the number of officers in the line of fire represents the allowable unit of prosecution of violations of subsection (a)(3) is reinforced by reading the statute as a whole, a point already made by another district of the appellate court. Moreover, that plain language reading is reinforced by the well-settled rule in Illinois that separate victims require separate convictions. Finally, even if subsection (a)(3) required multiple discharges for multiple convictions, the appellate court was incorrect that the charging instrument was insufficient; it provided enough specificity for defendant to prepare his defense.

I. The Aggravated Discharge of a Firearm Statute Permits One Conviction of Aggravated Discharge of a Firearm for Each Officer in the Line of Fire.

The "primary goal when construing a statute is to give effect to the legislature's intent, best indicated by giving the statutory language its plain and ordinary meaning." *Almond*, 2015 IL 113817, ¶ 34. The Court "may also consider the reason for the law and the problems intended to be remedied." *Id.* "A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *People v. Casas*, 2017 IL 120797, ¶ 18. To determine whether "convictions for multiple counts of the same offense can be proper," the question for a reviewing court is "to determine the legislative intent behind the statute." *People v. Coats*, 2018 IL 121926, ¶ 24; *see also Almond*, 2015 IL 113817, ¶ 37 (court looks for legislative intent of "allowable unit of prosecution").

A. The plain language and intent of the statute allow for multiple convictions when multiple officers are in the line of fire.

The aggravated discharge of a firearm statute aims to address the danger that discharging a firearm poses to people in the line of fire, including each public servant engaged in his or her official duties. Thus, a "person commits aggravated discharge of a firearm when he or she knowingly or intentionally . . . [d]ischarges a firearm in the direction of a person he or she knows to be a peace officer . . . while the officer . . . is engaged in the execution of any of his or her official duties." 720 ILCS 5/24-1.2(a)(3). The

clear intent of subsection (a)(3) is to protect individual officers from personal harm while on duty.

Under the plain language of the statute, then, multiple convictions are proper when multiple officers are in the line of fire, irrespective of the number of shots fired. Defendant does not dispute that he knew that the deputies were peace officers or that they were engaged in the performance of their official duties. And defendant satisfied the statute by discharging a firearm in the direction of each officer (Demko, Derouchie, Donovan, and Ferriman) in the line of fire. Therefore, under the plain language of the statute, defendant satisfied the statute in four different ways, permitting four separate convictions. *See People v. Butler*, 64 Ill. 2d 485, 489 (1976) (because threat of defendant's knife applied to two robbery victims, threat of force element of statute applied to both victims, justifying two convictions). The appellate court was incorrect when it focused exclusively on the word "discharges" to hold that the language allowed only one offense per shot fired. *See* A25 ¶ 78.

Notably, subsection (a)(3) does not provide that it is violated by discharging a firearm at a peace officer *or* peace officers. It is unreasonable to believe that the use of the singular term was a mere oversight or accident. Under the plain language, and consistent with the clear legislative intent, defendant could be charged and convicted of firing at each officer in the line of fire.

B. Reading the statute as a whole demonstrates that the number of officers dictates the permissible number of convictions.

That the number of officers in the line of fire represents the allowable unit of prosecution of violations of subsection (a)(3) is reinforced by reading the statute as a whole, including subsection (a)(4), which criminalizes shooting at a police vehicle. *See* 720 ILCS 5/24-1.2(a)(4). In *People v. Hardin*, 2012 IL App (1st) 100682, the defendant shot at a police vehicle occupied by two officers, and the People charged the defendant with two counts of aggravated discharge of a firearm, one count for each officer, under subsection (a)(4). *Id.* ¶ 27. Consistent with the statutory language, *Hardin* vacated one of the resulting convictions because the defendant discharged the firearm at a single police vehicle. *Hardin* explained that multiple convictions would be appropriate under (a)(3) because there were multiple officers, but not under (a)(4) because there was only one vehicle. *Id.* ¶ 37.

That the number of officers in the line of fire determines the number of permissible convictions under subsection (a)(3) is also evident by considering that a defendant would violate more than one provision of the statute if he were to discharge a firearm in the direction of both an officer and a person covered by one of the remaining subsections. For instance, if a defendant fired a single shot in the direction of a peace officer, satisfying subsection (a)(3), and an emergency medical services personnel, satisfying subsection (a)(5), he would not commit a single violation of the statute; instead, his act

would violate two different subsections of the statute. There is no reason that the legislature would have drafted the statute to provide that shooting at one peace officer and one emergency medical services personnel would support two convictions but that shooting at two peace officers would not.

Thus, an examination of the statute as a whole confirms that the number of permissible convictions depends on the number of officers in the line of fire.

C. In Illinois, separate victims require separate convictions.

This plain-language construction of the statute, allowing multiple convictions when multiple officers are in the line of fire, is further supported by the way Illinois law treats "distinct victims" of even a "single action." *People v. Shum*, 117 Ill. 2d 317, 363 (1987). "In Illinois it is well settled that separate victims require separate convictions and sentences." *Id.*; *see also People v. Thomas*, 67 Ill. 2d 388, 389-90 (1977) (multiple convictions proper with multiple victims); *Butler*, 64 Ill. 2d at 489 (same). When a shot is fired in the direction of multiple officers, there are multiple victims. The harm the statute seeks to remedy — endangerment of officers acting in their official capacity — applies to each officer in the line of fire. Indeed, the appellate court below conceded that multiple convictions would not run afoul of the one-act, one-crime rule. A25-27 ¶¶ 79-81 (noting that separate victims require separate convictions and that one-act, one-crime rule applies only to multiple convictions for acts against a single victim). While the appellate

court was correct that the one-act, one-crime and statutory interpretation questions are distinct, in interpreting the statute, it failed to take into account the "well-settled" principle of Illinois law that multiple victims justify multiple convictions. That principle, which is not confined to one-act, one-crime cases, *see Butler*, 64 Ill. 2d at 489, further reinforces the conclusion that the legislative objective in subsection (a)(3) was to protect each of the individual officers endangered. Thus, it made each individual officer, and not the number of individual discharges of a firearm, the "unit of prosecution." Because the act of discharging a firearm in the direction of multiple officers constitutes multiple criminal acts, and each act independently satisfies the statute, each act constitutes a separate and distinct violation of the statute.

Finally, the appellate court's approach is inconsistent with the construction of other statutes that define criminal acts directed at a person. For instance, a "person commits the offense of kidnapping when he or she knowingly . . . confines another . . .[,] carries another . . .[, or] induces another." 720 ILCS 5/10-1(a)(1)-(3). Under the appellate court's view, the allowable unit of prosecution would be based on the act of "confining," "carrying," or "inducing," and not on the number of victims. But the legislature surely did not mean to limit a defendant to one kidnapping conviction if by a single act he or she confines multiple victims. *See also People v. Lee,* 376 Ill. App. 3d 951, 957 (1st Dist. 2007) (upholding two convictions for aggravated unlawful restraint where defendant detained two

people in violation of statute that prohibited "knowingly without legal authority detains another while using a deadly weapon"). The appellate court's reliance on the word "discharges" to hold that subsection (a)(3) permits only one conviction per shot fired, *see* A25 ¶ 78, is thus inconsistent with how courts interpret similarly worded statutes.

Consistent with other provisions of Illinois law, therefore, the discharge of the firearm in the direction of four officers constituted four distinct criminal acts and defendant was properly convicted of four violations of the statute.

II. Even if the Statute Requires Multiple Discharges for Multiple Convictions, the Charging Instrument Was Sufficient.

Even if the appellate court's interpretation of the statute were correct, it would be inappropriate to vacate any of defendant's convictions. The court's conclusion was premised on the fact that in "the charging instrument, the State differentiated between peace officers instead of between discharges of the firearm in their direction." A30 ¶ 91. But defendant never challenged the sufficiency of the charging instrument in the circuit court; the appellate court raised this issue sua sponte.

"Where a defendant challenges the sufficiency of an indictment or information for the first time on appeal, a reviewing court need only determine whether the charging instrument apprised the defendant of the precise offense charged with enough specificity to prepare his or her defense and allow pleading a resulting conviction as a bar to future prosecution

arising out of the same conduct." *Phillips*, 215 Ill. 2d at 562. The "question is whether, in light of the facts of record, the indictment was so imprecise as to prejudice defendant's ability to prepare a defense." *Id.* In *Phillips*, for example, this Court rejected the defendant's argument that the indictment was insufficient because it failed to specify which images would be offered into evidence to demonstrate that he possessed child pornography. *Id.* at 564.

