

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

2026 IL App (4th) 251144-U  
NO. 4-25-1144  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
October 29, 2026  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the    |
| Plaintiff-Appellee,                  | ) | Circuit Court of   |
| v.                                   | ) | Mercer County      |
| DALE ROBERT WOODSMALL,               | ) | No. 24CF61         |
| Defendant-Appellant.                 | ) |                    |
|                                      | ) | Honorable          |
|                                      | ) | Matthew W. Durbin, |
|                                      | ) | Judge Presiding.   |

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JUSTICE CAVANAGH delivered the judgment of the court.  
Justices Zenoff and Grischow concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) A charging instrument's citation of the wrong statute which the defendant raised only after the trial had begun is a formal defect instead of a substantive defect and does not justify reversal unless the wrong citation caused the defendant prejudice.

(2) Trial errors, including errors in jury instructions, must be raised not only contemporaneously but also with reasonable specificity in a posttrial motion, or else, on appeal, the errors will be regarded as procedurally forfeited, and the burden will be on the defendant to avert the forfeiture by showing plain error.

(3) The circuit court does not abuse its discretion by refusing a nonpattern jury instruction as cumulative if, arguably, the subject matter is adequately covered by a pattern jury instruction.

(4) Prejudice is not presumed from the deficient performance of defense counsel, but rather must be shown, unless defense counsel entirely failed to subject the prosecution's case to meaningful adversarial testing.

¶ 2 In the Mercer County circuit court, a jury found defendant, Dale Robert Woodsmall, guilty of one count of drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2024)),

which was a Class X felony, and two counts of methamphetamine delivery (720 ILCS 646/55(a)(2)(A) (West 2024)), which were Class 2 felonies. For drug-induced homicide, the court sentenced him to imprisonment for 22 years. The court imposed four-year prison terms on the two convictions of methamphetamine delivery, ordering that those terms would run concurrently with each other but consecutively to the 22-year prison term.

¶ 3 Defendant appeals on five grounds.

¶ 4 First, he argues that count I, the count charging him with drug-induced homicide, “failed to state an offense because it cited a legally impossible predicate offense.” This count merely cited the wrong statute in connection with an element of the offense. This defect was formal, not substantive, and it caused the defense no prejudice.

¶ 5 Second, defendant claims the State failed to prove, beyond a reasonable doubt, that his delivery of methamphetamine contributed to the death of the victim, Blake Russell. When we view the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find, beyond a reasonable doubt, that this element of causation was proven.

¶ 6 Third, defendant maintains that the circuit court erred in its instructions to the jury. One error was an omitted word in a written instruction, and another error was an omitted word in an oral instruction. We conclude that those two errors are procedurally forfeited and that the doctrine of plain error does not avert the forfeiture. Also, defendant complains of the court’s refusal of his nonpattern instruction on the concept of an intervening cause. Because the pattern instructions the court gave the jury adequately covered that concept, we find no abuse of discretion in the refusal of the nonpattern instruction.

¶ 7 Fourth, defendant contends that the circuit court “allowed improper credibility determinations by both the State’s witness and the court itself[,] depriving [defendant] of a fair

trial.” We conclude that this contention likewise is procedurally forfeited and that the doctrine of plain error does not avert the forfeiture.

¶ 8 Fifth, defendant argues, alternatively, that “defense counsel provided ineffective assistance of counsel by building an entire trial strategy on a legally untenable theory.” By “a legally untenable theory,” defendant means the first argument he makes in this appeal: that count I was substantively deficient. Supposedly, it was in reliance on that misguided legal theory (assuming we regard it as misguided—we do), that defense counsel conceded defendant’s guilt on the delivery counts, counts II and III, while contesting his guilt on the count of drug-induced homicide, count I. Considering that defendant admitted, in a noncustodial audio/video interview at the sheriff’s office, which was played for the jury, that he delivered methamphetamine as alleged in counts II and III, we find that, by conceding defendant’s guilt on those counts and concentrating on fighting the more serious count, defense counsel caused the defense no prejudice.

¶ 9 Therefore, we affirm the circuit court’s judgment.

## ¶ 10 I. BACKGROUND

### ¶ 11 A. The Charges

¶ 12 The information consisted of three counts.

¶ 13 Count I charged defendant with drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2024)). Because a certain phrase in count I is a subject of contention in this appeal, we quote count I with the phrase at issue emphasized:

“[O]n or about May 25, 2024 in Mercer County, Illinois, the defendant \*\*\*  
committed the offense of DRUG INDUCED HOMICIDE, in violation of Section  
9-3.3(a) of Act 5 of Chapter 720 of the Illinois Compiled Statutes [(*id.*)], a Class

X felony, in that the said defendant, *in violation of Section 401 of the Illinois Controlled Substance Act [(720 ILCS 570/401 (West 2024))]*, by unlawfully delivering methamphetamine, to another, being Blake Russell, and Blake Russell’s death was caused by the ingestion, injection, inhalation or absorption of any amount of that methamphetamine.” (Emphasis added.)

Unlawfully delivering methamphetamine did not violate section 401 of the Illinois Controlled Substance Act, for that section made it unlawful to knowingly manufacture, deliver, or possess with the intent to manufacture or delivery “a controlled substance *other than methamphetamine*.” (Emphasis added.) 720 ILCS 570/401 (West 2024).

¶ 14 Counts II and III alleged that, on the same date, defendant committed the offense of delivering methamphetamine (720 ILCS 646/55(a)(1), (a)(2)(C) (West 2024)). The only difference between counts II and III was that count II alleged a violation of subsection (a)(2)(A) of section 55 of the Methamphetamine Control and Community Protection Act (720 ILCS 646/55(a)(2)(A) (West 2024)), whereas count III alleged a violation of subsection (a)(2)(C) (*id.* § 55(a)(2)(C)). Section 55(a)(2) (*id.* § 55(a)(2)) prescribed different penalties depending on the amount of the methamphetamine or substance containing methamphetamine the person delivered. Under subsection (a)(2)(A), delivery of less than five grams was a Class 2 felony, whereas, under subsection (a)(2)(C), delivery of 15 or more grams but less than 100 grams was a Class X felony. Despite their citation of different subsections of section 55, counts II and III both alleged that defendant “knowingly possessed with intent to deliver less than 5 grams of a substance containing methamphetamine” and that he thereby committed “a Class 2 felony.” This apparent discrepancy in count III is not an issue in this appeal, but we do not want to appear to be oblivious of it.

¶ 15

B. Defense Counsel’s Opening Statement

¶ 16

In his opening statement, defense counsel told the jury, “I expect you’ll find my client guilty of Counts 2 and 3. You’ll not find him guilty of Count 1. The State will not meet their burden.”

¶ 17

C. William Viager’s Account of the Sale and Use of Methamphetamine

¶ 18

At trial, William Viager testified he had known Russell for about five years—they had attended the same high school together—and that on May 25, 2024, he drove to Russell’s house in Aledo, Illinois, and picked him up around 1 p.m. because Russell had told him he wanted drugs and Viager “knew someone who had some.” In Viager’s vehicle, with Viager driving, they went to New Boston, Illinois, to “a big farmhouse,” which Viager called “Logan Beattie’s old house.” (In the record, the property also is called “the old Sloan Farm.”)

¶ 19

Viager testified that when he and Russell arrived at this farmhouse, Heather Houston was there. The prosecutor and Viager then had the following dialogue:

“Q. And do you purchase drugs, in your—in your words, from this place?

A. Yes.

Q. From who?

A. Logan Beattie.

THE COURT: I’m sorry. You’re going have to state that a little louder.

THE WITNESS: Logan Beattie.

BY [THE PROSECUTOR]:

Q. Who—who did you purchase drugs from?

A. Logan Beattie.

Q. So, at this residence, do you use any—what—what type of drugs were

you purchasing from this residence?

A. Meth.

Q. Meth?

A. Methamphetamine, yes.

Q. \*\*\* So present at this residence is you, Blake, Heather Houston, and Logan Beattie?

A. No. No. Just us three, me, Houston, and Blake.”

¶ 20 Viager thought he “purchased, like, \$10 worth” of methamphetamine, but he was tentative about the dollar amount, saying, “I don’t know how much.” Russell likewise purchased methamphetamine—and he purchased it from defendant, Viager testified, whereupon Viager identified defendant in court. The circuit court asked Viager, “You purchased methamphetamine from that gentleman to my left wearing the glasses, seated next to the other gentleman wearing a black suit \*\*\*?” Viager answered, “Yes.” The court stated, “The record will reflect the identification of the defendant in open court.”

¶ 21 After buying methamphetamine from defendant at the farmhouse in New Boston, Viager and Russell smoked some of the methamphetamine there. Then they went to John Beattie’s house, where Viager’s friend, Daniel Beattie, also lived. The four of them—Viager, Russell, John, and Daniel—smoked methamphetamine in a shed on John’s property.

¶ 22 The prosecutor and Viager had the following discussion about whose methamphetamine they smoked in the shed:

“Q. \*\*\* Whose methamphetamine did you use?

A. I know mine. I’m not sure if he pitched in too, but it was mine and his, mine and [Russell’s].

Q. Yours and [Russell's]?

A. I believe so, yes.

[DEFENSE COUNSEL]: Objection. That misstates his testimony. He said he was not sure.

THE COURT: Ask a clarifying question. The answer is stricken at this point until I get further clarification for the jury.

[PROSECUTOR]: Okay.

BY [THE PROSECUTOR]:

Q. So for sure yours is your testimony?

A. Yes.

Q. \*\*\* So, at any point in time other than yours, did John or Danny pitch in?

A. No.

Q. \*\*\* So all of the methamphetamine that was smoked at the Beattie residence came from New Boston?

A. Yes."

¶ 23 After smoking methamphetamine in John's shed with John and Daniel, Viager and Russell went to Viager's residence, in Seaton, Illinois, and played video games on his Xbox. According to Viager's testimony, they smoked no methamphetamine in Viager's residence but instead smoked only marijuana there. Eventually, as Viager was trying to leave his house and take Russell back to Aledo, Russell started acting strangely, claiming that Viager had a gun and intended to shoot him. In his testimony, though, Viager denied having a gun. He further denied getting into an altercation with Russell, putting his hands on him, or threatening to hurt him.

Russell just spontaneously began acting very nervous. He wrapped his arms around Viager as Viager was trying to get into his car to drive him home. Viager's neighbor and stepbrother, Brian Greer, was outside, and Viager went over to him and asked for help. (The State also called Greer as a witness, and he corroborated Viager's account.) Russell climbed into the driver's seat of Viager's car, a Lincoln LS sedan. The keys were in the ignition, and as Viager was conferring with Greer, Russell took off in Viager's car.

¶ 24           At this point in her direct examination of Viager, the prosecutor retraced her steps thus far:

                  “Q. You previously testified that you purchased methamphetamine from a farmhouse in New Boston, correct?

                  A. Yes.

                  Q. \*\*\* And at one point in time, I asked you who you purchased it from.

                  Your answer was Logan Beattie.

