

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) 251263-U

NO. 4-25-1263

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 16, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Rock Island County
JAMES R. BOETGER,	)	No. 24CF352
Defendant-Appellant.	)	
	)	Honorable
	)	Norma Kauzlarich,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Lannerd and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's failure to strictly comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) did not constitute plain error because the evidence was not closely balanced.

¶ 2 Following a September 2025 trial, a jury found defendant, James R. Boetger, guilty of unlawful possession with the intent to deliver methamphetamine, a Class X felony (720 ILCS 646/55(a)(1), (a)(2)(D) (West 2024)). Before sentencing, defendant filed motions for reconsideration and a new trial, raising various constitutional and evidentiary issues. The trial court denied the motions and sentenced defendant to 17 years in the Illinois Department of Corrections (DOC), followed by 18 months' mandatory supervised release (MSR), and imposed a fine upwards of \$21,000.

¶ 3 Defendant raises a new issue on appeal. Invoking the plain-error doctrine, he argues he was denied a fair trial when the trial court failed to properly admonish the jury

pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in a closely balanced case. We disagree and affirm the court’s judgment.

¶ 4

I. BACKGROUND

¶ 5

In the early morning hours of April 27, 2024, after observing multiple traffic violations, Moline, Illinois, police stopped a red Lexus driven by defendant. Following a K-9 sniff search and a subsequent search of the vehicle and its occupants, police found four bags of what they believed to be methamphetamine. Police also found a digital scale with white residue, individual dime baggies, two butane torches, and hundreds of dollars in cash. Two days later, the State charged defendant by information with one count of unlawful possession of methamphetamine with intent to deliver, a Class X felony (720 ILCS 646/55(a)(1), (a)(2)(D) (West 2024)), alleging “defendant knowingly possessed with intent to deliver 100 or more grams but less than 400 grams of methamphetamine.”

¶ 6

The case proceeded to a jury trial on September 8, 2025. Defendant was present initially, but he left the courthouse before jury selection, and the trial proceeded *in absentia*.

¶ 7

A. *Voir Dire*

¶ 8

The trial court and counsel examined prospective jurors in two panels. They chose the 12-member jury from the first panel and the alternate juror from the second panel. To the first panel, without objection, the court gave the following admonishments required by Illinois Supreme Court Rule 431(b) (eff. July 1, 2012):

“The next are questions I have to ask you. Please raise your hand if you agree with my questions.

Do you each understand, realize, and accept that the defendant is presumed innocent of the charges against him, and

that presumption remains with the defendant until you retire to the jury room to deliberate[?] Raise your hand if you agree with that concept.

I have everybody raising their hands. Thank you.

Next, do you each understand, realize, and accept that the burden of proof is on the prosecution, and that burden of proof is beyond a reasonable doubt[?] Please raise your hand if you agree with this concept.

Everybody is raising their hands.

* * *

Next, do you understand, realize, and accept that the defendant does not have to prove anything and is not required to present any evidence? The State has the burden of proof. Do you each understand and accept this concept? If you please raise your hand.

Everybody is raising their hand.

Do you each understand, realize, and accept that the defendant does not have to testify, that he has a constitutional right to not take the stand and that you cannot use his failure to testify against him? Do you each accept this concept? Raise your hand.

Everybody is raising their hand.”

To the second panel, the court recited the same four principles. However, this time the court asked the jurors to raise their hands if they “understand and accept this concept.” All jurors

raised their hands.

¶ 9

B. The State's Case

¶ 10

The State called Andrew Compton, a K-9 officer for the Moline Police Department. He testified he conducted a traffic stop on a red Lexus at 2:29 a.m. on April 27, 2024, and encountered defendant and his passenger, Joell Radcliff. Through Compton's testimony, the State moved to admit State's exhibit Nos. 1, 2, and 3—videos from Compton's squad car, Compton's body camera, and Officer Travis Leedom's squad car. The court admitted the videos and they were published for the jury. These exhibits documented the entire traffic stop, and Compton's testimony served as commentary.

¶ 11

Compton testified he directed defendant to exit the vehicle when he learned defendant "had a disqualified driver's license." Defendant was placed in Leedom's squad car. During a K-9 sniff search, the dog alerted at the Lexus's trunk. When officers searched the trunk, they found a locked lunch bag. In the bag, they found a locked pouch. Inside the pouch, Compton found two tied-off bags of what he suspected to be methamphetamine, a digital scale with white residue, individual dime baggies, and two butane torches. Officers searched the rest of the vehicle and found a small baggie containing what they believed to be methamphetamine in the front passenger-side door. When Compton searched defendant, he found \$358 in cash in his pocket. Compton testified officers also found cash and a small baggie of suspected methamphetamine in passenger Radcliff's purse.