Here, for each count, the charging instrument alleged that "on July 26, 2016, in Champaign County, Kelvin D. Hartfield committed the offense of AGGRAVATED DISCHARGE OF A FIREARM[,] Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION[,] in that the said defendant knowingly discharged a firearm in the direction of [the officer], a person he knew to be a peace officer and, at the time, [the officer] was engaged in the execution of his official duties," and named each officer as a separate victim. A35-38. The charging instrument thus clearly signaled that the People intended to treat defendant's conduct as four separate acts against four individual victims. *See People v. Crespo*, 203 Ill. 2d 335, 345 (2001).

Notably, the appellate court did not hold that the evidence was insufficient to find defendant guilty of multiple convictions. *See* A23 ¶ 74 ("there was testimony that defendant had fired more than one shot"). And the officers testified that defendant fired between two and five shots when

they were grouped together, R226, 297-98, 310-11, and subsequently fired another shot at Ferriman, R299. At the very least, then, there was sufficient evidence for three convictions. *See* 565 (People's closing argument suggesting there were "probably three shots"). Thus, four (or at the very least three) of the convictions were proper even if the statute required multiple discharges of the firearm because the indictment provided sufficient notice to defendant to prepare his defense and the evidence was sufficient to sustain the convictions.

CONCLUSION

This Court should reverse the appellate court's judgment.

May 12, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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 sixteen pages.

/s/ Eldad Z. Malamuth
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PROOF 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 May 12, 2021, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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2020 IL App (4th) 170787

NO. 4-17-0787

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KELVIN T. HARTFIELD, Defendant-Appellant.	) Appeal from the) Circuit Court of) Champaign County) No. 16CF1055)) Honorable) Thomas J. Difanis,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court, with opinion.
Justices Knecht and Turner concurred in the judgment and opinion.

OPINION

¶ 1 In the Champaign County circuit court, a jury found defendant, Kelvin T. Hartfield, guilty of one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)) and four counts of aggravated discharge of a firearm (*id.* § 24-1.2(a)(3)). For those offenses, the court sentenced him to prison terms that, in their consecutive running, totaled 90 years. He appeals on six grounds.

¶ 2 First, defendant claims a violation of his statutory right to a speedy trial. See 725 ILCS 5/103-5(a) (West 2016). He acknowledges that he has procedurally forfeited this claim. Nevertheless, he seeks to avert the forfeiture by invoking the doctrine of plain error (see Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)), purportedly because the error is so serious that the integrity of the judicial process is endangered (see *People v. Sebby*, 2017 IL 119445, ¶ 50). Setting aside the question of whether a statutory speedy-trial violation, as distinct from a constitutional speedy-trial violation, is an error so fundamental as to threaten the integrity of the judicial process, we find no

error, let alone a plain error. The reason is this. When the State moved for the continuances at issue, defendant objected but not in the manner required by section 103-5(a) (725 ILCS 5/103-5(a) (West 2016)), that is, by demanding a trial. Consequently, under that statutory provision, notwithstanding defendant's objections and the circuit court's recognition of his objections, he is considered to have agreed to the continuances, eliminating the possibility of a statutory speedy-trial violation. See *id.*

¶ 3 Second, defendant asserts that his appointed trial counsel rendered ineffective assistance by failing to move for a discharge on statutory speedy-trial grounds and by failing to raise the issue in the posttrial motion, thereby causing a forfeiture of the issue. For the reason set forth in the preceding paragraph, there was no statutory speedy-trial claim for defense counsel to forfeit.

¶ 4 Third, defendant alleges a violation of his constitutional right to have the jury selected in public. In the record before us, we find inadequate support for defendant's allegation that this right was violated.

¶ 5 Fourth, defendant complains of violations of Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in the admonitions the circuit court gave the potential jurors and in the inquiries the court made of them. We find a procedural forfeiture of this issue. Again, defendant seeks to avert the forfeiture by invoking the doctrine of plain error, this time arguing that the evidence was so closely balanced that the purported Rule 431(b) errors could have made a difference in the outcome of the trial. We find no error in the admonitions. And assuming that, in its questioning of the potential jurors, the court erred by substituting one word in Rule 431(b) for another word that carried the same meaning, we find no possibility of prejudice.

¶ 6 Fifth, defendant contends that, in answering a mid-deliberation question by the jury, the circuit court violated his right to due process by lightening the State's burden of proof as to some elements of aggravated discharge of a firearm. We disagree that the court's answer to the jury's question had any such import.

¶ 7 Sixth, defendant contends that his four convictions of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(3) (West 2016)) violate the one-act, one-crime doctrine. Because the multiple convictions are inconsistent with statutory law, we do not reach the one-act, one-crime doctrine. In our interpretation of section 24-1.2(a)(3), we find no textual support for basing the number of convictions on the number of peace officers in the direction of which defendant discharged the firearm.

¶ 8 Therefore, we remand this case with directions to vacate three of the convictions of aggravated discharge of a firearm and to resentence defendant. Otherwise, we affirm the judgment.

¶ 9 I. BACKGROUND

¶ 10 On July 27, 2016, the police arrested defendant. Ultimately, the State charged him with one count of armed robbery (*id.* § 18-2(a)(2)) and four counts of aggravated discharge of a firearm (*id.* § 24-1.2(a)(3)).

¶ 11 From August 2016 to January 2017, the State filed six motions to continue the jury trial so that the State could obtain the results of fingerprint and DNA analyses. See 725 ILCS 5/103-5(c) (West 2016).

¶ 12 In its first motion for a continuance, the State "request[ed] a continuance and an additional 60 days as provided by [section 114-4 of the Code of Criminal Procedure of 1963] 725 ILCS 5/114-4 [(West 2016)] and 120 days as provided [by section 103-5(c) (*id.* § 103-5(c))] to bring the matter to trial as it continue[d] to pursue the referenced forensic evidence."

¶ 13 On August 30, 2016, in the hearing on the State's first motion for a continuance, defense counsel objected to the motion as follows:

> "Judge, he's in custody.
>
> Ready for trial.
>
> Please note my objection to the State's motion."

Noting the objection, the circuit court overruled it and extended the speedy-trial period by 120 days, to March 26, 2017.

¶ 14 Finally, jury selection began on March 6, 2017, after defendant had been in custody for 222 days. The circuit court announced:

> "For the People in the courtroom, I've got 39 jurors coming up. There's not going to be enough room for everybody to be seated, and my jurors. I'm going to have you step out until I get a jury selected. All right, Officer, bring up the jurors, please.
>
> DEPUTY: Yes, [Y]our Honor.
>
> THE COURT: Mr. Vargas, any problem with the statement of the nature of the case?
>
> MR. VARGAS: No, sir. Judge, Ms. Gwendolyn Hartfield is in the room, as well as her mother, and obviously, one of our interns. Can they stay in the room and, if necessary, do you want them all to leave?
>
> THE COURT: As soon as I get twelve in the box, then I'll have Officer Helm bring them in, so at least I'll have all of my jurors seated."

Between the time when the court ordered the spectators to leave the courtroom to the time when the first 12 venire members were seated in the jury box, the court read the charges, the list of potential witnesses, and the initial jury instructions, and the venire members were sworn.

¶ 15 To each panel of potential jurors, the circuit court read the four principles in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) all at once and then had some version of the following dialogue with the panel:

> "THE COURT: The four of you understand those instructions. Is that correct?
>
> FOUR JURORS: (Indicating in the affirmative).
>
> THE COURT: They answer in the affirmative. And the four of you will follow those instructions. Is that correct?
>
> FOUR JURORS: (Indicating in the affirmative).
>
> THE COURT: They answer in the affirmative."

¶ 16 After the jury was selected, the trial began. In a nutshell, the evidence in the jury trial tended to show the following.

¶ 17 Around 1 a.m. on July 26, 2016, two masked men, one of them wielding a revolver, robbed a gas station in Urbana, Illinois. They took not only the cash in the register but also numerous cartons of cigarettes and cigars, which they carried away in a backpack. The gas station attendant saw a tan Buick automobile drive away.

¶ 18 Soon afterward that night, while surveilling another gas station, a deputy sheriff, Josh Demko, looked over at a nearby trailer park and saw a tan Buick back into a parking spot, next to a maroon Hyundai automobile. Demko and some other police officers went into the trailer park to investigate. A man was sitting in the front passenger seat of the Hyundai, and a woman was sitting in the back seat. The man got out of the Hyundai and walked to the trunk and then past the driver's door. He appeared to be, like defendant, a tall black man of a slender build, but none of the police officers got a good enough look at him to positively identify him, in the trial, as

defendant. The man ran when the police ordered him to stop. As he was running, he fired in the direction of the four police officers: Demko, Richard Ferriman, Casey Donovan, and Rob Derouchie, all of whom were more or less clustered together. Some of the police officers returned fire. The man went over a fence and got away.

