

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) 251053-U
NO. 4-25-1053
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 8, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Stephenson County
LARRY J. MARTIN,	)	No. 25CF66
Defendant-Appellant.	)	
	)	Honorable
	)	Glenn R. Schorsch,
	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices Zenoff and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) vacated defendant’s conviction of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2024)) under the one-act, one crime doctrine; (2) modified defendant’s five-year sentence for unlawful restraint because it was not an offense eligible for extended-term sentencing, reducing the sentence to the maximum nonextended term of three years; (3) modified the four-year term of mandatory supervised release for defendant’s unlawful restraint conviction as not authorized by statute, reducing it to the maximum statutorily allowed term of six months; (4) held the trial court sufficiently considered defendant’s *pro se* claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984); and (5) affirmed the remainder of the court’s judgment because defendant failed to show plain error to excuse his forfeiture of the court’s failure to fully admonish the jurors in accordance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012).

¶ 2 Defendant, Larry J. Martin, was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2024)), domestic battery (*id.* § 12-3.2(a)(1)), and unlawful restraint (*id.* § 10-3(a)) after a jury trial. The trial court sentenced defendant to five years in prison on each count, to be served concurrently. Defendant appeals, arguing (1) the court erred when it

failed to admonish all of the jurors in accordance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (2) his conviction for domestic battery must be vacated under one-act, one-crime principles, (3) the court erred in sentencing defendant, and (4) the court failed to comply with *People v. Krankel*, 102 Ill. 2d 181 (1984). For the following reasons, we affirm in part, vacate in part, and modify defendant's sentence.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged in a three-count information for an incident that occurred with his girlfriend, Jeanine West, on March 3, 2025. In count I, the State alleged defendant committed the offense of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2024)) by, in committing a domestic battery, intentionally strangling West, a family or household member, by applying pressure to her throat and neck area with his hands. Count II alleged defendant committed the offense of domestic battery (*id.* § 12-3.2(a)(1)) by strangling West by wrapping his hands around her neck and applying pressure and pressing a towel into her mouth. Count III alleged defendant committed the offense of unlawful restraint (*id.* § 10-3(a)) when he detained West in her apartment by standing in front of the door to prevent her from leaving, pressing his hand over her mouth to prevent her calling for help, and holding her down on the couch.

¶ 5 The matter proceeded to a jury trial. During *voir dire* examination, the trial court questioned the prospective jurors regarding the familiar *Zehr* principles. See *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). Specifically, the court asked the jurors if they understood and accepted that (1) defendant was to be presumed innocent, (2) defendant was not required to offer any evidence on his own behalf, (3) defendant could not be convicted unless proven guilty beyond a reasonable doubt, and (4) if defendant chose not to testify, the decision could not be held against him. While all jurors selected to serve on defendant's jury were asked and answered regarding

propositions one, two, and three, two jurors were never asked if they understood and accepted proposition four.

¶ 6 Carolyn Mitchell testified she lived on the same floor as West and was West's friend. She also knew defendant and had known him since he was a child. Mitchell testified she saw West earlier in the day on March 3, 2025. At that time, West gave Mitchell her keys and debit card. On cross-examination, Mitchell testified West "had been giving" her the keys and debit card for at least a week, and Mitchell was using the debit card to pay West's bills. Around 1 p.m. the same day, West and Mitchell decided to go visit a friend's apartment. While they were waiting for the elevator, defendant summoned West into their apartment. Mitchell went to the friend's apartment without West. On her way back home about an hour later, Mitchell knocked on West's door. Defendant opened the door and said West had gone out. Mitchell did not see West until West was released from the hospital. At that time, Mitchell observed West to be "all bruised up." Mitchell was shown photographs of West's injuries, which were taken at the hospital on March 4, 2025. Mitchell confirmed the injuries shown in the photographs were consistent with those she observed on West on March 4, and she did not observe any of those injuries on March 3.

¶ 7 Officer Vincent Christidis of the Freeport Police Department testified he was the responding officer when West called the police on March 4, 2025. He met her in the lobby of her apartment complex. Officer Christidis testified he noticed redness or an abrasion on West's chest and neck, bruising to her forearms, and a wound on her lip. Officer Christidis identified the photographs of West's injuries. He thought some of the injuries, like redness on her neck and ears, were not clear in the photographs.

¶ 8 West testified she lived with defendant, and he had been her boyfriend for about a

year and a half. West was at Mitchell's apartment in the late morning of March 3, 2025, and she and Mitchell left to visit another friend's apartment around 2 p.m. While waiting for the elevator, defendant summoned her into the apartment. Defendant wanted to discuss West's debit card, which she had removed the same day from defendant's jacket pocket and given to Mitchell. After returning to the apartment with defendant, West and defendant smoked crack cocaine. Thereafter, they argued about West's debit card. According to West, defendant pushed her on her right shoulder down onto the couch and grabbed her right arm. Standing above her, defendant pressed a towel into her mouth and tried to press it down her throat so she could not scream. He also applied pressure to West's neck or throat, and it was difficult to breathe. West attempted to reach her Life Alert button but could not activate it. Afterwards, West sat in her recliner and watched television until around 7 p.m., at which time she took a sleeping pill and went to bed. She recalled Mitchell stopping by the apartment around 4 p.m., but defendant answered the door, having told West to go in the bathroom and sit on the shower chair and be quiet. West did not feel she could leave her apartment. The next morning, she went to a friend's apartment and used his telephone to call 911.