                  A. I thought you asked me what I was doing there.

                  Q. Okay.

                  A. Because—at Logan Beattie's house.

                  Q. \*\*\* So you—but then you later testified that you purchased it from [defendant]?

                  A. Yeah. But he wasn't there when I got there.

                  Q. \*\*\* And so when does [defendant] arrive at that residence?

                  A. Like 10 or 15 minutes later, after we get there.

                  Q. \*\*\* And then—do both you and Blake Russell purchase methamphetamine from [defendant]?

A. Yes.”

¶ 25 As Viager and Russell were buying the methamphetamine from defendant (Viager recounted), the three of them were sitting at a table in the farmhouse, and defendant had “individual bags for both of [them],” which he had taken out of an “original bag.” The prosecutor asked Viager, “And it’s your testimony that you smoke at that residence, correct?” Viager answered, “Yes.” The prosecutor then asked, “And at the Beattie[s’] residence later on that day?” Viager answered, “Yes.”

¶ 26 On cross-examination, defense counsel and Viager had the following discussion about whose methamphetamine was smoked:

“Q. On May 25th you did methamphetamine with a number of people; is that correct?

A. Correct.

Q. And the methamphetamine that you did was your methamphetamine; is that correct?

A. I don’t know.

Q. Did you buy it from somebody, put in your pocket, and then later you smoked what came out of your pocket?

A. At John’s house. Yes.

Q. \*\*\* Who prepared—well, how did you smoke it?

A. Out of a bog [sic].

Q. Out of bog [sic]?

A. Water pipe. Yeah.

Q. And was that your bog [sic] or pipe?

A. No.

Q. Whose was it?

A. I smoked out of two pipes.

Q. Okay.

A. The one was John's, and I don't know whose at the New Boston residence it was.

Q. \*\*\* Who packed the pipes?

A. I'm not sure.

Q. Since it was your meth, would you have packed the pipe?

A. Yes."

¶ 27 Viager estimated it was about 1:30 p.m. on May 25, 2024, when he bought the methamphetamine from defendant at New Boston. He testified he started smoking it immediately after buying it. He reckoned it took only five minutes to smoke whatever quantity of methamphetamine they smoked at the farmhouse in New Boston. At that time, they did not smoke all the methamphetamine that Viager had bought. They smoked only some of it. Viager put the rest in his pocket, and then "four people shared that meth" at John's house.

¶ 28 Viager agreed that no one forced Russell to smoke the methamphetamine. Instead, Russell was "trying to find meth[,] and [Viager was] helping him find it." Defense counsel asked Viager, "And you were helping him find a pipe too, because in some of those text messages he didn't know how you guys were going to smoke it?" Viager answered, "Correct." Viager agreed that he "supplied the meth and the pipe that [Russell] smoked from 1:30 to 1:35" p.m. at Logan's house. Then the two of them went to John's house, in Keithsburg, Illinois, and at about 2 p.m., they smoked methamphetamine in a shed or barn, using John's pipe. Defense counsel asked

Viager, “You get your meth out and somebody else’s meth pipe?” Viager answered, “Yeah.”

¶ 29 Defense counsel sought to confirm it was Viager’s methamphetamine that was smoked, not only at the first stop (in New Boston), but also at the second stop (in John’s shed):

“Q. So you use John Beattie’s pipe and your meth around 2:00 o’clock; is that correct?

A. Yeah. Yeah.

Q. And [Russell] smoked some there; is that correct?

A. Yeah.

Q. And you still had some left over to put in your pocket?

A. No.

Q. So you finished all the meth that you had at John Beattie’s?

A. I think—yeah.”

¶ 30 At about 2:05 p.m. on May 24, 2025, Viager and Russell left John’s house and returned to Viager’s house. They arrived there “[p]robably like 2:00, 2:40 or 3:00 o’clock.” At Viager’s house, they did not smoke methamphetamine but smoked marijuana. Defense counsel asked, “You got it from a stranger?” Viager answered, “I just had it for a while. I don’t remember. Could be from a dispensary or—I can’t remember.” Viager testified he obtained marijuana sometimes from a dispensary and sometimes from “an illicit source.” He could not remember where this marijuana had come from. Defense counsel asked him, “You don’t know if there were any substances in it other than marijuana?” Viager answered, “No.” However, he had never laced his marijuana with anything. After smoking the marijuana at Viager’s, Russell began acting strangely, “[e]xhibiting behavior that was far different than earlier in the day after he had taken the methamphetamine.” Russell became paranoid and thought that Viager was going to

shoot him for having had sex with Viager's girlfriend (as Russell, in his panicky state, blurted out that he had done).

¶ 31 To firm up the matter, yet again, of whose methamphetamine Russell had smoked, defense counsel and Viager had the following conversation:

“Q. \*\*\* All of the methamphetamine that you saw \*\*\* Russell smoke that day went from your pocket into a pipe; is that correct?

A. Correct.

Q. And you joined him in all of that? There was nothing—there was no substance of the methamphetamine that he took that you didn't?

A. Correct.

Q. You were fine that day, correct?

A. Yeah.”

¶ 32 It was the same with the marijuana at Viager's house—they both partook of it. Viager and Russell smoked the marijuana out of the same bong, and Viager “did not repack” the bong.

¶ 33 By Viager's rough estimate, it was around 4 or 5 p.m. on May 25, 2024, when Russell took off in Viager's car—but Viager testified he did not know the exact time when Russell did so. Viager delayed calling the police because, as he explained in his testimony, he hoped that Russell would come to his senses and bring the car back.

¶ 34 After Russell's body was discovered in Viager's car, where it had veered off the road and into a cornfield, Viager willingly went to the sheriff's office to be interviewed. Defense counsel had this exchange with Viager regarding the interview, again nailing down the point that all the methamphetamine that Russell smoked had come out of Viager's bag:

“Q. And in the interview you state that Blake doesn’t do any of the methamphetamine that he purchased because it was for his aunt. You guys only smoked your methamphetamine.

Do you recall that?

A. Yes.

Q. And that’s accurate, correct?

A. Yes.”

¶ 35 In her redirect examination, the prosecutor discussed with Viager whether, on May 25, 2024, he might have possessed any methamphetamine that had come from a source other than defendant:

“Q. Did you have methamphetamine in your possession when the day in question started?

A. No.

Q. \*\*\* [Y]ou were asked quite a few questions about your meth, what you did with your meth, where you smoked your meth, *et cetera*, correct?

A. Yeah.

Q. Do you recall that?

So all the methamphetamine that you’re testifying to usage [*sic*] and obtaining that day, it’s your testimony that came from [defendant], correct?

A. Yes.”

¶ 36 D. John

¶ 37 John testified he had a son, Daniel, and that his other son, Logan, died on January 11, 2024.

¶ 38 John recalled seeing Russell the morning of the day he died. At about 10 or 11:30 a.m. that day, Russell and Viager arrived at John's house in Viager's car. When John came out to the shed, Viager, Russell, and Daniel were in the shed, loading a bong with what appeared to be some methamphetamine that Viager had brought with him. The four of them smoked the methamphetamine in the shed and afterward smoked marijuana that John had bought from a dispensary. They were in the shed for about 15 or 20 minutes, by John's estimate, and then Viager and Russell left in Viager's car.

¶ 39 On cross-examination, defense counsel and John had a discussion about preexisting residue that possibly was in the pipe the four of them had used in the shed:

“Q. \*\*\* [D]id you use your meth pipe or \*\*\* Viager's?

A. Used my son Logan's.

Q. Logan's meth pipe?

A. (Nodding.)

Q. Did you guys clean it out before using it? Or was there some residue in the pipe from the last time your son had used meth?

A. I don't know.

Q. You use meth, correct?

A. Yes, sir.

Q. When you use meth, there's still some residue in the pipe when you're done; is that correct?

A. Yes, sir.

Q. And the next time you use, that meth residue may still be in there; is that correct?

A. Could be, yes.

Q. \*\*\* So if I used meth in a pipe today, and I'm done, I put it back in my pocket, put it away, a couple days from now I smoke more meth, I'm not only smoking the meth that I pack that day, but the residue from ten days ago?

A. Yes, sir."

¶ 40

E. Daniel

¶ 41 In his testimony, Daniel could not recall the exact time when Viager and Russell arrived on May 25, 2024, at the house he occupied with his father—he thought it was 11:30 a.m. or noon. Viager and Russell “just randomly showed up,” uninvited, as it was common for Viager to do. When Daniel answered the knock at the door, it was Viager and Russell, and they asked him if he wanted to go to the shed. That was where the bong was—Logan’s bong. The three of them went to the shed, and soon afterward John joined them.

¶ 42 The direct examination of Daniel continued:

“Q. And at this point in time, do you consume methamphetamine?

A. Yes.

Q. \*\*\* Whose methamphetamine do you consume?

A. [Viager’s].

Q. \*\*\* Did you have in my [sic] methamphetamine at your home?

A. No.

Q. Did you throw in? Did you put any in the bong you consumed?

A. I had nothing to throw in the bong.”

¶ 43 The four of them smoked methamphetamine in the shed for maybe 15 minutes and smoked a marijuana joint afterward. There was no yelling or screaming. No one acted out of

the ordinary. Maybe 45 minutes after they arrived, Viager and Russell left in Viager's car. There was no change in Russell's behavior from the time when Russell exited the shed to the time when he got back into Viager's car.

¶ 44 On cross-examination, Daniel testified that the methamphetamine the four of them smoked in the shed came out of Viager's pocket and that it was Viager who packed the pipe. As Daniel put it, "the bong was in my shed, and [Viager] just grabbed it and then loaded it out of his pocket."

¶ 45 F. The Discovery of Russell's Body

¶ 46 Doug Chaffer, a farmer, testified that at about 4 p.m. on May 25, 2024, he was driving home from a graduation ceremony when he saw a car in his neighbor's cornfield. "[Y]ou could see where it came off the road and drove through some of the corn," he recounted. From about 100 yards away, he did not see anything in the car, so he continued home. He changed clothes and got on his four-wheeler to check on his crops. "[I]t took about two hours to get around to get back up to that area, and the car was still there." Chaffer stopped his four-wheeler and walked up to the car, and the car's motor was still running. He could see now that a man was slumped over in the driver's seat of the car and that he appeared to be dead. After pounding on the roof of the car and getting no response, Chaffer called the sheriff's office. Then he waited on his four-wheeler for the police to arrive.

¶ 47 G. The Cause of Death

¶ 48 Dr. Amanda Youmans was a physician specializing in forensic pathology. On May 28, 2024, she performed an autopsy on Russell's body. She saw cutting marks, in various stages of healing, on Russell's left forearm and left thigh. The cutting marks appeared to be self-inflicted and were nonlethal. After receiving a toxicology report from NMS Labs, Dr. Youmans

concluded that Russell had died of methamphetamine intoxication. She testified that, in the report from NMS Labs, “[t]here were several drugs identified, including marijuana; fluoxetine, which is the generic name for the drug Prozac; and also methamphetamine.” The marijuana and fluoxetine, however, were “non-contributory”: they were “within therapeutic or non-toxic concentrations.” The methamphetamine level was the highest, and it was, Dr. Youmans opined, fatal.