¶ 19 The four police officers differed on how many shots the fleeing man had fired. He fired two to five shots, according to their testimony. None of the officers were hit, although, afterward, they found what appeared to be two bullets holes in trailers near where some of them had been standing.

¶ 20 After the shoot-out, the police arrested the woman in the back seat of the Hyundai, Tierykah Wiley. She made several statements to the police, and not all of her statements agreed with one another. In one of her statements, Wiley represented that, the day of the robbery, she accepted a ride in a tan car driven by Kydel Brown. Defendant was in the front seat of the tan car, and she, Wiley, was in the back seat. She saw a lot of cigarettes on the floorboard. They drove to a nearby trailer park to switch cars. Brown got out of the tan car and went inside one of the trailers. Wiley got out of the tan car, too, and into a red car, and defendant moved some bags from the tan car to the trunk of the red car.

¶ 21 In the maroon Hyundai, the police found several items of evidence, including the following: a cell phone with accounts relating to Brown; mail addressed to defendant; a package of photographs with defendant's name on it; a garbage bag containing a single carton of Newport cigarettes; a blue and black backpack and a blue and gray backpack, each containing cartons and individual packs of Newports and packages of cigars; and Newports that were not in any bag. In all, the police found, in the maroon Hyundai, 15 cartons and 16 individual packs of Newports and about 28 packages of cigars.

¶ 22 Shortly after 8 a.m. on July 26, 2016, Brown emerged from a trailer that the police were surveilling, and they arrested him. The police searched the trailer and found the keys to the tan Buick.

¶ 23 At about 5 p.m. on July 27, 2016, the police were surveilling a hotel in which defendant's mother lived with her boyfriend. Defendant came out of the hotel and got into a taxi. The police pulled the taxi over and arrested defendant. He had a bandage on his forearm. Upon removing the bandage, the police saw a wound and took him to the hospital to get it treated.

¶ 24 On August 17, 2016, John Hampton was in the backyard of his house, which was near the trailer park, and he found a revolver in the weeds behind his shed. The revolver did not belong to him, and he did not know how it had gotten there. He picked up the revolver and called the police, who came and took possession of it. In the cylinder of the revolver were three spent rounds and two live rounds.

¶ 25 Lenore Smith, who lived near Hampton, testified that she had known defendant for 13 or 14 years and that, in the early morning hours of July 26, 2016, defendant awakened her by tapping on the window of her house. She opened the front door, and he came in. She noticed that he had a cut on his arm. He explained that he had gotten the cut by jumping a fence as he ran away from some "guys" who had wanted to fight him. Smith urged defendant go to the hospital and get the cut looked at, but he refused to do so. So, she herself bandaged the cut, which was about an inch and a half long and not bleeding.

¶ 26 Jamono Collier testified that she had known defendant for five or six years. Sometime on July 26, 2016, defendant telephoned Collier, looking for Collier's best friend, Wiley. Defendant requested Collier to "call the hospital or see if [Wiley] was in jail." Defendant gave Collier the following explanation for this request (as Collier recounted in her testimony):

"[T]hey was at a gas station and [Wiley] was in the back seat of a car or something, and I guess—well, I mean I guess—well, he said he shot at the police or whatever the case may be. *** He say he shot—was shooting at the police and he was with [Wiley] and he wasn't around her no more. *** [H]e was trying to locate her by me."

The prosecutor asked Collier:

"Q. Did he tell you more about the details of what happened after they separated? What did he do next?

A. He went to the trailer parks.

Q. Why?

A. I guess that's where he put the stuff at.

Q. What stuff?

A. That he took out the store.

Q. Did he talk—you said he was shooting. Did he talk about a gun?

A. Yeah.

Q. What did he say about the gun?

A. Well, I know he wanted to get a new gun but I don't know what happened with the other one."

¶ 27 Collier further testified that, when defendant came to her house the next day, he had a bandage on his arm and was still was looking for Wiley. He wanted to take Wiley with him out of town "because he didn't want to get caught."

¶ 28 In addition to the foregoing testimony, the State presented forensic evidence. No DNA or fingerprints were found on the revolver. Defendant's fingerprint was found, however, on the exterior front passenger door of the maroon Hyundai and on one of the packs of Newports.

¶ 29 Finally, the State presented cell phone evidence. Expert testimony and extraction reports showed several calls and text messages between defendant's cell phone and Brown's cell phone. One text message, transmitted from defendant's phone to Brown's phone at 9:43 p.m. on July 25, 2016, read: "U know anyone want square 5$ a pack[,] 3 for 10$[,] 5 for 20$[,] They shorts[.]" The State presented testimony that "squares" were cigarettes and that "shorts" were short cigarettes as distinct from long cigarettes. Approximately 10 messages were sent from defendant's phone to contacts other than Brown during the evening hours of July 25, 2016, in which defendant offered to sell cigarettes, cigarillos, and cigars. Some of the messages proposed a sale price of $45 per carton.

¶ 30 On March 9, 2017, the parties rested, and the jury retired to the deliberation room. During its deliberations, the jury sent out a written question to the judge. The note read: " 'Does suspect need to know there were four cops on the scene in the area where gun was fired to be guilty of all four counts of aggravated discharge of a firearm[?] Third proposition, that the Defendant knew that blank was a peace officer.' " In the discussion of what the reply should be, defense counsel interjected: "Judge, please note my objection to any—I believe the appropriate response is, you've been instructed as to the law. Please note my objection to any—anything beyond that." Over defense counsel's objection and with the prosecutor's approval, the circuit court sent the following written response to the jury:

"Question #1

No[.]

> Question #2
>
> You must determine based on the evidence which officer or officers, if any, may have been in the line of fire when the firearm was discharged."

¶ 31 After receiving that written clarification, the jury found defendant guilty of one count of armed robbery and four counts of aggravated discharge of a firearm. The circuit court entered judgment on each of the five guilty verdicts.

¶ 32 On April 3, 2017, defendant filed a motion for an acquittal or, alternatively, a new trial. He challenged the circuit court's decision to answer the jury's mid-deliberation inquiry. But he raised no speedy-trial issue.

¶ 33 On May 1, 2017, the circuit court denied defendant's posttrial motion. Immediately afterward, the court held a sentencing hearing. The court imposed concurrent sentences of 10 years' imprisonment for the aggravated-discharge convictions as to Demko, Derouchie, and Donovan; a consecutive 40 years' imprisonment for the aggravated-discharge conviction as to Ferriman; and a consecutive 40 years' imprisonment for the armed-robbery conviction.

¶ 34 On May 19, 2017, defendant moved for a reduction of the sentences. He argued that the total of 90 years' imprisonment was excessive, "essentially amount[ing] to a life sentence." He was 22 years old.

¶ 35 On October 23, 2017, the circuit court denied the post-sentencing motion.

¶ 36 On October 27, 2017, defendant appealed.

¶ 37 II. ANALYSIS

¶ 38 A. The Speediness of the Trial

¶ 39 Defendant acknowledges that because he never moved to be discharged on speedy-trial grounds and because he never raised a speedy-trial issue in his posttrial motion, the issue might be regarded as procedurally forfeited. See *People v. Alcazar*, 173 Ill. App. 3d 344, 354 (1988) (holding that, by failing to apply for discharge prior to his conviction and by failing to raise the speedy-trial issue in his posttrial motion, the defendant had forfeited his right to be discharged on speedy-trial grounds). By invoking the doctrine of plain error, however, defendant seeks to avert a procedural forfeiture. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 40 Plain-error analysis begins with the question of whether the defendant has identified an error. *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 69. Defendant challenges only the first and third continuances that the circuit court granted to the State, arguing it was those continuances that caused a violation of his statutory right to be tried within 120 days after he was put in custody. See 725 ILCS 5/103-5(a) (West 2016). But if, on the other hand, the first continuance was attributable to defendant instead of to the State, defendant admits that the running of the 120-day period was suspended until the day the case went to trial and that, consequently, he has no statutory speedy-trial claim. To quote from defendant's brief, "if the August 30, 2016[,] continuance was lawful, [defendant's] new speedy-trial date was March 26, 2017, and his March 6, 2017[,] trial did not violate the speedy trial statute. 725 ILCS 5/103-5(c)."