¶ 9 West testified she was transported by ambulance to the hospital, and her injuries were photographed in the emergency room at the hospital. West identified the injuries caused by defendant, including injuries to her lip, neck, and eye and bruises on her right arm and both hands. West identified some of the bruises on the back of her left arm as predating the abuse by defendant. West confirmed she used a walker and had some health issues, one of which required blood thinner medication. On the day of trial, West had some visible bruises on her arms from a recent hospital visit and from bumping into a door.

¶ 10 Dr. Syed Haq testified he was the emergency room physician who treated West at

the hospital on March 4, 2025. Dr. Haq opined West's injuries were possibly consistent with her being assaulted.

¶ 11 After the State rested, defendant filed a motion for a directed verdict, which was denied. Defendant did not testify.

¶ 12 Anna Woods testified for the defense. She lived in the same building as West and defendant. Woods described her relationship with West as that of an "honorary daughter." Woods testified she checked on and assisted West on a regular basis when Woods was in Freeport, Illinois. However, as of the date of the trial in July 2025, Woods had only seen West once from afar since the incident because Woods was traveling between Chicago and Freeport.

¶ 13 Woods testified she stopped by the apartment where West and defendant lived around 3 or 4 p.m. on March 3, 2025. At the time, defendant was cooking and West was sitting in her chair, watching television. Woods stayed and talked with West for about 20 minutes, and she did not notice any injuries "out of the norm" on West. Woods returned to her own apartment. Woods testified West later came by her apartment at around 8 p.m. At that time, West was upset and angry with defendant. Again, Woods did not notice anything "out of the norm" and explained the bruises she saw on West's arm were normal bruises resulting from her use of blood thinner medication.

¶ 14 The jury found defendant guilty of all three counts. Defense counsel filed a motion for a new trial, which was denied. Thereafter, defendant filed two *pro se* motions. The motions alleged his counsel provided ineffective assistance by failing to utilize key evidence, call important witnesses, and effectively cross-examine witnesses to establish reasonable doubt. Defendant also criticized counsel's failure to present medical records, body camera footage, and prior statements by West to the jury.

¶ 15 Prior to sentencing, the trial court addressed defendant's motions, finding they raised issues that triggered a preliminary *Krankel* inquiry. Thus, the court asked defendant to elaborate on his claim that defense counsel was ineffective. Defendant clarified he asked counsel to seek to admit into evidence prior police reports made by West, arguing they were false reports, including no contact orders during the time defendant lived with West. Defendant asked counsel to review and admit into evidence the police officers' body camera footage. He also believed counsel did not properly question the witnesses. In response, counsel stated defendant's allegations were matters of trial strategy. For instance, counsel reviewed the body camera footage and believed it was consistent with the testimony in court, so she made a strategic decision not to seek admission of the footage. Also, as a matter of trial strategy, she chose not to ask all the questions of the witnesses requested by defendant. The court concluded defendant's allegations did not merit appointing new counsel and denied defendant's *pro se* motions.

¶ 16 The trial court sentenced defendant to five years in the Illinois Department of Corrections, followed by four years of mandatory supervised release (MSR). The written judgment indicates three individual five-year sentences, each followed by four years of MSR, to be served concurrently.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues (1) the trial court erred when it failed to admonish all of the jurors in accordance with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (2) his conviction for domestic battery must be vacated under one-act, one-crime principles, (3) the court erred in sentencing defendant, and (4) the court failed to comply with *Krankel*. We will address each contention in turn.

¶ 20

A. Jury Admonishments

¶ 21

Defendant contends the trial court reversibly erred when it failed to admonish all the jurors in accordance with Rule 431(b). Defendant admits he did not object to the court's questioning during *voir dire* and did not raise the error in a posttrial motion, but he argues the evidence was closely balanced, so we can review it as first-prong plain error. The State concedes the court committed error but contends the evidence was not closely balanced, so there was no plain error.

¶ 22

To preserve an error for review and avoid forfeiture, a defendant must both object to the error at trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). If an error is not preserved, a reviewing court may exercise discretion and excuse the procedural default under the plain error doctrine. *People v. Sebby*, 2017 IL 119445, ¶ 48; see Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). There are two prongs to the plain error doctrine, allowing review of clear and obvious errors when a defendant shows (1) “the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him” or (2) “the error was so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process.” *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 23

The first step under either prong of the plain error doctrine is to determine whether error occurred. *Sebby*, 2017 IL 119445, ¶ 49. Here, the parties agree the trial court violated Rule 431(b). That rule requires the trial court to ask potential jurors whether they understand and accept the four *Zehr* principles:

- “(1) that the defendant is presumed innocent of the charge(s) against him or her;
- (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer

any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.” Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 24 Here, the trial court attempted to abide by Rule 431(b) during its *voir dire* examination, but in the process of replacing and excusing prospective jurors, the court failed to ask two of the selected jurors if they understood and accepted the fourth principle. Therefore, we accept the State’s concession that an error occurred.