¶ 49 H. What Was Found in the Car and on Russell's Body

¶ 50 Jeffrey Meisenheimer was a trooper with the Illinois State Police who worked in the crime scene division. On May 25, 2024, at about 6:28 p.m., the Mercer County Sheriff’s Office contacted him to perform a death investigation. When he arrived at the scene, he saw a black Lincoln LS 2000 four-door sedan about five or six rows into a cornfield. The deceased man in the car, Russell, appeared to bear no marks of abuse or beating. He “seemed to be more stretched out in \*\*\* the driver’s seat, with his right arm laying over the center console, his head back, not necessarily even on the headrest.” In his search of Russell’s body, Meisenheimer found “a wallet \*\*\* in his left gym short pocket, along with a JUUL e-cigarette and a small plastic bag with a white powdery-like substance in the bag.” Meisenheimer also described the substance in the bag as a “white brown-like powdery substance.” People’s exhibit No. 3 was the bag containing the “whitish brown powder-like substance,” and People’s exhibit No. 6 was the evidence bag into which Meisenheimer had put People’s exhibit No. 3. The prosecutor asked Meisenheimer, “So you collected that substance from the photographs \*\*\* that you’ve been shown here today and placed it in that evidence bag?” Meisenheimer answered, “Yes, ma’am.” Also, in the pocket between the driver’s seat and the rear passenger seat was a red-topped plastic food container “containing a white unknown powder-like substance”

¶ 51 I. Testing of the Powder From the Bag in Russell's Pocket

¶ 52 Angela Nealand was a forensic scientist III at the Morton Forensic Science Laboratory, which was a facility of the Illinois State Police in Morton, Illinois. She testified that, upon receiving People's exhibit Nos. 3 and 6, she removed the crystalline substance from the baggie that had been in Russell's pocket and weighed the substance. It was 0.562 grams, which she reported as 0.5 grams. She performed two color tests on the substance, both of which were positive for the presence of methamphetamine. She then put some of the substance in a mass spectrometer and, after comparing the substance to a known standard, determined that the substance contained methamphetamine. So, the bag of brownish-white powder in Russell's pocket was methamphetamine.

¶ 53 J. Detective Anthony Baugh

¶ 54 The State called Anthony Baugh. He testified he had been a detective with the Mercer County Sheriff's Office for almost 29 years and that his responsibility was to "investigate all kinds of major crimes within the County, sex assaults, homicides, drug cases, burglaries, anything major that \*\*\* comes into [the] department." On May 25, 2024, he was called out to a death scene. A vehicle was parked in a field. Deputy Sheriff Devin Mannon was already on the scene when Baugh arrived, and Baugh stood by and helped secure the scene while awaiting the arrival of the crime scene investigator, Meisenheimer.

¶ 55 The next day, May 26, 2024, Viager voluntarily came to the sheriff's office and recounted what happened the day before. Baugh testified, "When I interviewed \*\*\* Viager, \*\*\* he called it a \$10 and \$20 bag of methamphetamine that he purchased from [defendant]." Also, "[Viager] said \*\*\* during his interview that \*\*\* there should be some methamphetamine still in \*\*\* Russell's possession. We found that," Baugh noted.

¶ 56 Baugh also spoke with Greer, John, and Daniel. According to Baugh’s testimony, what they told Baugh was consistent with what Viager had told him.

¶ 57 Baugh then contacted defendant at the camper or recreational vehicle he was living in. Defendant agreed to come to the sheriff’s office for an interview. Initially, in the interview, he denied meeting with Viager or Russell on May 25, 2024. Baugh testified, “I told him, That wasn’t true, that he did, I knew he did. He said, [‘]Well, they were at the house that day,[’] the house being what I call the old Sloan Farm on 55th Street.” Defendant admitted he had met with Viager and Russell there and “that they had smoked methamphetamine there.” When Baugh asked defendant where the methamphetamine had come from, he answered that “[i]t was just there.” Baugh then testified, “Being around long enough, around drug users, they don’t just leave their drugs laying around. I knew that was not the truth, so I inquired more.”

¶ 58 Baugh’s remark that he knew “that was not the truth” elicited an objection by defense counsel, a response by the prosecutor, and the following initial ruling by the circuit court:

“[DEFENSE COUNSEL]: Objection. Improper bolstering. Improper commenting on the truth or veracity of another witness’ statement. Bolstering and improper, in my view.

[PROSECUTOR]: Your Honor, he’s made statements that he’s been an officer for 29 years and that as part of his duties he is to investigate major crimes, such as drug usage and other types of investigations. I believe he has the ability. He is speaking generally about drug users and their habits.

THE COURT: His training and experience and expertise in these cases is well noted by this Court. He may testify only to what he saw, what he gleaned from what he observed or was reported to him in his conclusions.

The objection is overruled. He may answer because it's within that parameter."

¶ 59 The prosecutor's direct examination of Baugh resumed, but it was interrupted by defense counsel's reiterated objection, which, this time, the circuit court sustained:

"BY [THE PROSECUTOR]:

Q. So the portion of the interview where they indicated that he had just left—left it out?

A. That was not the truth. As we spoke more—

[DEFENSE COUNSEL]: Your Honor, I want to renew my objection.

THE COURT: That is sustained.

[PROSECUTOR]: I'll rephrase, Your Honor.

THE COURT: What he saw, what he observed, not his conclusions as to whose truthfulness or anything else. The Court will not tolerate that. That is for the par lance [sic] of the jury to decide who is telling the truth and who is not. The credibility is for the trier of fact."

¶ 60 "Absolutely," the prosecutor responded, whereupon she resumed her direct examination, asking Baugh if defendant eventually told him something different. Baugh answered, "Yes, he did. He \*\*\* said, " [']All right, I did sell them a little out of my personal bag, then we smoked, and then they left, and that was it.['] " People's exhibit No. 21, Baugh testified, was an audio/video recording of this interview of defendant in the sheriff's office. The circuit

court admitted People's exhibit No. 21, and, with the court's permission, it was played for the jury.

¶ 61 The defense also called Baugh in its own case. Baugh testified that defendant came willingly to the sheriff's office and talked with him. Defendant told him he had "purchased an 8 ball" of methamphetamine from Brandon Biesler. Defense counsel asked Baugh, "And that would have been the person that sold him an 8 ball of methamphetamine that was allegedly later broken off, a small piece, and sold to \*\*\* Viager and \*\*\* Russell?" Baugh answered, "That's correct." Because Biesler was "constantly on the run," Baugh had been unable to locate him.

¶ 62 Defense counsel elicited admissions from Baugh that two items had not been tested: the powder in the red-topped plastic container and the vape pen:

"Q. In fact, there was a white, powdery substance and a vape pen in that vehicle that were taken and sent to the lab but then not tested; is that correct?

A. That's correct.

Q. And you received that report and didn't follow up and ask them to test it, did you?

A. I did not."

Nor did Baugh or any other investigating police officer "ask[ ] for the actual pipes, bongs \*\*\* that they smoked out of." Nor did Baugh take for testing the marijuana that Viager said he and Russell had smoked together. Nor did Baugh "ever confirm whether it came from a dispensary or an illicit source."

¶ 63 When defense counsel challenged him about his decision not to have the powder in the red-topped plastic container tested, Baugh explained that, based on his experience, that powder did not look like methamphetamine:

“Q. \*\*\* And you could have said, [‘H]ey, we also want 2 and 3 tested,[’]  
right?

A. I could have, yes.

Q. And you chose not to?

A. I did not.

Q. You chose not to, correct?

A. I—we knew at that point how he—what he died from. It was meth  
intoxication, and that was not methamphetamine.

Q. You didn’t have it tested?

A. That’s correct. I’ve got many years of—

A. You don’t know it was—

Q. —experience looking at—

A. You don’t know—You haven’t been declared an expert.

[DEFENSE COUNSEL]: Your Honor, I ask that that be stricken. It’s  
opinion testimony.

[PROSECUTOR]: Your Honor, he’s testified that he’s been a detective. In  
fact, [defense counsel] has indicated he’s a lead detective, that he’s the most  
senior detective, and that he investigates some of the most senior [sic] crimes. I  
believe he can give his opinion in terms of police experience and training.”

THE COURT: He can give his opinion, but he is not an expert in that  
field, and that was [defense counsel’s]—so he can give his lay opinion.

[DEFENSE COUNSEL]: Thank you.

THE WITNESS: My opinion is it was not methamphetamine.

BY [DEFENSE COUNSEL]:

Q. What was the white, powdery substance?

A. I don't know.

Q. You didn't test it?

A. I just said that. No, I did not."

¶ 64 Defense counsel next asked Baugh if he was "familiar with vape pens and putting things other than [tetrahydrocannabinol (THC)] or tobacco in them." Baugh answered that, although he knew what vape pens were, he was not familiar with them, having never used one. Defense counsel asked him, "You're familiar that sometimes people put other drugs in them, correct?" Baugh answered, "I've heard of THC. I don't know they use them for other drugs, no. I've never, never dealt with that." Baugh admitted that a vape pen was found in the pocket of the deceased, Russell, and that he never opened the vape pen "to see what kind of cartridge was in it."

¶ 65 K. A Deleted Text Message

¶ 66 In cross-examining Mannon, defense counsel asked him, "And to keep your phone running properly, you delete evidence and communications about cases including homicides?" The circuit court interjected, "Don't answer that. The Court is going to object. That's a mischaracterization, and that's a legal conclusion. He's not answering that."

¶ 67 L. The Motion for a Directed Verdict

¶ 68 After the State rested, defense counsel moved for a directed verdict on count I. His stated reason for the motion was that, in count I, the State alleged that defendant had violated section 401 of the Illinois Controlled Substances Act—an impossibility because section 401 "specifically excludes methamphetamine." Defense counsel argued, "Had the State wanted to

charge my client with drug-induced homicide by methamphetamine, the correct statute that they should have cited would have been Section 55 of the Methamphetamine Control and Community Protection Act.” Defendant “cannot be found guilty under Count 1,” defense counsel reasoned, “when meth is the cause because the statutory section cited explicitly excludes methamphetamine.”

¶ 69           The prosecutor responded that, even if count I made “a scrivener’s error” by alleging that defendant’s unlawful delivery of methamphetamine had been in violation of section 401 of the Illinois Controlled Substances Act instead of section 55 of the Methamphetamine Control and Community Protection Act, the defense was “on notice of exactly what information [was] being charged,” and the drug-induced homicide statute provided that “either of those violations [was] appropriate.”