¶ 41 The State observes that, on August 30, 2016, in the hearing on the State's first motion for a continuance, defense counsel announced his readiness for trial instead of demanding a trial as required by section 103-5(a) (*id.*). As a result, the State argues, the continuance from August 30, 2016, to March 6, 2017, is indeed attributable to defendant, and his statutory speedy-trial claim lacks merit. In support of that argument, the State cites *People v. Murray*, 379 Ill. App. 3d 153 (2008), in which the appellate court held that stating a readiness for trial and objecting to a

proposed delay, without "specifically ask[ing] for trial or us[ing] language that would reference the speedy-trial statute," was "not a sufficient oral demand for trial" (*id.* at 161).

¶ 42 Defendant rejoins that, in the hearing on the State's first motion for a continuance, defense counsel did more than announce a readiness for trial: defense counsel also used language that, according to defendant, could only be understood as referencing the speedy-trial statute. Defense counsel said: "Judge, he's in custody." See 725 ILCS 5/103-5(a) (West 2016) (providing that "[e]very person in custody in this State for an alleged offense shall be tried *** within 120 days from the date he or she was taken into custody"). And not only that, defendant argues, but the circuit court noted, for the record, defense counsel's objection to the continuance, thereby explicitly recognizing defense counsel's response as a *bona fide* objection—without being gainsaid by the State. From *Murray*, 379 Ill. App. 3d at 161-62, defendant derives the following holding, which he regards as applicable to his own case:

> "the defendant's declaration of readiness for trial, when coupled with his objection to a proposed trial delay, his additional use of 'language that would be used only in reference to [his] speedy-trial right,' *and* the trial court's recognition of the defendant's objection to the delay, is sufficient to affirmatively invoke the speedy-trial right." (Emphasis in original.).

¶ 43 *Murray*, however, is distinguishable in two ways. First, the language that *Murray* characterized as "clearly showing an intent to invoke the speedy-trial statute" was defense counsel's "stated *** desire that the delay be attributed to the State." *Id.* at 161. Such language, the appellate court reasoned, "would be used only in reference to [the defendant's] speedy-trial right." *Id.* In the present case, by contrast, defense counsel merely observed that defendant was "in custody." That observation, unlike the defense counsel's request in *Murray*, was not specifically

and exclusively relevant to the speedy-trial statute. It was relevant to delay in general. Objecting to a continuance because one's client is languishing in jail does not specifically invoke or allude to the speedy-trial statute the way a request to attribute the delay to the State would.

¶ 44 Second, as the appellate court in *Murray* pointed out, the circuit court's recognition of defense counsel's objection to a continuance was not the same as the circuit's recognition of a demand for trial. *Id.* In the present case, in the hearing on the State's first motion for a continuance, the circuit court recognized defense counsel's objection to the proposed 120-day continuance, but the court never characterized the objection as a demand for trial.

¶ 45 Under the language of section 103-5(a) (725 ILCS 5/103-5(a) (West 2016)), this distinction is crucial. That section provides: "Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." *Id.* That statutory provision is unambiguous, and we are supposed to "apply it straightforwardly, without reading [into it any] exceptions, limitations, or qualifications." *People ex rel. Webb v. Wortham*, 2018 IL App (2d) 170445, ¶ 31. Thus, under the plain language of section 103-5(a), an objection to a proposed delay, without a demand for trial, operates as an agreement to the delay—period: no exceptions, no limitations, no qualifications. In the hearing on the State's first motion for a continuance, defense counsel objected to the proposed continuance without demanding a trial. Unless the objection was made in a certain manner—"by making a *** demand for trial"—the objection was ineffectual, and the "[d]elay shall be considered to be agreed to by the defendant." 725 ILCS 5/103-5(a) (West 2016). To the State's proposed first continuance, defendant made no objection in the statutorily prescribed manner. It follows that defendant is considered to have agreed to the first continuance and he has no valid statutory speedy-trial claim.

¶ 46 That being the case, defense counsel could not have rendered ineffective assistance by omitting to file a motion for discharge on statutory speedy-trial grounds or by refraining from raising the issue in the posttrial motion. See *People v. Peco*, 345 Ill. App. 3d 724, 735-36 (2004). To render effective assistance, defense counsel need not file futile motions. *People v. Smith*, 2014 IL App (1st) 103436, ¶ 64. Defendant does not argue it was ineffective assistance for defense counsel to omit to demand a trial when objecting to the State's first motion for a continuance. Therefore, any such argument would be forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (providing that "[p]oints not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 47 B. The Right to a Jury Selection That is Open to the Public

¶ 48 On appeal, defendant contends that, by asking spectators to leave the courtroom so as to make room for the potential jurors, the circuit court violated his constitutional right to have the jury selected in a proceeding that was open to the public. See *Presley v. Georgia*, 558 U.S. 209, 213 (2010).

¶ 49 The record is insufficient to support that contention. We cannot tell, from the record, if any spectators *ultimately* were excluded from the courtroom. Officer Helm might have brought them all back in after the first 12 potential jurors were seated in the jury box. How many spectators were in the courtroom to begin with? And were all of them or only some of them brought back in? The record appears to give no answer. To quote from *People v. Radford*, 2018 IL App (3d) 140404, ¶ 51, "we cannot know whether a closure occurred."

¶ 50 In his petition for rehearing, defendant disagrees. According to him, it is indeed knowable, from the transcript of March 6, 2017, that a closure occurred. We quote from defendant's petition for rehearing:

> "Between the time that all spectators were directed to leave the courtroom [citation] and the time that the first 12 veniremembers were seated in the jury box [citation], portions of the jury selection process occurred, including: the trial court's reading of the charges [citation], the list of potential witnesses [citation], and the initial jury instructions [citation]; and the swearing-in of the veniremembers."

Defendant grants that it is unknowable, from the record, how many spectators were in the courtroom to begin with and whether all of them or only some of them were brought back in after the first 12 venire members were seated in the jury box. Nevertheless, defendant argues, unless one were to infer—improbably—that (1) all the spectators disobeyed the court's order to leave the courtroom and (2) the court let the disobedience pass without comment, "*all spectators* were excluded from the courtroom during identifiable and significant portions of the jury selection process," namely, the portions listed in the quotation above. (Emphasis in original.)

¶ 51 In all the cases that defendant cites, though, in which spectators were excluded from "the jury selection process," they were excluded while jurors were being selected: in other words, during the *voir dire* itself. See *Weaver v. Massachusetts*,__ U.S.___, _____, 137 S. Ct. 1899, 1905 (2017); *Presley v. Georgia*, 558 U.S. 209, 210 (2010); *People v. Evans*, 2016 IL App (1st) 142190, ¶ 3; *People v. Willis*, 274 Ill. App. 3d 551, 553 (1995). Our supreme court has held that "[t]he public trial right extends to *jury selection*." (Emphasis added.) *People v. Radford*, 2020 IL 123975, ¶ 25. Likewise, the Supreme Court of the United States has held that "the Sixth Amendment right to a public trial extends to the *voir dire* of prospective jurors." *Presley*, 558 U.S. at 213. "*Voir dire*" means "a preliminary examination to determine the competency of a witness or juror." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/voir%20dire (last visited Oct. 28, 2020). When the circuit court read to

the prospective jurors the charges, a list of potential witnesses, and initial jury instructions and when the court swore them in, no prospective jurors were being examined, and no jurors were being selected. We do not see how the absence of spectators during these preliminary procedures implicated defendant's right to a public trial. See *State v. Parks*, 363 P.3d 599, 602-03 (Wash. Ct. App. 2015). If the spectators were let back into the courtroom as soon as the first 12 venire members were seated in the jury box, the spectators then would be able to see that the jurors were "fairly and openly selected." *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 509 (1984) (explaining that "public proceedings vindicate the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected"). Absent a contrary showing from the record, we presume that the selection of jurors in this case was open to the public. See *People v. Hillis*, 2016 IL App (4th) 150703, ¶ 106. Therefore, we find no proven violation of the constitutional right to a public trial (see *Radford*, 2020 IL 123975, ¶ 25), and we deny defendant's petition for rehearing.

¶ 52 C. The *Zehr* Instructions to the Potential Jurors

¶ 53 Under Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), the circuit court must admonish each potential juror on four constitutional principles that are essential to a fair trial. Also, the court must ask each potential juror if he or she understands and accepts those principles. The rule provides as follows:

> "(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his

> or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.
>
> 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." *Id.*

These are *Zehr* admonitions and inquiries, so named after *People v. Zehr*, 103 Ill. 2d 472 (1984).

¶ 54 In the present case, *Zehr* admonitions were given, and *Zehr* inquiries were made. On appeal, however, defendant asserts violations of Rule 431(b).