¶ 12

Through Compton's testimony, the State also admitted photographs of what police found in the red Lexus, in Radcliff's purse, and on defendant's person. Exhibit No. 5C was a photograph showing the largest bag of methamphetamine found in the lunch bag on a scale indicating the bag weighed 113.05 grams. The second largest bag of methamphetamine found in

the lunch bag weighed 51.10 grams.

¶ 13 The State next called Joseph Ward of the Moline Police Department. He interviewed defendant at the police station. Through Ward's testimony, the State admitted the video of the interview. To assist the jury in following along, the State provided the jury with an interview transcript that Ward compiled after he reviewed the video. The State did not seek to admit the transcript, and without objection from the defense, the court instructed the jury that the video recording was the evidence, and the transcript was an aid. If the two conflicted, the video controlled.

¶ 14 Ward identified the man he interviewed as defendant. Ward testified he went into the interview with defendant wanting to learn who supplied him with the 100-plus grams of methamphetamine because "[a] larger quantity like that is usually for distribution and not for personal use." Before interviewing defendant, Ward reviewed text messages between Radcliff and defendant, observing the two discussed defendant getting Radcliff "candy." Based on his experience, Ward testified people use "candy" as a substitute for "meth." Ward testified that, during the interview, defendant took ownership of all the methamphetamine found in the car. Ward testified that defendant told him he had previously given methamphetamine to Radcliff. Ward informed defendant that police attributed to him the two larger bags of meth from the lunch bag and attributed to Radcliff the small bags found on her person and in the passenger-side door.

¶ 15 In the video interview, defendant stated he owned the red Lexus, even though it was registered to Radcliff. He said he purchased the Lexus from Radcliff for \$1,000 but had not yet changed the registration. Defendant told Ward he bought four ounces of meth for \$1,400 shortly before he was stopped. Defendant confirmed he probably had five or six ounces of meth

in the trunk of his car. He said he typically bought four ounces of meth from a younger man from Clinton, “probably every other day.” He said he had been buying meth from this man for eight months. He said he started buying one ounce, he increased the amount over time, and he had been buying four ounces for “probably a few months.”

¶ 16 Defendant told Ward that “the dope” Radcliff had was from him. He confirmed any discussions with Radcliff about “candy” were referencing “meth.” Defendant said he last gave Radcliff an “eight ball” of meth “a few days” ago. He said that sometimes he charged Radcliff and sometimes he did not.

¶ 17 On cross-examination, Ward testified four ounces is “a large quantity” of methamphetamine “to buy,” but he also confirmed “it’s one of the standardized sizes that people will buy it in.” Put differently, Ward acknowledged “the 4 ounces that was in the baggie that [defendant] said he got an hour ago, that would be a common size for him to have purchased from somebody else.”

¶ 18 Before resting, the parties offered the following stipulation:

“[I]f the government was to call the chemist from the Illinois State Police [(identified as Angela Nealand)], she would testify that 110.8 grams of a crystalline substance from one plastic bag was tested and found to be methamphetamine, and that that would correspond to the bag that we have discussed in this case as the one that was tested by the previous witness.”

The stipulation also provided “that she also tested 6.4 grams of a crystalline substance from one plastic baggie which also tested positive for methamphetamine, that being the bag in evidence” “that was found in the door.” The stipulation noted “[t]he other larger bag was not analyzed, and

the [other] smaller bag was not analyzed.”

¶ 19 C. The Motion for Directed Verdict, the Verdict, and the Sentence

¶ 20 After the close of evidence, the defense moved for directed verdict, arguing the State had not met its burden of proving defendant’s “intent to deliver.” Citing *People v. Johnson*, 2013 IL App (4th) 120162, ¶ 33, the defense asserted, “Delivery in this context means more than simply transporting a controlled substance from one place to another. At very least, it requires an attempt to transfer possession.” Counsel insisted the State presented no evidence of transferring possession of methamphetamine. He argued defendant and Radcliff had “joint possession,” and the State had not shown any evidence that defendant planned to transfer possession to any other person. The court denied the motion.

¶ 21 During closing arguments, the defense argued the State presented no evidence of what defendant’s “future plans were” for the bag of meth weighing over 110 grams. Counsel argued the State failed to present evidence of defendant’s and Radcliff’s “usage patterns” or “what an amount is for a normal dosage of methamphetamine.” Counsel summarized the argument as,

“You don’t have anybody that you can point to to say
[defendant] was going to deliver any portion of that bag that’s over
100 grams to anybody else. You have a lot of evidence dancing
around that, but you don’t have any evidence about any intent
whatsoever to deliver any portion of that bag to anybody.”

The jury returned a guilty verdict.