¶ 70           But defense counsel insisted:

“My client would be quite prejudiced if they were allowed to switch to \*\*\* the other act \*\*\* because, if the Court will recall, my opening statement was that my client is guilty of that act. So to suggest that my client isn’t prejudiced by developing a trial strategy based on the charging document and electing to proceed and concede Counts 2 and 3 repeatedly confirm with the State’s witnesses that it was indeed methamphetamine that killed him. There were no other substances.

We did not go down other routes. We did not attack the credibility of the eyewitnesses such as Mr. Viager, which we might otherwise, likely otherwise, would have done.”

¶ 71           The prosecutor responded that defense counsel’s position might have been

stronger if count I had not included the phrase “ ‘by unlawfully delivering methamphetamine.’ ”

The prosecutor argued, “That is what puts the defense on notice that that is exactly what the State is alleging right there, committed the offense of drug-induced homicide in violation of Section 9-3.3(a) in that said defendant, by unlawfully delivering methamphetamine to another.”

¶ 72 Defense counsel maintained, however, that only the citation to section 401 mattered. “The other facts are surplusage,” he argued. “They are irrelevant. It is the violation of the code section that controls. The code section excludes methamphetamine.”

¶ 73 The circuit court denied the motion for a directed verdict on count I.

¶ 74 M. Jury Instructions

¶ 75 The written jury instruction based on Illinois Pattern Jury Instructions, Criminal, No. 7.15 (approved July 29, 2022) (hereinafter IPI Criminal No. 7.15), omitted the word “delivery.” The written instruction the circuit court gave the jury read as follows:

“In order for you to find that the acts of the defendant caused the death of \*\*\* Russel[l], the State must prove beyond a reasonable doubt that defendant’s *acts of methamphetamine* were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.” (Emphasis added.)

IPI Criminal No. 7.15, however, required the use of the phrase “acts of delivering methamphetamine” instead of the phrase “acts of methamphetamine.”

¶ 76 Also, in reading to the jury the instruction based on Illinois Pattern Jury Instructions, Criminal, No. 7.27 (4th ed. 2000) (hereinafter IPI Criminal No. 7.27), the circuit court omitted the word “that.” The court orally instructed the jury, “A person commits the

offense of drug-induced homicide when he knowingly delivers to another a substance containing methamphetamine and any person's death is caused by the inhalation of *any amount of methamphetamine*.” (Emphasis added.) IPI Criminal No. 7.27 required the use of the modifier “that” in the concluding phrase—“any amount of *that* methamphetamine.” (Emphasis added.) (The corresponding written jury instruction, however, did not make that mistake: it included the word “that.”)

¶ 77 At the jury instruction conference, defense counsel tendered a nonpattern instruction that “an intervening cause completely unrelated to the acts of the defendant does relieve a defendant of criminal liability.” The prosecutor began voicing an objection to the proposed nonpattern instruction, but to save time, the circuit court decided it did not need to hear the objection further:

“[PROSECUTOR]: \*\*\* A jury is allowed to decide and will be given a causation—

THE COURT: Well, let me—let me save you further argument. It’s not going to be given, but I guarantee you he’s going to be able to argue it, as he already has.

But this non-IPI on this particular issue in this particular case is not going to be given by this Court. That’s over the objection of defense.”

¶ 78 N. Defense Counsel’s Closing Argument

¶ 79 In his closing argument, defense counsel told the jury:

“First, two people purchase methamphetamine from [defendant], my client. I told you at the start he sold methamphetamine. You’ll find him guilty on counts two and three.

Two people came looking for methamphetamine, \*\*\* Viager and \*\*\*

Russell. He sold it to them. We didn't need to spend that much time on it."

¶ 80 Defense counsel argued that, even so, "investigative oversights" and "causation questions" should leave the jury with reasonable doubt about whether defendant was guilty of count I. The police had made no effort to recover the pipes at the Sloan Farm, John's shed, and Viager's house so that those pipes could be tested. Even though Russell feared that Viager would kill him, and even though Viager inexplicably "wait[ed] several hours" before reporting to the police that Russell had stolen his car—instead texting Russell at 2:54 p.m., "[']What the fuck man. Where'd you go with my car?[']"—the police simply "[took] William Viager's word for it." They did not "investigate his house for a single other substance, a single other source of drugs, or any other type of substance that could have killed \*\*\* Russell." Nor did the police "test the things in the car." They tested neither the powder in the pouch behind the driver's seat nor the vape pen in Russell's pocket.

¶ 81 Defense counsel asserted, "There's not a single step from the collection of \*\*\* Russell's blood until the preparation of the death certificate that doesn't have some kind of question mark next to it." The witnesses from NMS Labs did not even know one another—the right hand did not know what the left hand was doing. For the autopsy, the blood work was "outsourced to a private company with private company motives."

¶ 82 Even People's exhibit No. 21, the audio/video recording of the interview of defendant, cast doubt on causation, defense counsel argued. He urged the jury:

"Take it from Detective [Matthew] Bruning, who in those videos—if you watch Exhibit 21 again together in the jury room, you'll hear Bruning say, '[']We know what you gave him wasn't enough to kill him. We know that's \*\*\* not what did

it.[’]

I’m not asking you to believe me. I’m asking you to look at all the evidence, believe Detective Bruning. He’s the one on video saying, [’]Couldn’t have been [defendant].[’] ”

¶ 83 Defense counsel summed up:

“You will find my client guilty on counts two and three. He purchased methamphetamine from somebody else and resold it. We heard that. Also, you heard they didn’t follow up on that guy either.

But, no, we had it all tied up within a day. It was all [defendant]. It’s the story the State wants you to believe.

I think the doubts you’ll have are reasonable, and I think you’ll find [defendant] not guilty of count one.”

¶ 84

## II. ANALYSIS

¶ 85

### A. The Sufficiency of Count I as Pleaded

¶ 86

Again, count I of the information alleged as follows:

“that on or about May 25, 2024 in Mercer County, Illinois, \*\*\* defendant \*\*\* committed the offense of DRUG INDUCED HOMICIDE, in violation of Section 9-3.3(a) of Act 5 of Chapter 720 of the Illinois Compiled Statutes [(720 ILCS 5/9-3.3(a) (West 2024))], a Class X felony, in that the said defendant, in violation of Section 401 of the Illinois Controlled Substance Act [(720 ILCS 570/401 (West 2024))], by unlawfully delivering methamphetamine, to another, being Blake Russell, and Blake Russell’s death was caused by the ingestion, injection, inhalation or absorption of any amount of that methamphetamine.”

¶ 87 One of the statutes that count I charged defendant with violating, section 9-3.3(a), defined the offense of drug-induced homicide as follows:

“A person commits drug-induced homicide when he or she violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully delivering a controlled substance to another, and any person’s death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance.” 720 ILCS 5/9-3.3(a) (West 2024).

¶ 88 Thus, one of the elements of drug-induced homicide was that the defendant violated either section 401 of the Illinois Controlled Substances Act or section 55 of the Methamphetamine Control and Community Protection Act. Count I alleged that defendant’s “unlawful[ ] deliver[y] [of] methamphetamine[ ] to \*\*\* Russell” was “in violation of Section 401 of the Illinois Controlled Substance Act.” Because section 401(a) (720 ILCS 570/401(a) (West 2024)), however, made it “unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance *other than methamphetamine*” (emphasis added), defendant’s unlawful delivery of methamphetamine could not have been “in violation of Section 401,” as alleged. Instead, defendant’s unlawful delivery of methamphetamine was in violation of section 55, which, in subsection (a)(1), made it “unlawful knowingly to engage in the delivery or possession with intent to deliver methamphetamine or a substance containing methamphetamine.” 720 ILCS 646/55(a)(1) (West 2024). Count I correctly charged defendant with violating section 9-3.3(a) by committing drug-induced homicide. But count I incorrectly charged him with violating section 401 by unlawfully delivering methamphetamine—a predicate offense within the offense of drug-induced homicide.

¶ 89 Defendant contends that because count I cited section 401 instead of section 55 as the statute he had violated by unlawfully delivering methamphetamine, count I was “substantively defective.”

¶ 90 On its face, that contention would appear to contradict well-established case law. The appellate court has observed:

“It is well established that reference in a charging instrument to an incorrect chapter or section of a statute, or both, is regarded as a formal rather than substantive defect [citations], and a formal defect, such as an incorrect citation of the criminal statute violated, does not require or warrant reversal of a conviction unless the defendant was prejudiced by the miscitation.” *People v. Boyd*, 87 Ill. App. 3d 978, 981-82 (1980).

There is a long line of cases characterizing an erroneous statutory citation in a charging instrument as a formal defect instead of a substantive defect.

¶ 91 One such case—one example among many—is *People v. Gray*, 61 Ill. App. 3d 243 (1978). In *Gray*, the circuit court found the defendant guilty, at a bench trial, of theft of a firearm (Ill. Rev. Stat. 1975, ch. 38, § 16-1). *Gray*, 61 Ill. App. 3d at 244. He had stolen a pistol out of the glove compartment of a security guard’s parked car. *Id.* The information alleged that this “ ‘obtain[ing]’ ” of “ ‘unauthorized control’ ” over the pistol was “ ‘in violation of the Criminal Code of 1961, as amended, Section 16-1(d)(1).’ ” *Id.* at 244-45. However, given the allegation, in the information, that the defendant stole the *security guard’s* property—*his* pistol—that statutory citation was incorrect. Section 16-1(d)(1) provided that the offense of theft included knowingly obtaining unauthorized control over property *stolen by someone else* and intending to permanently deprive the owner of that property. *Id.* at 245. This taking control of

already stolen property was the same offense of theft, the same offense one would commit by stealing property directly from the owner. It was just a different way of committing theft. See *id.* at 245. Because the pistol was not stolen before the defendant took unauthorized control of it but, rather, belonged to the security guard, the information should have cited section 16-1(a) instead of section 16-1(d)(1). *Id.*

¶ 92 In *Gray*, then, there was a contradiction, a mismatch, between the allegations in the information—its account of how the defendant had gone about committing theft—and the subsection of section 16-1 the information cited. It was not that the offense the State charged the defendant with committing, theft, was nonexistent. Illinois statutory law defined and criminalized theft, and this law against theft was in force when the defendant stole the pistol. It was just that, in the information, the State cited the wrong subsection of the theft statute.

¶ 93 Despite the incorrect statutory citation, the appellate court concluded in *Gray* that the information sufficiently charged the defendant with the offense of theft. *Id.* at 245-46. “[E]ven though the nature and elements described in the charge correspond[ed] to section 16-1(a) while citing section 16-1(d)(1),” “a miscitation of the statutory provision alleged to have been violated [did] not render the charging instrument void unless [the] defendant [was] prejudiced by the error.” *Id.* Because the defendant in *Gray* had received “adequate notice of the charge against him” and had been “able to present a defense thereto,” the appellate court concluded he had not been “prejudiced by the miscitation.” *Id.* at 246.