¶ 55 Defendant acknowledges that, in the proceedings below, he never objected to any noncompliance with Rule 431(b), let alone reiterated the objection in a posttrial motion. "[B]oth a trial objection and a written post-trial motion raising the issue are necessary to preserve an issue for review." *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Nevertheless, defendant seeks to avert the procedural forfeiture by again invoking the doctrine of plain error. This time, he relies on the first prong of the plain-error doctrine instead of the second prong. That is, instead of arguing that the alleged Rule 431(b) errors were so inherently serious that they require automatic reversal, he argues that that the evidence in the trial was "closely balanced" and that the "clear or obvious" violations of Rule 431(b) "threatened to tip the scales of justice against" him. (Internal quotation marks omitted.) *Sebby*, 2017 IL 119445, ¶ 48. In other words, the reputed errors, regardless of how serious they were in themselves, could have nudged the decision from not guilty to guilty, given the closeness of the evidence.

¶ 56 According to defendant, the circuit court clearly or obviously violated Rule 431(b) in two ways.

¶ 57 First, the circuit court asked the potential jurors if they would "follow" its "instructions" on the *Zehr* principles instead of asking them if they would "accept" those "principles." Under Rule 431(b), the court was supposed to "ask each potential juror, individually or in a group, whether that juror underst[ood] and *accept*[*ed*]" the *Zehr* "principles," not whether that juror understood and would "follow" "instructions" on the *Zehr* principles. (Emphasis added.) Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Defendant quotes from *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 35: "Trial 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."

¶ 58 In that judicial *dictum*, however, *McGuire* did not go so far as to say that any deviation from the precise language in Rule 431(b) necessarily was reversible error. There is, after all, an opinion by the appellate court, *People v. Atherton*, 406 Ill. App. 3d 598, 611 (2010), finding no error in the substitution of "follow" for "accept." The appellate court held in *Atherton*: "[A]sking the potential jurors if they were 'willing to follow' the propositions was just another way of asking the potential jurors if they accepted those propositions. Thus, the trial court's questions as to those principles complied with Rule 431(b)." *Id. Atherton* is on directly point, and we see no compelling reason to reject *Atherton*. After all, to "follow" means "to accept as authority." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/follow (last visited Oct. 1, 2020) [https://perma.cc/8J2A-RFKY]. Taking our lead from *Atherton*, we find no error, let alone plain error, in the substitution of "accept" for "follow"—words that carry the same meaning.

¶ 59 The second error in the *Zehr* admonitions and inquiries, according to defendant, was lumping the four principles together instead of reciting one principle at a time and asking the

potential jurors if they understood and accepted that principle. If indeed this was an error, it was not a clear or obvious one. Nothing in the text of Rule 431(b) clearly requires delivering the admonitions piecemeal with the inquiries interspersed. As defendant admits, the appellate court is divided on the question of whether it is necessary to do so. *Cf. People v. Willhite*, 399 Ill. App. 3d 1191, 1196-97 (2010) (observing that "Rule 431(b) has no requirement that the trial court ask separate questions of the jurors about each individual principle"); *People v. Othman*, 2019 IL App (1st) 150823, ¶ 60 (holding that, after stating each of the four *Zehr* principles, the circuit court must ask the potential jurors if they understand and accept that principle, necessitating eight inquiries). Because it was not a clear or obvious error for the circuit to follow *Willhite* over *Othman*, the procedural forfeiture of this issue will be honored. See *People v. Albea*, 2017 IL App (2d) 150598, ¶ 17.

¶ 60 D. The Asserted Error in a Jury Instruction

¶ 61 Counts IV to VII of the information charged defendant with committing, on July 26, 2017, four separate offenses of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(3) (West 2016)). Count IV alleged that he fired in the direction of one police officer, Demko. Count V alleged that he fired in the direction of a second police officer, Ferriman. Count VI alleged that he fired in the direction of a third police officer, Donovan. Count VII alleged that he fired in the direction of a fourth police officer, Derouchie.

¶ 62 During its deliberations, the jury sent out a written inquiry regarding those four counts. The note read: " 'Does suspect need to know there were four cops on the scene in the area where gun was fired to be guilty of all four counts of aggravated discharge of a firearm[?] Third proposition, that the Defendant knew that blank was a peace officer.' " (We quote from the transcript.)

¶ 63 Defense counsel objected to any answer beyond simply referring the jury to the instructions already given. Over defense counsel's objection and with the State's approval, the circuit court sent in to the jury the following written answer:

> "Question #1
>
> No[.]
>
> Question #2
>
> You must determine based on the evidence which officer or officers, if any, may have been in the line of fire when the firearm was discharged."

¶ 64 On appeal, defendant makes the indisputable point that if the circuit court chooses to give a clarifying instruction to the jury, the instruction should be accurate—it should be a correct statement of the law. See *People v. Childs*, 159 Ill. 2d 217, 229 (1994). Defendant maintains that the clarifying instruction the circuit court gave was an incorrect statement of the law. It was incorrect, he argues, in that it reduced the State's burden of proof as to two elements of aggravated discharge of a firearm, thereby violating his right to due process. See *Jackson v. Virginia*, 443 U.S. 307, 316 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009).

¶ 65 The statute defining aggravated discharge of a firearm provides as follows:

> "(a) A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:
>
> * * *
>
> (3) Discharges a firearm in the direction of a person he or she knows to be a peace officer *** while the officer *** is engaged in the execution

> of any of his or her official duties ***[.]" 720 ILCS 5/24-1.2(a)(3) (West 2016).

Defendant divides this statutory definition into four elements: "(1) knowing or intentional discharge of a firearm, (2) in the direction of a person who is a peace officer, (3) with knowledge that such person is a peace officer, (4) in connection with the officer's official duties."

¶ 66 By its clarifying instruction, defendant argues, the circuit court lightened the State's burden of proof on the second and third of those elements. The court instructed the jury: "You must determine[,] based on the evidence[,] which officer or officers, if any, *may* have been in the line of fire when the firearm was discharged." (Emphasis added.) According to defendant, this instruction, with its noncommittal language of possibility ("may"), excused the State from proving two propositions *beyond a reasonable doubt*: (1) defendant's discharge of a firearm was in the direction of a peace officer and (2) defendant knew that the person was a peace officer. Relieved of much of its evidentiary burden, defendant argues, the State only had to prove that

(1) defendant's discharge of firearm *may* have been in the direction of a peace officer and (2) defendant knew that this person *may* have been a peace officer.

¶ 67 This argument assumes an equivalence between the phrase "in the line of fire" and the phrase "in the direction of" (*id.*). Do these phrases have the same meaning? If being "in the line of fire" means the same as having a firearm discharged "in the direction of" oneself, then defendant's reasoning is valid: the phrase "may have been the line of fire" lightened the State's burden of proof to (1) defendant's discharge of firearm *may* have been in the direction of a peace officer and (2) defendant knew that this person *may* have been a peace officer.

¶ 68 But being "in the line of fire" has a different meaning from having a firearm discharged "in the direction of" oneself. The "line of fire" means "the place where bullets are being

shot." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/line%20of%20fire (last visited Oct. 1, 2020) [https://perma.cc/SJK6-2M48]. Or, as another dictionary defines the phrase, the "line of fire" is "the expected path of gunfire." New Oxford American Dictionary 991 (2001). Thus, anyone remaining in the line of fire when a firearm is discharged will be hit. Being in the line of fire means being in the expected trajectory of the round. The line is the path of the round, and anyone who intersects that line is in the line of fire. By contrast, the phrase "in the direction of" is more approximate. It means "so as to be approaching" or "toward." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/in%20the%20direction%20of (last visited Oct. 1, 2020) [https://perma.cc/DGR8-NPC4]. To "approach" means "to draw closer to" or "to come very near to." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/approach (last visited Oct. 1, 2020) [https://perma.cc/2SJ9-AY3D].

¶ 69 To illustrate this distinction, let us say that, with the intention of merely scaring *A*, *B* carefully aims at a window to the side of *A* and shoots out the glass. *A* would not be in the line of fire, and, when pulling the trigger, *B* would know that *A* was not in the line of fire. Nevertheless, *B* would fire in *A*'s direction, and *B* would know he was firing in *A*'s direction.

¶ 70 Because of the differing meanings of "in the line of" and "in the direction of," we are unconvinced that the clarifying instruction lightened the State's burden of proof on the second and third elements of aggravated discharge of a firearm, as defendant argues. Thus, prejudice from the clarifying instruction is unproven. See *People v. Williams*, 2017 IL App (1st) 142733, ¶ 50 (holding that "[i]t is the defendant's burden to demonstrate prejudice resulting from an alleged instruction error").