¶ 22 Posttrial, defendant filed a combined motion to reconsider and motion for a new trial, raising seven issues. In the former motion, defendant raised four issues: (1) the dog in

question was trained on substances that are legal, namely marijuana, so the search was illegal, and the trial court should have granted the suppression motion; (2) the traffic stop was unlawful, and the suppression motion should have been granted; (3) the governing statute was unconstitutional; and (4) the court erred in not granting the motion for directed verdict. The latter motion added three different issues: (1) the objections that were improperly sustained or improperly overruled individually or collectively resulted in an unfair trial; (2) the court erred in denying the defense's motion to continue the trial; and (3) the jury instructions failed to adequately restate the law. The motions sought various forms of relief, ranging from suppressing all evidence from the traffic stop, vacating the conviction, and finding defendant not guilty to vacating the conviction and ordering a new trial. The court denied the combined motion and proceeded with sentencing.

¶ 23 Defendant faced a sentencing range of 9 to 40 years in DOC and up to \$200,000 in fines. The State argued for a 20-year sentence, while the defense sought “[a] sentence at or near the mandatory minimum” of 9 years. After acknowledging its review of the presentence investigation report, along with the factors in mitigation and aggravation, the trial court sentenced defendant to 17 years in DOC, followed by 18 months’ MSR, and imposed a fine of \$21,522.50 for the street value of the meth seized.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Defendant’s appeal seeks reversal of his conviction and remand for a new trial based on the trial court’s failure to strictly comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), which codifies what is commonly referred to as the four *Zehr* principles. See *People v. Zehr*, 103 Ill. 2d 472 (1984). He acknowledges he forfeited this claim because he did

not object during *voir dire* or raise the issue in his posttrial motion. He invokes the plain-error doctrine, arguing he “was denied his right to a fair trial where the court asked jurors whether they agreed with the *Zehr* principles instead of properly asking whether they understood and accepted the principles in a closely-balanced case with no direct evidence of an intent to deliver methamphetamine.”

¶ 27 Plain error is a well-established exception to forfeiture. *People v. Sebbby*, 2017 IL 119445, ¶ 48. The reviewing courts find plain error “(1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error” or “(2) when a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” (Internal quotation marks omitted.) *Sebbby*, 2017 IL 119445, ¶ 48. “[T]he plain error rule is not a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.” (Internal quotation marks omitted.) *People v. Moon*, 2022 IL 125959, ¶ 21. “Instead, it is a narrow exception to forfeiture principles designed to protect the defendant’s rights and the reputation of the judicial process.” *Moon*, 2022 IL 125959, ¶ 21. “The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error.” *Sebbby*, 2017 IL 119445, ¶ 49.

¶ 28 A trial court can commit error if it fails to properly survey jurors pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). See *People v. Kinnerson*, 2020 IL App (4th) 170650, ¶ 59. The rule is simple—the trial court is to ask each prospective juror in a criminal case whether they both “understand[]” and “accept[]” that (1) the defendant is presumed innocent, (2) the State bears the burden of proving the defendant guilty beyond a

reasonable doubt, (3) the defendant has no obligation to present evidence, and (4) the defendant's choice to not testify cannot be held against him. Ill. S. Ct. R. 431(b) (eff. July 1, 2012). Strict compliance with this simple rule is required. *People v. Curry*, 2013 IL App (4th) 120724, ¶ 64; *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 35.

¶ 29 The parties agree that the trial court did not strictly comply with Rule 431(b), with the State acknowledging “the court’s phrasing did not strictly comply with Rule 431(b).” To be sure, the record confirms the court asked both panels *two questions* for each *Zehr* principle but only gave jurors *one chance* to respond. This approach may well sow confusion. Curiously, as a preface to each substantive principle, the court asked, “Do you each understand, realize, and accept,” and then it read the principle. The court then asked a second question to give the jurors a chance to respond. With that second question, however, which was the jurors’ only opportunity to answer, the court did not ask the first panel of prospective jurors if they understood and accepted all four *Zehr* principles. With the first two principles the court asked jurors if they “agree[d] with that concept,” and with the fourth principle, it asked, “Do you each accept this concept?” The State’s brief skips the initial analytical step in the plain-error analysis by not addressing whether this alleged noncompliance amounts to a clear or obvious error. The State’s analysis begins at step two—whether the trial evidence was closely balanced. We regard the State’s approach as a concession that the court committed a clear or obvious error. Therefore, we too will skip the first step and proceed to the closely balanced analysis.