¶ 94 The supreme court has cited *Gray* approvingly (see *People v. Ryan*, 117 Ill. 2d 28, 37 (1987)), and we do not see how *Gray* could be meaningfully distinguished from the present case. In fact, in the present case, the argument for reversal is weaker than in *Gray*. Whereas the information in *Gray* charged the defendant with theft but cited the wrong subsection of the theft

statute, count I in the present case correctly cited the statute defining the offense of drug-induced homicide. It is just that count I contained an incorrect *subsidiary* citation: it cited the wrong statute in connection with one of the elements of drug-induced homicide, the element of unlawfully delivering methamphetamine. There was a mismatch between the element as count I described it (“unlawfully delivering methamphetamine”) and the citation of section 401 of the Illinois Controlled Substances Act. Unless defendant can show that the erroneous citation caused him prejudice, it was merely a formal defect that would not justify reversal. See *Gray*, 61 Ill. App. 3d at 246.

¶ 95           It would be a different story if the statute defining the offense of drug-induced homicide, section 9-3.3(a) of the Criminal Code of 2012 (720 ILCS 5/9-3.3(a) (West 2024)), were unconstitutional and, hence, void from its inception. Then the charged offense would be nonexistent. That was the problem in a case on which defendant relies, *People v. Tellez-Valencia*, 188 Ill. 2d 523, 526 (1999). *Tellez-Valencia* is inapposite. *Tellez-Valencia* was not about statutory miscitation; it was about statutory nonexistence. There appears to be no dispute that the offense of drug-induced homicide existed on May 25, 2024, and that the cited statute defining that offense was valid and in force.

¶ 96           Defendant maintains, “The rule [in *Tellez-Valencia*] is not confined to offenses that never existed. The committee comments on which the Court relied exclude ‘failure to charge a crime’ from the defects considered merely formal.” Defendant reasons that because “[n]o person can violate section 401 by delivering methamphetamine,” count I “did not state a cognizable offense.”

¶ 97           Similarly, however, in *Gray*, no person could violate section 16-1(d)(1) by stealing from a security guard a pistol that belonged to the security guard. That would have been,

to borrow defendant's language, a "legal impossibility." And yet, despite the mismatch between its description of the offense and its statutory citation, the count of theft was sufficient. A mismatch, in the charging instrument, between a statutory citation and the description of a single element is not meaningfully different from a mismatch between a statutory citation and the description of the offense as a whole, *i.e.*, all the elements together.

¶ 98           Therefore, we are unconvinced that count I was, as defendant claims, "substantively defective." Instead, the incorrect statutory citation was merely a formal defect. See *People v. McBrien*, 144 Ill. App. 3d 489, 495 (1986). Because defendant did not raise this defect *before* trial, the burden is on him to show he suffered prejudice from the defect. See *People v. Cuadrado*, 214 Ill. 2d 79, 86-87 (2005). Under this "prejudice standard," "the charging instrument is sufficient if it apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecutions arising out of the same conduct." (Internal quotation marks omitted.) *Id.*

¶ 99           Defendant claims that count I's erroneous citation of section 401 of the Illinois Controlled Substances Act inflicted prejudice upon him because it was only in reliance "on the legal impossibility of Count I as charged" that defense counsel, in his opening statement, conceded counts II and III. Defendant explains, "By conceding the delivery counts, the defense narrowed the issues for the jury and focused the trial on the defective drug-induced homicide charge. The concession was made in direct reliance on the information's citation of Section 401, a statute that cannot apply to methamphetamine." Defendant argues that "defense counsel chose not to impeach" the State's key witness, Viager, because defense counsel's "strategy rested on the legal argument that the charge as written could not be sustained regardless of what the evidence showed."

¶ 100 If defendant suffered prejudice (but we do not think he suffered prejudice, because he was clearly guilty of the delivery counts), it was not from count I's erroneous citation of section 401. Rather, it was from defense counsel's misguided premise that the State was locked into that erroneous citation. Contrary to defense counsel's assumption, a defective count is not necessarily a legally insufficient count. An imperfect count can "be sustained." Again, a charging instrument's citation of the wrong statute "is regarded as a formal rather than substantive defect" and "does not require or warrant reversal of a conviction unless the defendant was prejudiced by the miscitation." *Boyd*, 87 Ill. App. 3d at 981-82.

¶ 101 Under *Cuadrano*, there is prejudice only if the charging instrument is so vague that it prevents the defendant from (1) preparing a defense or (2) pleading double jeopardy. *Cuadrado*, 214 Ill. 2d at 86-87. (It should be noted, though, that a prior conviction can also be proven from the entire record (see *People v. Guerrero*, 356 Ill. App. 3d 22, 29 (2005)) and, thus, the ability to invoke double jeopardy would not depend solely on the charging instrument.) Basically, the prejudice standard in *Cuadrano* poses the question of whether, despite its defect, the charging instrument would be sufficiently informative to a reasonable reader. Would a reasonable reader understand, despite the error in the charging instrument, the conduct and elements for which the State intended to hold the defendant criminally liable? Often, someone's meaning can be reasonably discerned despite mistakes in the communication of that meaning. To be sure, a charging instrument is a serious legal document, a document of great gravity, and it should not contain mistakes. But a mistake is not necessarily fatal to the charging instrument, for a mistake does not necessarily obscure the intended meaning, as virtually everyone has experienced in everyday communication.

¶ 102 In deciding, *de novo* (see *People v. Carey*, 2018 IL 121371, ¶ 19), whether the

charging instrument “was so imprecise as to prejudice [the] defendant’s ability to prepare a defense,” the reviewing court is not limited to considering the charging instrument but also “may resort to the record.” (Internal quotation marks omitted.) *People v. Phillips*, 215 Ill. 2d 554, 562 (2005). In our resort to the record, we note that, on July 25, 2024—11 months before the trial—the circuit court explained count I to defendant without referencing section 401 of the Illinois Controlled Substances Act. The court explained count I to him simply in terms of his alleged delivery of the methamphetamine that caused Russell’s death. The court told defendant:

“[T]he State of Illinois has filed against you in 24 CF 61, Count I, alleging that on May 25th or thereabouts, in Mercer County, State of Illinois, you committed the offense of Drug Induced Homicide, in violation of our laws, that being a Class X felony, in that you unlawfully delivered methamphetamine to another, being Blake Russell, and Blake Russell’s death was caused by the ingestion, injection, inhalation or absorption of any amount of that methamphetamine. Those are the allegations in Count I.”

It was clear, from this admonition, that the lethal drug was methamphetamine.

¶ 103 Immediately afterward, at the ensuing pretrial detention hearing, the State called Bruning, who testified that, according to the autopsy performed by Dr. Youmans, Russell died from having 930 nanograms per milliliter of amphetamine in his blood (the average dose for intoxication being 20 nanograms per milliliter). Bruning further testified that, according to his investigation, Russell bought methamphetamine from defendant.

¶ 104 So, from the inception of this case, the defense was clearly informed that the lethal drug in count I, the substance that caused Russell’s death, was the methamphetamine that defendant had delivered. Even count I, despite its inapposite citation of section 401, alleged that

defendant “unlawfully deliver[ed] *methamphetamine*, to another” and that “Russell’s death was caused by the ingestion \*\*\* of any amount of that *methamphetamine*.” (Emphases added.)

¶ 105 It is true, as defendant argues, that count I alleged a “legal impossibility”: it was impossible to violate section 401 of the Illinois Controlled Substances Act by delivering methamphetamine. The question, however, is not whether count I contained, in that respect, a “legal impossibility.” Instead, the question is whether a reasonable reader would have perceived that the statutory citation was a mistake and would have looked beyond it and understood, from other language in count I and in the light of the record, that defendant was being charged with causing Russell’s death by unlawfully delivering the methamphetamine. The answer is yes. Therefore, defendant has failed to show prejudice within the meaning of *Cuadrano*, and we reject the challenge he first raised to count I during the trial. See *Cuadrado*, 214 Ill. 2d at 91 (“When the sufficiency of a criminal indictment is challenged during trial the court must determine whether the defendant was prejudiced by the defect. If [the] defendant has not been prejudiced, the indictment may stand. If prejudice is established, however, the indictment must be dismissed.”).

¶ 106 B. Sufficient Proof of Causation

¶ 107 One of the elements of drug-induced homicide is that the victim’s death was “*caused* by the injection, inhalation, absorption, or ingestion of any amount of” the “controlled substance” that the defendant “unlawfully deliver[ed] \*\*\* to another.” (Emphasis added.) 720 ILCS 5/9-3.3(a) (West 2024).

¶ 108 Generally, as the supreme court explained in *People v. Nere*, 2018 IL 122566, ¶ 31, if an element of a criminal statute is that the defendant caused a harm, the statute is interpreted as requiring two kinds of causation: (1) causation in fact and (2) legal or proximate

causation. The defendant's act was a cause in fact if (at the risk of tautology) it "actually" caused the harm. *Id.* If the harm would not have happened but for the defendant's act, the defendant's act is a cause in fact. *Id.* ¶ 32. However, but-for causation is not required for there to be causation in fact. See *id.* ¶ 63. Nor is it required that the defendant's act was "the sole and immediate cause" of the harm. (Internal quotation marks omitted.) *Id.* ¶ 32. It is enough, for causation in fact, that the defendant's act actually *contributed* to causing the harm. See *id.* ¶ 63.

¶ 109 In some circumstances, causation in fact, even though it exists, might have been so surprising and unforeseeable that it would be unreasonable and unfair—and, therefore, presumably, not within the intention of the legislature—to hold the defendant criminally liable for it. See *People v. Duddleston*, 2026 IL App (2d) 250365, ¶ 67 ("In construing statutes, we presume that the legislature did not intend absurdity, inconvenience, or injustice." (Internal quotation marks omitted.)). To avoid such an unjust outcome, courts interpret causation as including the other kind of causation, legal or proximate causation. As the appellate court explained in *People v. Acosta*, 2026 IL App (2d) 240364, ¶ 114, legal causation (in contrast to causation in fact) "is a question of foreseeability." The appellate court elaborated on this distinction:

"[T]he court must consider whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct. [Citation.] Foreseeability is added to the cause-in-fact requirement because even when a cause in fact is established, it must be determined that any variation between the result intended \*\*\* and the result actually achieved is not so extraordinary that it would be unfair to hold the defendant responsible for the actual result." (Internal quotation marks omitted.) *Id.*

¶ 110 Defendant does not appear to dispute that unlawful delivery of methamphetamine can be the *legal cause* of death by methamphetamine intoxication. Instead, he disputes *causation in fact* under the circumstances of his case. He contends that his conviction of drug-induced homicide “cannot stand because the State failed to prove beyond a reasonable doubt that [defendant’s] delivery of methamphetamine was a contributing cause of \*\*\* Russell’s death.”

¶ 111 Defendant gives five reasons for his challenge to causation in fact.

¶ 112 First, defendant observes that “Russell smoked methamphetamine at multiple locations.” Because two locations qualify as “multiple locations,” that observation has a basis in the evidence. There was evidence that on May 25, 2024, Russell smoked methamphetamine first at what Viager called “Logan Beattie’s house” (although Logan died months earlier), and, soon afterward, in John’s shed.