¶ 71 E. Surplus Convictions of Aggravated Discharge of a Firearm

¶ 72 After the first round of briefs in this appeal, we were left with reservations about the multiple convictions of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(3) (West 2016)). Therefore, we ordered supplemental briefing on the question of whether these multiple convictions violated the one-act, one-crime doctrine (see *People v. King*, 66 Ill. 2d 551, 566 (1977))—a violation that, if it occurred, would be reviewable as a plain error (see *People v. Smith*, 2019 IL 123901, ¶ 14).

¶ 73 The parties filed supplemental briefs. As we were reminded by some of the cases the parties cited in their supplemental briefs, a question of statutory construction must be answered before the one-act, one-crime doctrine becomes relevant. The threshold question is whether section 24-1.2(a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)), by its terms, allows four convictions of aggravated discharge of a firearm for fewer than four shots fired in the direction of the four peace officers. See *People v. Carter*, 213 Ill. 2d 295, 300-01 (2004); *People v. Avelar*, 2017 IL App (4th) 150442, ¶ 16. Only if we construe section 24-1.2(a)(3) as allowing the four convictions should we then proceed to the further question of whether the four convictions violate the one-act, one-crime doctrine. See *Carter*, 213 Ill. 2d at 301.

¶ 74 To be sure, the statute would have allowed a separate conviction for each *shot* that defendant had fired in the direction of the peace officers. Each shot would have been a "[d]ischarge[ ]" that the statute criminalized. 720 ILCS 5/24-1.2(a)(3) (West 2016). And there was testimony that defendant had fired more than one shot.

¶ 75 But the trouble is this: in the charging instrument, the State did not differentiate between the shots that defendant had fired. Instead, in the charging instrument, the State differentiated between the peace officers that defendant had fired at. Similarly, in its closing argument to the jury, the State took the position that, regardless of the number of shots that

defendant had fired, the jury should return *four* guilty verdicts for aggravated discharge of a firearm: a guilty verdict for each of the four peace officers in the direction of which defendant had fired. It would be too late to change that theory now. See *People v. Crespo*, 203 Ill. 2d 335, 344 (2001) (stating it would not "allow the State to change its theory of the case on appeal"). The State is stuck with its one-conviction-per-peace-officer theory, be that theory valid or invalid—which is the question.

¶ 76 We must decide, then, whether section 24-1.2(a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)) allows four convictions of aggravated discharge of a firearm to be carved out of the discharge of a firearm in the direction of four peace officers, regardless of the number of times the firearm was discharged—even if the firearm was discharged, say, only once. (It may as well have been only once since, according to the prosecutor's argument to the jury, the number of shots that defendant fired is unimportant and it is the number of peace officers he fired at that matters.) Like an alleged violation of the one-act, one-crime rule (see *Smith*, 2019 IL 123901, ¶ 14), this threshold question of statutory interpretation is reviewable under the plain-error doctrine, despite a procedural forfeiture (see *Carter*, 213 Ill. 2d at 299 (noting the supreme court's recent holding that " 'the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule' ") (quoting *People v. Harvey*, 211 Ill. 2d 368, 389 (2004))).

¶ 77 Under the unambiguous language of section 24-1.2(a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)), the "allowable unit of prosecution" (internal quotation marks omitted) (*Carter*, 213 Ill. 2d at 302) is the "discharge[ ]" of the firearm, not the number of persons in the direction of which the firearm is discharged. Again, the statute reads as follows:

> "(a) A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:
>
> * * *
>
> (3) *Discharges* a firearm in the direction of a person he or she knows to be a peace officer *** while the officer *** is engaged in the execution of any of his or her official duties, or to prevent the officer *** from performing his or her official duties, or in retaliation for the officer *** performing his or her official duties ***[.]" (Emphasis added.) 720 ILCS 5/24-1.2(a)(3) (West 2016).

¶ 78 Nothing in the language of section 24-1.2(a)(3) justifies an interpretation that there is a separate offense of aggravated discharge of a firearm for every peace officer in the direction of which a round is fired. If the defendant knowingly or intentionally discharges a firearm once in the direction of four persons whom the defendant knows to be peace officers doing their jobs, the defendant has, *ipso facto*, in the language of the statute, "[d]ischarge[d] a firearm in the direction of *a person* he or she knows to be a peace officer *** while the officer *** is engaged in the execution of any of his or her official duties"—and the single violation of the statute is complete. (Emphasis added.) *Id.* As the statute is written, there is one offense per "discharge," not one offense per person in the group toward which the firearm is discharged. *Id.*

¶ 79 This is not to detract from our supreme court's statement in *People v. Shum*, 117 Ill. 2d 317, 363 (1987): "In Illinois it is well settled that separate victims require separate convictions and sentences." The offenses in *Shum*, however, were significantly different from the offense of aggravated discharge of a firearm. The offenses in *Shum* were the infliction of bodily harm upon two victims. The defendant in *Shum* killed Gwendolyn Whipple and her unborn child

(*id.* at 335), and he was convicted of murder and feticide (*id.* at 332). He argued to the supreme court that the one-act, one-crime doctrine required the reversal of his feticide conviction since "it arose from the single physical act of killing Gwendolyn Whipple." *Id.* at 363. The supreme court disagreed with the defendant's one-act, one-crime argument because "separate victims require[d] separate convictions and sentences." *Id.* Or, as the appellate court has put it, "the one-act, one-crime rule only applies to multiple convictions for acts against a single victim." *People v. Leach*, 2011 IL App (1st) 090339, ¶ 30.

¶ 80 It is important to keep in mind, though, that, by invoking the one-act, one-crime doctrine, the defendant in *Shum* implicitly conceded that convicting him of both murder and feticide was consistent with the legislature's intent. Again, "[o]ne-act, one-crime principles apply only if the statute is construed as permitting multiple convictions" for a single act. *Carter*, 213 Ill. 2d at 301. The defendant in *Shum* could not have seriously argued that if someone murdered a pregnant woman, the legislature intended to exempt the murderer from criminal liability for feticide. If, without justification, *A* fatally shoots *B* and the round passes through *B* and kills *C* as well, it cannot seriously be contended that the legislature intended to exempt *A* from criminal liability for the death of *C*. Common sense would suggest that "multiple harms to different people should lead to multiple convictions." *People v. Jackson*, 2016 IL App (1st) 133823, ¶ 64. Precisely because the legislature intended *A* to incur criminal liability for the death of *C*, *A* might invoke the one-act, one-crime doctrine. And no doubt courts would respond with the multiple-victims exception to the doctrine. See *Leach*, 2011 IL App (1st) 090339, ¶ 30. But that exception to the one-act, one-crime doctrine does not answer the *preceding* threshold question of legislative intent in our case. See *Carter*, 213 Ill. 2d at 300-01.

¶ 81 As we have explained, we see no textual evidence in section 24-1.2(a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)) that a single discharge of a firearm in the direction of a group of peace officers may support multiple convictions of aggravated discharge of a firearm. In the way the statute is written, the unit of prosecution is the "discharge," not the number of peace officers. *Id.* Even if the statutory language were ambiguous in this regard, the rule of lenity would require us to resolve the ambiguity in defendant's favor. See *People v. Jones*, 223 Ill. 2d 569, 581 (2006). But the statutory language is not ambiguous. One discharge equals one offense.

¶ 82 We acknowledge that this interpretation of section 24-1.2(a)(3) is at odds with the appellate court's interpretation of that section in *People v. Hardin*, 2012 IL App (1st) 100682, ¶ 37. In *Hardin*, though, the appellate court stated an interpretation that was undisputed in the appeal it was deciding. The appellate court took the issue as the parties had framed it. Consequently, *Hardin* is of little help. To explain what we mean, let us begin with the facts in *Hardin*.

¶ 83 In *Hardin*, the defendant, as he was running away, turned and fired a single shot at a car occupied by two police officers. He was convicted of two counts of aggravated discharge of a firearm in the direction of a vehicle known to be occupied by a peace officer (720 ILCS 5/24-1.2(a)(4) (West 2008)): one count for each of the two peace officers. *Hardin*, 2012 IL App (1st) 100682, ¶ 1.

¶ 84 Notice, first of all, that the defendant in *Hardin* was charged under a different subsection of section 24-1.2 than the subsection under which defendant in the present case was charged. In the present case, defendant was charged under subsection (a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)), which criminalized "[d]ischarg[ing] a firearm *in the direction of a person* he or she knows to be a peace officer." (Emphasis added.) *Id.* In *Hardin*, by contrast, the

defendant was charged under subsection (a)(4) (720 ILCS 5/24-1.2(a)(4) (West 2008)), which criminalized " '[d]ischarg[ing] a firearm *in the direction of a vehicle* he or she knows to be occupied by a peace officer.' " (Emphasis in original.) *Hardin*, 2012 IL App (1st) 100682, ¶ 26 (quoting 720 ILCS 5/24-1.2(a)(4) (West 2008)).