¶ 30 Defendant bears the burden of showing the trial evidence was closely balanced. See *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007). He focuses his argument on the “intent to deliver” element, claiming “the jury could have reasonably found that there was insufficient evidence to prove that [defendant] intended to deliver the 164.15 grams of methamphetamine

found inside the car, as there was no direct evidence presented that he intended to deliver any of the methamphetamine he possessed.” He directs our attention to *People v. Robinson*, 167 Ill. 2d 397, 408 (1995), where our supreme court identified some factors to consider when assessing “the nature and quantity of circumstantial evidence necessary to support an inference of intent to deliver.” *Robinson* lists seven factors that could be probative for the “intent to deliver” element, namely: (1) whether the amount of drugs is too large for personal consumption; (2) the high purity of the drug confiscated; (3) the possession of weapons; (4) the possession of large amounts of cash; (5) the possession of police scanners, beepers, or cellular telephones; (6) the possession of drug paraphernalia; and (7) how the drug is packaged. *Robinson*, 167 Ill. 2d at 408. Defendant argues that because “the State introduced no evidence regarding four of the seven factors,” the “evidence was not overwhelming” and, therefore, it must have been closely balanced. We disagree with defendant’s premise and conclusion.

¶ 31 Defendant conflates sufficient evidence with closely balanced evidence, but they are two different concepts. See *Piatkowski*, 225 Ill. 2d at 566 (“Whether the evidence is closely balanced is, of course, a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge.”) The closely balanced standard requires reviewing courts to “evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Sebby*, 2017 IL 119445, ¶ 53. Put differently, we consider the “closeness of sufficient evidence” and not “the sufficiency of close evidence.” *Sebby*, 2017 IL 119445, ¶ 60.

¶ 32 The *Robinson* factors and analysis relate to inquiries into the sufficiency of the evidence and do not provide a solid basis for defendant’s argument. *Robinson*’s list of seven factors regarding the intent to deliver element is neither “exhaustive” nor “inflexible.” *People v.*

Bush, 214 Ill. 2d 318, 327 (2005). To be sure, our supreme court recognized *Robinson* “allows for the consideration of other, unspecified factors by stating that, ‘[i]n light of the numerous types of controlled substances and the infinite number of potential factual scenarios in these cases, there is no hard and fast rule to be applied in every case.’ ” *Bush*, 214 Ill. 2d at 327 (quoting *Robinson*, 167 Ill. 2d at 414). We are unpersuaded by defendant’s argument allocating evidence to certain *Robinson* categories, emphasizing the lack of evidence for other categories, and concluding what the jury could have decided based on that evidence.

¶ 33 Looking at the trial evidence qualitatively and commonsensically, we hold the evidence in this case was overwhelmingly persuasive and not closely balanced on the intent to deliver element. The State’s evidence, through testimony, pictures, videos, and physical evidence, established that defendant possessed two large bags of methamphetamine, which together weighed more than 150 grams. Sergeant Ward testified, “A larger quantity like that is usually for distribution and not for personal use.” In two interviews with Officer Compton and Sergeant Ward, defendant took ownership of all the methamphetamine found in the car. He also took ownership of the lunch bag and its other contents, namely, a digital scale with white residue on it, two butane torches, and smaller unused baggies. Most importantly, defendant admitted he regularly purchased four ounces of methamphetamine three or four times weekly. He confessed he had previously given meth to Radcliff. And other evidence corroborated his confession, showing Radcliff possessed two smaller bags of methamphetamine, which together weighed seven grams. Comparing the pictures in exhibit No. 5, we see the small bags of meth attributed to Radcliff match the extra smaller baggies found in the lunch bag attributed to defendant. Finally, based upon the defense’s cross-examination and closing argument, we observe witness credibility did not seem to be an issue in this case. The defense did not attack Compton’s or

Ward’s credentials or experience or ask the jury to not believe their testimony. Indeed, the defense did not dispute the State’s evidence; it merely maintained it did not prove beyond a reasonable doubt an intent to deliver methamphetamine.

¶ 34 All this sufficient evidence was not closely balanced between the State’s and the defense’s positions. We cannot say the court’s error in stating the *Zehr* principles tipped the scales toward the State in a close case. Defendant, therefore, has not met his burden of establishing plain error.

¶ 35 As a final note, we will say again—42 years after *Zehr* was handed down and 19 years after Rule 431(b) was promulgated—we are still addressing *Zehr* admonishments. In this instance, not necessarily because the wrong terms were used, but because the trial court felt compelled to complicate the process by asking the question twice within the same sentence to the jurors, misstating the proper inquiry when it eventually sought the jurors’ responses. We know,

“Being a trial judge can be a difficult job, often requiring careful study to properly apply difficult legal concepts and to ensure that a jury is properly instructed on the law. However, admonishing prospective jurors pursuant to 431(b) is not a difficult task.

It could hardly be easier.

We remind trial courts that supreme court rules are not suggestions, to be complied with when convenient or unless the trial court believes they could better explain these fundamental principles to the jurors than Supreme Court Rule 431(b) does.

They can't." *People v. Neal*, 2020 IL App (4th) 170869,

¶¶ 188-90, 192-93.

Just read the rule, please.

¶ 36

III. CONCLUSION

¶ 37

For the reasons stated, we affirm the trial court's judgment.

¶ 38

Affirmed.