¶ 113 It is unclear, though, what difference it makes that Russell smoked methamphetamine at “multiple locations,” which is to say, at two locations. When the evidence is viewed in the light most favorable to the prosecution, as we are supposed to view the evidence, a rational trier of fact could find that, at both locations, the methamphetamine that Russell smoked on May 25, 2024, was the methamphetamine that defendant had unlawfully delivered to Viager at New Boston that day. See *People v. McLaurin*, 2020 IL 124563, ¶ 22. After all, it was undisputed that, on May 25, 2024, at the farmhouse in New Boston, defendant sold bags of methamphetamine to Viager and Russell. Defendant so admitted in his audio/video interview at the sheriff’s office (People’s exhibit No. 21). Also, defense counsel admitted as much in his opening statement and closing argument. Additionally, there was the fact (if Viager was believed) that Russell was with Viager from the time when Viager picked him up in Aledo to the time when Russell took off in Viager’s car. One might reasonably infer that Russell had no

methamphetamine when Viager picked him up, considering that they were going to the farmhouse to buy methamphetamine. Viager testified he had no methamphetamine when the day began. He further testified that all the methamphetamine that he and Russell consumed together that day had come from defendant. We cannot say it would be unreasonable of a trier of fact to believe Viager. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007).

¶ 114 Second, defendant argues that “[t]he evidence presented contradictory information about the source of the meth.” Initially, according to defendant, Viager testified he bought methamphetamine from Logan, but he “later changed his testimony on redirect to attribute the purchase to [defendant].”

¶ 115 It is true that there initially was this exchange between the prosecutor and Viager:

“Q. And do you purchase drugs, in your—in your words, from this place?

A. Yes.

Q. From who?

A. Logan Beattie.

\* \* \*

Q. Who—who did you purchase drugs from?

A. Logan Beattie.”

However, the subject of discussion, in the quotation above, was not—explicitly—from whom Viager bought *methamphetamine* on *May 25, 2024*. Instead, the prosecutor’s question was “[D]o you” (which was to say, “Are you accustomed to”) “purchase drugs” (in general) “from this place?” (the farmhouse). (Emphasis added.) Viager answered, “Yes.” In other words—again, viewing the evidence in the light most favorable to the prosecution—the farmhouse was generally Viager’s go-to place for drugs, and Logan was generally his go-to supplier of drugs.

This was not to say, however, that it was Logan who sold Viager the methamphetamine in the farmhouse on May 25, 2024. That would have been impossible—and arguably that would be an unconvincing interpretation of Viager’s testimony—because Logan was dead. Logan’s father, John, testified that Logan died on January 11, 2024. Defendant admits, in his brief, that Logan “had died months earlier of pneumonia.”

¶ 116 Later, in the prosecutor’s direct examination of Viager, any confusion about the seller’s identity was cleared up, or the jury could have regarded any confusion as cleared up to its satisfaction. The prosecutor and Viager had this discussion:

“Q. \*\*\* And at one point in time, I asked you who you purchased it from.

Your answer was Logan Beattie.

A. I thought you asked me what I was doing there.

Q. Okay.

A. Because—at Logan Beattie’s house.

Q. \*\*\* So you—but then you later testified that you purchased it from [defendant]?

A. Yeah. But he wasn’t there when I got there.

Q. \*\*\* And so when does [defendant] arrive at that residence?

A. Like 10 or 15 minutes later, after we get there.

Q. \*\*\* And then—do both you and Blake Russell purchase methamphetamine from [defendant]?

A. Yes.”

*If Viager was inconsistent in his testimony about the seller’s identity (but we do not think he necessarily was), “[t]he weight to be given the witnesses’ testimony, the credibility of the*

witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact.” *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The jury was free to accept Viager’s clarification, especially in the light of (1) defendant’s admission to Baugh, “ [‘]All right, I did sell them a little out of my personal bag, then we smoked, and then they left, and that was it[’] ”; (2) defense counsel’s remark, in his opening statement, that “I expect you’ll find my client guilty of Counts 2 and 3”; and (3) defense counsel’s admission in his closing argument, “Two people came looking for methamphetamine, William Viager and Blake Russell. He sold it to them”

¶ 117 Third, defendant argues that John’s testimony “established as a matter of undisputed fact that Russell inhaled meth from residue left in Logan Beattie’s pipe, a source completely unconnected with [defendant].” “[E]stablished as a matter of undisputed fact” is too strong. Defense counsel and John had the following dialogue about residue:

“Q. Did you guys clean [the pipe] out before using it? Or was there some residue in the pipe from the last time your son had used meth?

A. I don’t know.

Q. You use meth, correct?

A. Yes, sir.

Q. When you use meth, there’s still some residue in the pipe when you’re done; is that correct?

A. Yes, sir.

Q. And the next time you use, that meth residue may still be in there; is that correct?

A. Could be, yes.

Q. \*\*\* So if I used meth in a pipe today, and I'm done, I put it back in my pocket, put it away, a couple days from now I smoke more meth, I'm not only smoking the meth that I pack that day, but the residue from ten days ago?

A. Yes, sir."

When we view the evidence in the light most favorable to the prosecution (see *McLaurin*, 2020 IL 124563, ¶ 22), a rational trier of fact could find that because John did not know if the pipe in the shed had been cleaned out after its previous use and whether it had preexisting methamphetamine residue in it, it was unproven that the pipe in the shed had preexisting methamphetamine residue in it. A trier of fact could also find it to be unproven that a mere residue of incinerated methamphetamine retained any intoxicating effect. Otherwise, seemingly, there would be no need to repack the pipe.

¶ 118 In any event, and perhaps more to the point, even if the pipe in the shed contained preexisting methamphetamine residue and it were possible to become intoxicated on the residue, it would make no difference to the issue of causation in fact. Even if, as defendant argues, Russell "us[ed] paraphernalia contaminated with residual meth from prior use," this paraphernalia (or pipe) was packed with methamphetamine that defendant had sold to Viager. Therefore, if Russell inhaled fumes from the preexisting residue, he necessarily, at the same time, inhaled fumes from the methamphetamine that had come from defendant and with which Viager had packed the pipes. It is unclear, then, by what logic the methamphetamine residue supplied by the pipe owners could have eliminated, as "a contributing cause of the death," the methamphetamine powder supplied by defendant—given that Russell would have consumed both forms of methamphetamine simultaneously. (Internal quotation marks omitted.) *Nere*, 2016 IL 122566, ¶ 32.

¶ 119 Fourth, defendant notes that, “[l]ater[,] at Viager’s home, Russell smoked marijuana from Viager’s bong and Viager testified that he did not know whether the marijuana was laced with any other substance.” Defendant uses the open-ended phrase “any other substance,” but only three substances were found in Russell’s blood: (1) amphetamine, the breakdown product of methamphetamine, in a lethal amount; (2) marijuana in a nonlethal amount, and (3) the antidepressant fluoxetine in a nonlethal, therapeutic amount. Assuming that Viager obtained his marijuana from an illicit source instead of from a dispensary (he could not remember either way), do illicit sellers of marijuana lace their product with methamphetamine? The record does not appear to contain any evidence that they do so. The only information the record offers about Viager’s marijuana is that it was marijuana. Viager seemed to perceive nothing amiss with his marijuana, which he smoked with Russell. If Viager’s marijuana already contained methamphetamine, there would seem to be no reason for Viager to buy methamphetamine from defendant. The jury did not have to “elevate to reasonable doubt” the speculation that Viager bought the marijuana from an illicit source and the further speculation that his marijuana was contaminated with methamphetamine. *People v. Johnson*, 2026 IL App (1st) 230142, ¶ 37. By reversing the conviction on count I on the basis of those mere conjectures, we would violate our standard of review, which requires us to view the evidence in the light most favorable to the prosecution. See *McLaurin*, 2020 IL 124563, ¶ 22.

¶ 120 Fifth, defendant points out “the State offered no forensic proof that the meth [defendant] delivered was still in Russell’s body when he died or had contributed to the lethal concentration in his blood at all.” Also, defendant observes, “[n]o analysis was performed to differentiate the meth by purity, cutting agents, or chemical signature.” Defendant argues that, without “expert testimony establishing that the meth from [defendant’s] sale remained at any

level in Russell's body at the time of death," "the State could not show that [defendant's] meth was among the contributing causes, rather than a source the body had already metabolized out of Russell's system."

¶ 121 There was scientific evidence, however, that Russell died from having too much methamphetamine in his system. So, methamphetamine, in a lethal amount, was still in his blood when Dr. Youmans performed the autopsy. The only way the methamphetamine that Russell smoked in the farmhouse and in the shed could *not* have been a contributing cause of his death from methamphetamine overdose was if *that* methamphetamine had metabolized completely out of his system and he *afterward* consumed additional methamphetamine. In other words, there would have to be an intervening cause of death. To intervene means to come in between. There would have to be a consumption of methamphetamine in between the consumption in the shed and Russell's death in Viager's car. Otherwise, it would be reasonable to infer that the methamphetamine which was still in Russell's blood when he died was defendant's methamphetamine or, alternatively, that defendant's methamphetamine piggybacked on an earlier consumption of methamphetamine. The record does not appear to contain any evidence of an intervening consumption of methamphetamine.

¶ 122 Granted, there was the red-topped plastic container containing white powder that was in the pouch behind the driver's seat of Viager's car. One could understand from Baugh's testimony, however, that an experienced police officer could visually screen powder and, just by looking at it, rule out the possibility that it was methamphetamine. Arguably, from his 29 years of experience as a detective investigating major crimes, including drug crimes, Baugh knew what methamphetamine looked like. Significantly, in his testimony, he described the methamphetamine in Russell's pocket as a brownish white powder, whereas he described the

powder in the plastic container as white. Evidently, the powders looked different. The jury could reasonably take Baugh's word for it that the powder in the plastic container was not methamphetamine because it did not look like methamphetamine and that laboratory testing of that powder, therefore, was unnecessary.

¶ 123 Baugh did not have the vape pen tested, either, but the vape pen took cartridges (defense counsel asked Baugh if he had examined the cartridge in the vape pen), and the record appears to contain no evidence that there is any such thing as a methamphetamine cartridge. Can a vape pen be used to smoke methamphetamine? Baugh, an experienced detective, had never heard of a vape pen being put to that use. Arguably, if Russell's vape pen could have been used to smoke methamphetamine, Russell would not have asked Viager where they were going to obtain a pipe to smoke the methamphetamine they were setting out to buy. The jury could have found that when Russell took off in Viager's car, he was dying and was fleeing in a paranoid panic and, hence, was in no condition to consume further methamphetamine, even if he had the means of doing so. But he lacked the means: he had no lighter and no pipe.