¶ 85 The defendant in *Hardin* argued that, under the one-act, one-crime doctrine, one of his convictions of aggravated discharge of a firearm should be vacated. *Id.* ¶ 23. He did not dispute that there had been two peace officers in the car. Even so, the defendant got around the multiple-victims exception this way. "[H]is convictions," he reasoned, "were for shooting at the vehicle itself, and not the officers located inside, and he fired one shot at one police vehicle." Thus, he concluded, he deserved no more than one conviction of aggravated discharge of a firearm: a single shot at a vehicle, a single conviction (720 ILCS 5/24-1.2(a)(4) (West 2008)). *Hardin*, 2012 IL App (1st) 100682, ¶ 25. The State argued, on the other hand, that the two convictions should stand because the single shot victimized the two peace officers occupying the vehicle and, surely, "the criminal statute at issue was designed to protect them, and not the vehicle." *Id.*

¶ 86 Now let us pause here to make a crucial observation about *Hardin*. In their arguments to the appellate court, both parties in *Hardin* assumed that, if indeed the defendant had fired the single shot *at the two peace officers*, the two convictions of aggravated discharge of a firearm were legitimate. But the defendant insisted that he had fired the single shot not at the two peace officers but, instead, at *their vehicle*. That was, after all, the theory the State had pleaded in its charging instrument. The State countered that, by firing the single shot at the vehicle occupied by the two peace officers, the defendant had fired at the two peace officers and that his attempted distinction between firing at them and firing at their vehicle was meaningless.

¶ 87 The appellate court was unconvinced that the defendant's distinction between firing at the two peace officers and firing at their vehicle could be dismissed as meaningless considering that this was the very distinction the legislature had drawn in subsections (a)(3) and (a)(4) of section 24-1.2 (720 ILCS 5/24-1.2(a)(3), (4) (West 2008)). See *Hardin*, 2012 IL App (1st) 100682, ¶ 27. "[S]ubsection (a)(4) [had to] be interpreted to prohibit the act of discharging a firearm in the direction of the vehicle, and not the officer, to ensure that it ha[d] meaning and [was] not superfluous." *Id.* ¶ 29. The defendant had violated subsection (a)(4) by firing one shot at a vehicle occupied by peace officers. *Id.* ¶ 26. Given the charge, the defendant could "only be convicted of one crime under the statute's plain language." *Id.*

¶ 88 The appellate court in *Hardin* added:

> "*If [the] defendant had been charged under subsection (a)(3) [(720 ILCS 5/24-1.2(a)(3) (West 2008))] and the State had met its burden of proof, then [the] defendant could have been convicted of two crimes because his criminal actwould have been directed at two people*. However, [the] defendant was charged and convicted under subsection (a)(4) [(*id.* § 24-1.2(a)(4))], which defines the criminal act as the discharge of a firearm at a vehicle. As such, we determine that [the] defendant has committed one criminal act under subsection (a)(4) where he fired his gun one time at one vehicle and conclude that he may therefore be convicted of only one crime." (Emphasis added.) *Id.* ¶ 37.

¶ 89 The *dictum* we emphasized in that quoted passage was undisputed in *Hardin*. But it is disputed in the present case. Because defendant disagrees that, under subsection (a)(3) (720 ILCS 5/24-1.2(a)(3) (West 2016)), a single discharge can yield multiple convictions corresponding to the number of peace officers, *Hardin* is distinguishable.

¶ 90 As we have explained, under the unambiguous language of section 24-1.2(a)(3), the discharge of the firearm is the unit of prosecution, not the number of persons at which the firearm was discharged. It follows, by the way, that the circuit court was correct when it answered, "No," to the jury's question "Does [the] suspect need to know there were four cops on the scene in the area where the gun was fired to be guilty of all four counts of aggravated discharge of a firearm[?]" Instead of knowing the precise number of peace officers, the suspect would have to know, rather, that he fired the gun four times in the direction of at least one peace officer. That is because, in section 24-1.2(a)(3), the victim the legislature had in mind was public order, not the person fired at. Unlike aggravated assault (720 ILCS 5/12-1(a) (West 2018)), which is in part B of Title III of the Criminal Code of 2012, a part titled "Offenses Directed Against the Person," aggravated discharge of a firearm (*id.* § 24-1.2(a)(3)) is in part D of Title III, a part titled "Offenses Affecting Public Health, Safety[,] and Decency." Part D also includes disorderly conduct (*id.* § 26- 1). Carving multiple convictions of aggravated discharge of a firearm out of a single discharge of a firearm is as misguided as carving, say, 30 convictions of disorderly conduct out of a single late- night drunken rant: a conviction for each person in the neighborhood whose sleep was disturbed. If only one episode of disorderly conduct is pleaded, only one conviction of that offense can result. Likewise, if only one aggravated *discharge* of a firearm was pleaded, only one conviction of that offense can result.

¶ 91 In the charging instrument, the State differentiated between peace officers instead of between discharges of the firearm in their direction. Effectively, then, only one discharge was pleaded: the State "portray[ed] defendant's conduct as a single attack" on four peace officers (*Crespo*, 203 Ill. 2d at 343-44). In our *de novo* construction of section 24-1.2(a)(3) (see *Carter*, 213 Ill. 2d at 301), we conclude, therefore, that only one conviction of aggravated discharge of a

firearm is permissible. Having so interpreted the statute, we do not reach the one-act, one-crime doctrine, let alone the multiple-victims exception to that doctrine. See *id.*

¶ 92 That leaves the question of a remedy. For three of the convictions of aggravated discharge of a firearm, the circuit court imposed 10-year prison sentences, and for the fourth conviction of that offense, the court imposed a 40-year prison sentence. Some of the prison terms were concurrent with one another, and other prison terms were consecutive to one another. Given the differing prison terms and the web of concurrent and consecutive sentencing, resentencing appears to be necessary. Therefore, we remand this case with directions to vacate three of the convictions of aggravated discharge of a firearm and to resentence defendant in accordance with section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4 (West 2016)). See *People v. Artis*, 232 Ill. 2d 156, 179 (2009).

¶ 93 III. CONCLUSION

¶ 94 In sum, there was no violation of the speedy trial statute. The alleged violations of Rule 431(b) are procedurally forfeited and are not saved by the doctrine of plain error. We reject, on their merits, the remaining theories of ineffective assistance, a violation of the right to a public trial, and a faulty jury instruction. But we vacate three of the convictions of aggravated discharge of a firearm as statutorily unauthorized surplusage, given the charges. Therefore, we remand this case with directions to vacate three of the four convictions of aggravated discharge of a firearm—leaving to the circuit court to decide which three convictions to vacate—and to resentence defendant. Otherwise, we affirm the circuit court's judgment.

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

No. 4-17-0787

Cite as:	*People v. Hartfield*, 2020 IL App (4th) 170787
Decision Under Review:	Appeal from the Circuit Court of Champaign County, No. 16-CF-1055; the Hon. Thomas J. Difanis, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Catherine K. Hart, and Amy J. Kemp, of State Appellate Defender's Office, of Springfield, for appellant.
Attorneys for Appellee:	Julia Rietz, State's Attorney, of Urbana (Patrick Delfino, David J. Robinson, and James Ryan Williams, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Vs) Case Number 2016-CF-001055
Kelvin T Hartfield)

AMENDED
JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above named defendant, whose date of birth is **March 30, 1995**, has been adjudged guilty of the offenses below, IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the year and months specified for each offense

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
01	Armed Robbery	July 26, 2016	720 ILCS 5/18-2(a)(2)	X	40 years	3 years
To run (concurrent with) (**CONSECUTIVE TO**) counts **4,6 and 7**						
04	Agg Discharge of a Firearm	July 26, 2016	720 ILCS 5/24-1 2(a)(3)	X	10 years	3 years
To run (**CONCURRENT WITH**) (consecutively to) counts **6 and 7**						
05	Agg Discharge of a Firearm	July 26, 2016	720 ILCS 5/24-1 2(a)(3)	X	40 years	3 years
To run (concurrent with) (**CONSECUTIVE TO**) counts **1,4,6 and 7**						
06	Agg Discharge of a Firearm	July 26, 2016	720 ILCS 5/24-1 2(a)(3)	X	10 years	3 years
To run (**CONCURRENT WITH**) (consecutive to) counts **4 and 7**						
07	Agg Discharge of a Firearm	July 26, 2016	720 ILCS 5/24-1 2(a)(3)	X	10 years	3 years
To run (**CONCURRENT WITH**) (consecutively to) counts **4 and 6**						

This Court finds that the defendant is

_____ Convicted a class ___ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4 5-95(b)

__X__ The Court further finds that the defendant is entitled to receive credit for time actually served in custody of **160** days as of the date of this order

_____ 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-(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 alcohol, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program

_____ 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 Champaign County

_____ It is FURTHER ORDERED that

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 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 effective Nunc Pro Tunc as of May 1, 2017.

DATE May 3, 2017 Entered _____
Thomas J Difanis
Sixth Judicial Circuit Judge, Champaign County, Illinois

Approved by Conference of Chief Judges 6/20/14

APPEAL TO THE ILLINOIS FOURTH APPELLATE COURT

FROM THE CIRCUIT COURT OF CHAMPAIGN COUNTY, SIXTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	Trial Court No. 2016-CF-001055
VS	)	
	)	
Kelvin T. Hartfield	)	Trial Judge Hon. Thomas J Difanis
	)	

FILED 40
SIXTH JUDICIAL CIRCUIT
OCT 27 2017
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

Notice of Appeal

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

(1) Court to which appeal is taken: Appellate Court of Illinois, Fourth Judicial Circuit

(2) Name of Appellant and address to which notices shall be sent. Use additional sheet of paper if necessary:

Name: Kelvin T. Hartfield

Address: M35193 Menard Cc Po Box 1000, Menard, IL 62259 Email Address:

(3) Name and address of Appellant's Attorney on appeal.

Name: Office of the State Appellate Defender

Address: 400 W Monroe, Suite 303
Springfield, IL 62705 Email Address:

(4) Date of judgment or order: 10/23/2017

(5) Offense of which convicted: CNT I: ARMED ROBBERY/ARMED W/FIREARM, CNTS IV-VII: AGG DISCH FIR/PC OFF/FIREMAN

(6) Sentence: CNT I: 40 Years IDOC, CNT IV: 10 Years IDOC, CNT V: 40 Years IDOC, CNT VI: 10 Years IDOC, CNT VII: 10 Years IDOC

(7) If appeal is not from a criminal conviction, nature of order appealed from: Denial of Motion to Reconsider, Sentence and Conviction

(8) If 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 this Notice of Appeal.

Kelvin Hartfield M35193
Defendant-Appellant

Signed: Kevin M. Blakeman MP

Clerk of the Circuit Court
Champaign County, Illinois

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS)
PLAINTIFF)
)
VS) No 2016 CF 1055
)
)
KELVIN D HARTFIELD)
DEFENDANT

COUNT FOUR

FILED
SIXTH JUDICIAL CIRCUIT
SEP 20 2016
10
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

INFORMATION

The State's Attorney of said County charges:

That on July 26, 2016, in Champaign County, Kelvin D. Hartfield committed the offense of

AGGRAVATED DISCHARGE OF A FIREARM
Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION

in that the said defendant knowingly discharged a firearm in the direction of Joshua Demko, a person he knew to be a peace officer and, at the time, Joshua Demko was engaged in the execution of his official duties,

in violation of 720 Illinois Compiled Statutes 5/24-1.2(a)(3)

Julia R. Rietz, State's Attorney

STATE OF ILLINOIS)
COUNTY OF CHAMPAIGN)

The undersigned, being duly sworn, states upon information and belief that the facts set forth in the foregoing Information are true

Asst State's Attorney

SWORN TO before me this 9/20/2016

Katri M. Blakeman
(Signature)

Circuit Clerk
(Official Capacity)

Information filed _____, 20___ Bail set at $_____
_____ order to issue

_____
Judge

Defendant appears in open court _____, 20___
Defendant released on bail in sum of $_____ with security _____,
(Description of Security)
(Surety _____)
(Name) (Address)
_____, 20___
Defendant remanded to custody of Sheriff for failure to give bail _____, 20___
Cause continued until _____, 20__, for _____
(Plea - Hearing -Trial)

_____
Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS)
PLAINTIFF)
)
VS.) No. 2016 CF 1055
)
)
KELVIN D HARTFIELD) COUNT FIVE
DEFENDANT

INFORMATION

The State's Attorney of said County charges.

That on July 26, 2016, in Champaign County, Kelvin D. Hartfield committed the offense of

AGGRAVATED DISCHARGE OF A FIREARM
Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION

in that the said defendant knowingly discharged a firearm in the direction of Richard Ferriman, a person he knew to be a peace officer and, at the time, Richard Ferriman was engaged in the execution of his official duties,

in violation of 720 Illinois Compiled Statutes 5/24-1 2(a)(3)

Julia R. Rietz, State's Attorney

STATE OF ILLINOIS)
COUNTY OF CHAMPAIGN)

The undersigned, being duly sworn, states upon information and belief that the facts set forth in the foregoing Information are true

Asst State's Attorney

SWORN TO before me this 9/20/2016

Karin M. Blakeman KM
(Signature)

Circuit Clerk
(Official Capacity)

Information filed _____, 20___ Bail set at $_____
_____ order to issue

_____
Judge

Defendant appears in open court _____, 20___
Defendant released on bail in sum of $_____ with security _____,
(Description of Security)
(Surety _____)
(Name) (Address)
_____, 20___
Defendant remanded to custody of Sheriff for failure to give bail _____, 20___
Cause continued until _____, 20__, for_____
(Plea - Hearing -Trial)

_____
Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY

FILED
SIXTH JUDICIAL CIRCUIT
SEP 20 2016
10
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
PLAINTIFF)
)
VS) No 2016 CF 1055
)
)
KELVIN D HARTFIELD) COUNT SIX
DEFENDANT

INFORMATION

The State's Attorney of said County charges

That on July 26, 2016, in Champaign County, Kelvin D Hartfield committed the offense of

AGGRAVATED DISCHARGE OF A FIREARM
Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION

in that the said defendant knowingly discharged a firearm in the direction of Casey Donovan, a person he knew to be a peace officer and, at the time, Casey Donovan was engaged in the execution of his official duties,

in violation of 720 Illinois Compiled Statutes 5/24-1.2(a)(3).

Julia R Rietz, State's Attorney

STATE OF ILLINOIS)
COUNTY OF CHAMPAIGN)

The undersigned, being duly sworn, states upon information and belief that the facts set forth in the foregoing Information are true

Asst State's Attorney

SWORN TO before me this 9/20/2016

(Signature)

Circuit Clerk
(Official Capacity)

Information filed _____, 20___ Bail set at $_____
_____ order to issue

Judge

Defendant appears in open court _____, 20___
Defendant released on bail in sum of $_____ with security _____,
(Description of Security)
(Surety _____)
(Name) (Address)
_____, 20___
Defendant remanded to custody of Sheriff for failure to give bail _____, 20___
Cause continued until _____, 20__, for _____
(Plea - Hearing -Trial)

Judge

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY

FILED
SIXTH JUDICIAL CIRCUIT
SEP 20 2016
10
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
PLAINTIFF)
)
VS) No. 2016 CF 1055
)
)
KELVIN D. HARTFIELD) COUNT SEVEN
DEFENDANT

INFORMATION

The State's Attorney of said County charges

That on July 26, 2016, in Champaign County, Kelvin D Hartfield committed the offense of

AGGRAVATED DISCHARGE OF A FIREARM
Class X Felony SENTENCING RANGE 10 to 45 YEARS INCARCERATION

in that the said defendant knowingly discharged a firearm in the direction of Rob Derouchie, a person he knew to be a peace officer and, at the time, Rob Derouchie was engaged in the execution of his official duties,

in violation of 720 Illinois Compiled Statutes 5/24-1 2(a)(3).

Julia R Rietz, State's Attorney

STATE OF ILLINOIS)
COUNTY OF CHAMPAIGN)

The undersigned, being duly sworn, states upon information and belief that the facts set forth in the foregoing Information are true

Asst State's Attorney

SWORN TO before me this 9/20/2016

Katie M. Blakeman
(Signature)

Circuit Clerk
(Official Capacity)

Information filed _____, 20___ Bail set at $_____
_____ order to issue

_____
Judge

Defendant appears in open court _____, 20___
Defendant released on bail in sum of $_____ with security _____,
(Description of Security)
(Surety _____)
(Name) (Address)
_____, 20___
Defendant remanded to custody of Sheriff for failure to give bail _____, 20___
Cause continued until _____, 20__, for _____
(Plea - Hearing -Trial)

_____
Judge

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