¶ 124 Admittedly, although Viager was with Russell from the time when he picked Russell up in Aledo to the time when Russell took off in Viager's car, none of the witnesses who testified at trial were with Russell from the time when he took off in Viager's car to the time when Chaffer saw the car, with Russell's body in it, in the cornfield. The events in that interval of time were unaccounted for, and the State had the burden of proving that "the death did not result from a cause unconnected with the defendant." (Internal quotation marks omitted.) *Nere*, 2018 IL 122566, ¶ 32. Thus, it would not be enough for the State to argue the lack of evidence that Russell was supplied with more methamphetamine after taking off in Viager's car. The State had the burden of proving a negative: that Russell was *not* supplied with more

methamphetamine. Proving a negative can be difficult. Even so, viewing the evidence in the light most favorable to the prosecution, we conclude that, for two reasons, a fair-minded trier of fact could regard that negative as having been proven. First, Russell had to rely on Viager to find for him a supplier of methamphetamine and a pipe to smoke it, and if Russell could have found a supplier of those things on his own, he would not have had to seek Viager's help in the first place. (It seems to be undisputed that Russell saved the methamphetamine in his pocket for his aunt.) Second, it could be reasonably inferred, from Russell's bizarre behavior, that when Russell took off in Viager's car, he already was in serious medical trouble and, thus, was in no condition to find a supplier—whom, even when he was not *in extremis*, he needed help finding.

¶ 125 To sum up, Dr. Youmans opined that Russell had died of methamphetamine intoxication. The record appears to lack evidence of any other methamphetamine besides that which came from defendant (and, possibly, at the risk of speculation, from the residue in the pipes). The circumstances arguably render it unlikely that Russell obtained and consumed more methamphetamine while he was in headlong flight, after stealing Viager's car. It would be reasonable to infer, then, that a contributing cause of Russell's death was the methamphetamine which defendant supplied and which Russell smoked in the farmhouse and in the shed.

“[R]easonable inferences to be drawn from the testimony are the responsibility of the trier of fact,” and we will not arrogate that responsibility to ourselves. *Sutherland*, 223 Ill. 2d at 242. We find sufficient evidence that the methamphetamine that defendant unlawfully delivered to Viager was a contributing cause of Russell's death. (Although count I alleged that the methamphetamine that defendant unlawfully delivered to *Russell* caused Russell's death, defendant does not appear to regard that variance as reversible error. Section 9-3.3(a) requires unlawful delivery “to another,” not necessarily to the person who died. 720 ILCS 5/9-3.3(a) (West 2024).)

¶ 126 C. Claims of Error in the Jury Instructions That Were Given

¶ 127 1. *Omission of the Word “Delivering” in a Written Instruction*

¶ 128 Defendant claims that, in the instructions it gave the jury, the circuit court made two errors.

¶ 129 First, the written jury instruction based on IPI Criminal No. 7.15 omitted the word “delivery.” The written instruction the circuit court gave the jury read as follows:

“In order for you to find that the acts of the defendant caused the death of Blake Russel[l], the State must prove beyond a reasonable doubt that defendant’s *acts of methamphetamine* were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.” (Emphasis added.)

IPI Criminal No. 7.15, however, required the use of the phrase “acts of delivering methamphetamine” instead of the phrase “acts of methamphetamine.” The omission of the word “delivering” was an error.

¶ 130 To preserve, for review, an error in the jury instructions, a party must do two things: “(1) object to a proposed instruction or tender one of his own and (2) raise the issue again in a posttrial motion.” *People v. Miller*, 2021 IL App (1st) 190060, ¶ 42.

¶ 131 Under section 116-1(c) of the Code of Criminal Procedure of 1963, a posttrial motion must “specify” the grounds for a new trial. 725 ILCS 5/116-1(c) (West 2024). To specify the grounds is to name them in detail so as to give the circuit court meaningful guidance. “The purpose of a post-trial motion is to alert the trial court to trial errors, so that a new trial may be granted, if warranted, without the necessity of an appeal. The post-trial motion also limits the

issues reviewable on appeal, which otherwise would be open-ended and unduly burdensome.” *People v. Todd*, 249 Ill. App. 3d 835, 840 (1993). To serve that purpose, a posttrial motion must be reasonably informative, and to be reasonably informative, it must be reasonably specific. A *pro forma* posttrial motion that uses broad, one-size-fits-all language is of no use to the circuit court and, therefore, preserves no issue for review. “General references in a post-trial motion to alleged trial errors without specific factual detail are insufficient to preserve that issue for review.” *People v. Hassan*, 253 Ill. App. 3d 558, 566 (1993).

¶ 132 Under the heading of “Jury Instructions,” defendant’s posttrial motion stated as follows:

“7. For the reasons stated on the record at trial, the proposed instruction of the defendant were an accurate statement of the law—including, *inter alia*, the clarification that methamphetamine cannot serve as a basis of liability on Count I.

8. The instructions given by the court improperly instructed the jury on the law, and a jury verdict on an improperly instructed jury cannot stand.”

Neither of those two paragraphs—which were the only two paragraphs under the heading of “Jury Instructions”—specifically raised the omission of the word “delivering” in the phrase “defendant’s acts of methamphetamine.” Therefore, the error in the omission of that word is forfeited. See *id.*

¶ 133 Defendant attempts to avert the forfeiture by invoking the doctrine of plain error. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.”). In two circumstances, this doctrine allows a reviewing court to consider “a forfeited error affecting substantial rights.” *People v. Herron*, 215 Ill. 2d 167, 178 (2005). The first circumstance is when

“the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence.” *Id.* The second circumstance is when “the error is so serious that the defendant was denied a substantial right, and thus a fair trial,” so that addressing the error, despite the forfeiture of the issue, is necessary “to preserve the integrity of the judicial process.” *Id.* at 179. Defendant maintains that the first circumstance applies to his case.

¶ 134 We disagree that the evidence in this case was closely balanced. Defendant thinks it was. He argues that Viager contradicted himself on the amount of money he paid defendant for the methamphetamine and in his estimates of time. Viager cautioned, however, that he was uncertain about how much he paid defendant and that he was unable to accurately recount times. Our “commonsense assessment of this case” suggests that these discrepancies or uncertainties are relatively unimportant, especially considering Viager’s conscientious caveats. *People v. Rogers*, 2025 IL App (4th) 231286-U, ¶ 77.

¶ 135 Defendant argues that Viager further contradicted himself by first testifying that the methamphetamine that was smoked on May 25, 2024, came out of both his and Russell’s bags (that they had bought from defendant) but subsequently testifying that it came out of only his, Viager’s, bag. Strictly speaking, though, this contradiction does not exist, because the circuit court struck Viager’s testimony that he “believe[d]” that Russell “pitched in too.” Given that Viager testified, “I’m not sure if [Russell] pitched in,” the court struck Viager’s answer, “I believe [he did] so,” and called for “further clarification for the jury.” The further clarification, which defense counsel elicited repeatedly, was that all the methamphetamine that was smoked at the farmhouse and in John’s shed came out of Viager’s bag, which Viager had bought from defendant in the farmhouse.

¶ 136 This sale was, after all, undisputed. There was scientific evidence that, after

smoking the methamphetamine purchased from defendant, Russell died of methamphetamine intoxication.

¶ 137           There appears to be no substantial reason to disbelieve Viager’s testimony that Russell was with him from the time when he picked him up from Aledo to the time when Russell took off in Viager’s car and that Russell smoked no further methamphetamine after they finished off Viager’s methamphetamine in John’s shed. Several witnesses saw Viager and Russell together. Witnesses saw Viager driving Russell around. Having admitted packing the pipes, out of his own pocket, that Russell smoked that day, it is unclear why Viager would conceal any further consumption of methamphetamine by Russell. As we have explained, it seems unlikely that, while fleeing in Viager’s car, Russell located an additional source of methamphetamine. Because the evidence on the charge of drug-induced homicide was not closely balanced, the first prong of the plain-error doctrine does not avert the procedural forfeiture of the “acts of methamphetamine” error in the jury instructions. See *People v. Hood*, 2022 IL App (4th) 200260, ¶ 126.

¶ 138           Defendant also seems to invoke the second prong of the plain-error doctrine by quoting *People v. Robinson*, 2016 IL App (1st) 130484, ¶ 48: “[W]here conflicting instructions are given, one of which is a correct statement of the law and the other is an incorrect statement of the law, the error is not harmless and constitutes grave error.” (Internal quotation marks omitted.) Also, in his reply brief, he cites *People v. Hartfield*, 2022 IL 126729, ¶ 59, for the proposition that “[c]onflicting instructions on an essential element are presumed prejudicial.” In *Hartfield*, the supreme court held:

“Whereas a single erroneous instruction might be cured by other instructions or by some other showing of a lack of prejudice, two directly conflicting instructions

on an essential element, one stating the law correctly and the other erroneously, cannot be cured this way due to the simple fact that we can never know which instruction the jury was following. What is at issue with this error is the integrity of the judicial system itself.” *Id.*

If, as the supreme court held in *Hartfield*, conflicting jury instructions on an element threaten “the integrity of the judicial system itself” (*id.*) such a conflict would be second-prong plain error, and addressing the error would be necessary “to preserve the integrity of the judicial process.” *Herron*, 215 Ill. 2d at 179.

¶ 139           It would be impossible for the “acts of methamphetamine” instruction to “directly conflict[ ]” with other jury instructions (*Hartfield*, 2022 IL 126729, ¶ 59), for, as defendant rightly remarks, the phrase “acts of methamphetamine” is “a legally and grammatically meaningless phrase.” A statement conflicts with another statement only if its meaning is at odds with the meaning of the other statement. To *conflict* with another statement, a statement must *mean* something. Because the phrase “acts of methamphetamine” lacks meaning, it cannot conflict with another jury instruction, and *Hartfield* and *Robinson* are inapposite.

¶ 140           This is not to deny the importance of instructing the jury that defendant could be found guilty of drug-induced homicide only if his delivery of methamphetamine was a contributing cause of Russell’s death. Other jury instructions, however, got that point across. Given the other jury instructions, the jury, in a commonsense way, probably perceived the clerical error in “acts of methamphetamine” and supplied the intended word, “delivering.” For example, the circuit court instructed the jury, “A person commits the offense of drug induced homicide when he knowingly *delivers* to another a substance containing methamphetamine and any person’s death is caused by the inhalation of any amount of that methamphetamine.”

(Emphasis added.) Also, the court gave the jury the following issues instructions on drug-induced homicide:

“To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: that the defendant knowingly *delivered* to another a substance containing methamphetamine; and

Second Proposition: that any person inhaled any amount of that methamphetamine; and

Third Proposition: that \*\*\* Russell’s death was caused by that inhalation.”

(Emphasis added.)

Reading the jury instructions as a whole, “ordinary persons acting as jurors” would not fail to understand that the acts of defendant that were at issue were his acts of delivering methamphetamine. *Herron*, 215 Ill. 2d at 187-88. When the jury instructions were “construed as a whole, rather than read in isolation,” the only relevant act that defendant allegedly had performed relating to methamphetamine was his delivery of it. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). Thus, we are unconvinced that “acts of methamphetamine” created a “misleading or confusing” conflict in the jury instructions. *Herron*, 215 Ill. 2d at 187-88.

¶ 141 In short, then, neither prong of the plain-error doctrines saves this issue from forfeiture. See *People v. Frakes*, 2026 IL App (5th) 220408-U, ¶ 47.

¶ 142 Also, because the evidence was not closely balanced, there is no prejudice to support defendant’s alternative claim of ineffective assistance with respect to defense counsel’s failure to object to the “acts of methamphetamine” instruction. See *People v. White*, 2011 IL 109689, ¶ 134; *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶ 143           2. *Omission of the Word “That” in the Reading of a Jury Instruction*

¶ 144           In reading to the jury the instruction based on IPI Criminal No. 7.27, the circuit court omitted the word “that.” The court instructed the jury, “A person commits the offense of drug-induced homicide when he knowingly delivers to another a substance containing methamphetamine and any person’s death is caused by the inhalation of *any amount of methamphetamine*.” (Emphasis added.) IPI Criminal No. 7.27 required the use of the modifier “that” in the concluding phrase: “any amount of *that* [methamphetamine].” (Emphasis added.) (The corresponding written jury instruction did not make that mistake: it included the word “that.”)

¶ 145           When the circuit court misread IPI Criminal No. 7.27 to the jury by omitting the word “that,” defense counsel did not object. Therefore, we agree with the State that defendant has forfeited this objection. See *Herron*, 215 Ill. 2d at 175. Failure to specify this issue in the posttrial motion is an independent reason for finding a forfeiture. See *Hassan*, 253 Ill. App. 3d at 566.

¶ 146           The plain-error doctrine does not avert the forfeiture, for the error was cured in the corresponding written jury instruction, thereby eliminating the error. See *People v. Jarvis*, 2026 IL App (4th) 250565-U, ¶ 39 (“There being no error, there can be neither plain error nor ineffective assistance of counsel on this particular issue.”). The written jury instruction (which the court misread) was sent into the deliberation room, and it read as follows: “A person commits the offense of drug induced homicide when he knowingly delivers to another a substance containing methamphetamine and any person’s death is caused by the inhalation of *that* methamphetamine.” (Emphasis added.) In *People v. Dylan E.A.*, 2023 IL App (4th) 220503-U, ¶ 35, the appellate court referred to the rule that “a correct written instruction cures an error in an

oral reading of an instruction.” In his reply brief, defendant admits that this “rule is accurate.” Thus, the written jury instruction cured the error in the oral reading of the instruction. A cured error is an eliminated error, and without an error, there can be no plain error.

¶ 147 D. The Refusal of the Nonpattern Jury Instruction on an Intervening Cause

¶ 148 At the jury instruction conference, defense counsel tendered a nonpattern instruction that “an intervening cause completely unrelated to the acts of the defendant does relieve a defendant of criminal liability.” The State objected to this proposed nonpattern jury instruction, and the circuit court refused the instruction. Defendant contends that the court thereby erred.

¶ 149 The question is whether the circuit court abused its discretion by refusing the nonpattern jury instruction. See *People v. Emerson*, 189 Ill. 2d 436, 505 (2000). “The circuit court does not abuse its discretion in refusing a nonpattern instruction if there is an applicable pattern instruction or if other instructions given to the jury cover the same material as the proposed nonpattern instruction.” *Id.* The pattern jury instruction on causation that the court gave the jury covered the same material as the proposed nonpattern instruction, and it did so in almost the same words. The pattern jury instruction stated that, to prove that “the acts of the defendant caused the death of \*\*\* Russell,” the State had to prove “that the death did not result from a cause unconnected with the defendant.” Thus, defendant’s proposed nonpattern jury instruction would have been cumulative, and we find no abuse of discretion in its refusal. See *id.*

¶ 150 E. Baugh’s Assessment of Defendant’s Truthfulness

¶ 151 At trial, Baugh testified that when he interviewed defendant at the sheriff’s office, defendant at first denied meeting with Viager or Russell on May 25, 2024. When Baugh informed defendant that he, Baugh, knew otherwise and suggested that defendant was not telling

the truth in that respect, defendant admitted he had met with Viager and Russell at “the old Sloan Farm” and that “they had smoked methamphetamine there.” Baugh asked defendant where the methamphetamine had come from, and defendant answered that “[i]t was just there.” Baugh testified, “Being around long enough, around drug users, they don’t just leave their drugs laying around. I knew that was not the truth, so I inquired more.” Defense counsel then objected on the grounds of “[i]mproper bolstering” and “[i]mproper commenting on the truth or veracity of another witness’[s] statement.” The circuit court overruled the objection, and, on appeal, defendant argues the court thereby abused its discretion. See *People v. Becker*, 239 Ill. 2d 215, 236 (2010) (“Under Illinois law, it is generally improper to ask one witness to comment directly on the credibility of another witness.”).

¶ 152 In making that argument, defendant does not mention that, immediately after overruling defense counsel’s objection, the circuit court changed course, sustaining defense counsel’s objection and giving what amounted to a curative jury instruction.

¶ 153 In any event, defendant has forfeited this issue because, in his posttrial motion, he did not raise this issue with reasonable specificity. Instead, the posttrial motion used the following vague boilerplate language:

“9. The court’s ruling on trial objections skewed the evidence at trial and prevented the jury from rendering [sic] a fair decision on the merits of the case; each objection erroneously sustained or erroneously overruled prevented legitimate evidence from being allowed and allowed in illegitimate evidence. The effect of each ruling, and the cumulation of such rulings, prevented the defendant from having a fair trial.”

Paragraph No. 9 of the posttrial motion, quoted above, is “so general as to defeat the purposes

envisioned by section 116-1.” *People v. Bailey*, 77 Ill. App. 3d 953, 956 (1979). Consequently, defendant has forfeited the issue of whether the circuit court erred by initially overruling defense counsel’s objection to Baugh’s assessment of defendant’s truthfulness. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *Hassan*, 253 Ill. App. 3d at 566.

¶ 154 F. A *Sua Sponte* Objection by the Circuit Court

¶ 155 In cross-examining Mannon, defense counsel asked him, “And to keep your phone running properly, you delete evidence and communications about cases including homicides?” The circuit court interjected, “Don’t answer that. The Court is going to object. That’s a mischaracterization, and that’s a legal conclusion. He’s not answering that.” Defendant argues that, “by raising [this] objection *sua sponte* on the State’s behalf, the court abandoned its role as a neutral arbiter and assumed the posture of a prosecutor.”

¶ 156 This issue likewise is forfeited because of the failure to raise it with reasonable specificity in the posttrial motion. See *Enoch*, 122 Ill. 2d at 186; *Hassan*, 253 Ill. App. 3d at 566.

¶ 157 Anticipating the possibility of forfeiture, defendant contends that both the *sua sponte* objection and Baugh’s assessment of his truthfulness qualify as plain error. He maintains that the evidence was so closely balanced that the errors he raises, especially in their cumulative effect, threatened to tip the scales of justice against him, regardless of the seriousness of the errors individually. See *People v. Sebby*, 2017 IL 119445, ¶ 48. For the reasons we have discussed, we disagree that the evidence was closely balanced. Therefore, we give effect to the forfeiture of these issues. See *Frakes*, 2026 IL App (5th) 220408-U, ¶ 47.

¶ 158 G. The Alternative Claim of Ineffective Assistance

¶ 159 In the event we are unconvinced by his argument that count I is substantively deficient (we are unconvinced), defendant argues, alternatively, that defense counsel rendered

ineffective assistance by conceding counts II and III and passing up the opportunity to impeach Viager.

¶ 160 Initially, we point out the dubiousness of one of defendant’s premises. We question defendant’s assertion that defense counsel refrained from impeaching Viager. By eliciting Viager’s repeated admission that all of the methamphetamine that Russell smoked on May 25, 2024, came out of Viager’s pocket, surely defense counsel meant to make this suggestion to the jury: Viager—himself a deliverer of the methamphetamine—had a strong incentive to appease the State with a scapegoat who might take his place, namely, defendant. Defense counsel further suggested that Viager could not be trusted to have provided Russell with untainted marijuana, considering that it was only after smoking Viager’s marijuana that Russell began acting strangely. Defense counsel further suggested that maybe Russell had a good reason to fear Viager after sleeping with Viager’s girlfriend. To further darken the cloud of suspicion around Viager, defense counsel noted his delay in reporting the theft of his car, as if to suggest that Viager had compelling reasons not to get the police involved.

¶ 161 Defense counsel impeached the police, too, for not testing the pipes, the powder in the red-topped container, and the vape pen. It would be an exaggeration, then, to claim that defense counsel “entirely fail[ed] to subject the prosecution’s case to meaningful adversarial testing.” (Internal quotation marks omitted.) *People v. Hattery*, 109 Ill. 2d 449, 461 (1985). Therefore, this is not a case in which we can legitimately *presume* prejudice. See *People v. Johnson*, 128 Ill. 2d 253, 271 (1989). Rather, prejudice must be shown pursuant to *Strickland*. See *id.*

¶ 162 Under *Strickland*, 466 U.S. at 687, a claim of ineffective assistance has two elements: (1) deficient performance by counsel and (2) resulting prejudice to the defense. In

*Johnson*, 128 Ill. 2d at 271, the supreme court held that, unless defense counsel entirely failed to subject the prosecution's case to meaningful adversarial testing, "prejudice may not be presumed" but, rather, "we must apply the *Strickland* test to determine if there has been ineffective assistance." The supreme court continued in *Johnson*:

"Claims of ineffective assistance of counsel may be disposed of on the ground that the defendant suffered no prejudice from the claimed errors, without deciding the first prong, whether the errors were serious enough to constitute less than reasonably effective assistance. [Citation.] Under the second prong of *Strickland* the defendant must show that there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt."

(Internal quotation marks omitted.) *Id.*

Because defendant admitted, in his audio/video interview in the sheriff's office (People's exhibit No. 21), that he sold methamphetamine to Viager and Russell, there is no reasonable probability that, but for defense counsel's concession of counts II and III, the jury would have had a reasonable doubt that defendant was guilty of those unlawful delivery counts. Contrary to defendant's assertion, defense counsel did not give Viager a free pass. He did not refrain from impeaching Viager or calling into question his credibility. There was no prejudicial avoidance of impeachment. Without prejudice, the claim of ineffective assistance fails. See *Strickland*, 466 U.S. at 687.

¶ 163        Also, as we have noted, a finding that the evidence was not closely balanced undermines the prejudice element in a claim of ineffective assistance. See *People v. Weaver*, 2026 IL App (5th) 240782-U, ¶ 168 ("[I]f we find the evidence was not close for plain error

purposes, defendant also cannot meet the prejudice requirement for ineffective assistance of counsel.”).

¶ 164

### III. CONCLUSION

¶ 165

For the reasons stated, we affirm the circuit court’s judgment.

¶ 166

Affirmed.