¶ 25 Having determined there was error, we must determine if the error requires reversal. Defendant argues the error was first-prong plain error because the evidence in his case was closely balanced. See *Sebby*, 2017 IL 119445, ¶ 51. When evaluating whether evidence at trial was close, “a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Id.* ¶ 53. As part of that assessment, a reviewing court considers any evidence on the elements of the charged offenses as well as any evidence regarding the witnesses’ credibility. *People v. Williams*, 2022 IL 126918, ¶ 58.

¶ 26 To prove a defendant guilty of domestic battery, the State must prove the defendant knowingly caused bodily harm to a family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2024). To prove a defendant guilty of aggravated domestic battery under the provision charged in this case, the State must prove the defendant, in committing the domestic battery, knowingly strangled that person. *Id.* § 12-3.3(a-5). The disputed issue in this case for the jurors to determine was whether, as alleged by the State, defendant strangled, battered, and restrained West or, as alleged by defendant, West injured herself or was injured by a person other

than defendant. Defendant does not argue the evidence was closely balanced regarding his unlawful restraint conviction, so we will not address the evidence supporting that conviction. See *id.* § 10-3(a) (a conviction of unlawful restraint requires proof the defendant knowingly and without legal authority detained another).

¶ 27 According to defendant, this case presented a classic credibility contest. See *People v. Naylor*, 229 Ill. 2d 584, 608 (2008) (finding the case presented a credibility contest where the trial court was faced with two different but credible versions of events and there was no extrinsic evidence to support or contradict either version). We disagree. While the State and defendant presented two different versions of events, the State's version was supported by extrinsic evidence that corroborated the State's version of events. Specifically, photographs were admitted showing injuries to West's face, neck, arms, and hands. Although defendant argues the injuries shown in the photographs are equally compatible with his version of events, we conclude defendant's argument is unconvincing. Defendant does not explain how West's use of blood thinner medication would result in multiple bruises and scratches to different parts of her body at one time.

¶ 28 In our view, the injuries shown in the admitted photographs far more closely align with West's assertion that defendant pushed her down on the couch and choked her with a towel and his hands. West's version of events was also corroborated by the testimony of Mitchell and Officer Christidis. Defendant did not testify, but he had no burden to present any evidence at trial or testify himself. See *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007) ("Although [the] defendant has the burden before this court to show that the evidence is closely balanced, he had no burden to present any evidence or to testify himself at trial."). However, the testimony of the defense's sole witness did not directly contradict the State's version of events. Woods testified

she saw West after the alleged altercation between West and defendant, and she did not observe any injuries to West's face and neck. She did, however, observe bruises on West's arms but opined those bruises were just West's normal bruises.

¶ 29 We hold this case did not present a classic credibility contest. After making a qualitative, commonsense assessment of the evidence presented at trial, we conclude the evidence in this case strongly favored the State's allegations and was not closely balanced. As such, defendant has not established reversible plain error and cannot overcome the forfeiture of his argument.

¶ 30 B. One-Act, One-Crime

¶ 31 Defendant contends his conviction of domestic battery must be vacated because his convictions of domestic battery and aggravated domestic battery were based on the same physical act. Thus, defendant argues the two convictions violate one-act, one-crime principles. The State concedes the error and agrees the domestic battery conviction must be vacated.

¶ 32 Pursuant to the one-act, one-crime doctrine, "a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *People v. Coats*, 2018 IL 121926, ¶ 11. "[U]nder the one-act, one-crime rule, the less serious offense must be vacated." *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004). Whether a violation of the one-act, one-crime doctrine has occurred is a question of law we review *de novo*. *Coats*, 2018 IL 121926, ¶ 12.

¶ 33 While defense counsel stated at the close of sentencing that count II would merge into count I, she never raised the merger of the counts in a posttrial motion. However, "one-act, one-crime violations fall within the second prong of the plain error doctrine as an obvious error so serious that it challenges the integrity of the judicial process." *Id.* ¶ 10. Thus, we will review

the issue under the second prong of the plain error doctrine. *Id.*

¶ 34 Here, as charged and argued by the State, defendant’s convictions for aggravated domestic battery and domestic battery stem from the same physical altercation, which included the act of strangling West. The State did not make any attempt to apportion or differentiate defendant’s acts to charge or allege a domestic battery separate from an aggravated domestic battery. See *People v. Crespo*, 203 Ill. 2d 335, 343-44 (2001) (holding each of a victim’s stab wounds could have supported a separate offense, but the State’s charges and theory at trial portrayed the defendant’s conduct as a single attack). Accordingly, we accept the State’s concession and vacate defendant’s conviction and sentence for domestic battery.

¶ 35 C. Sentencing

¶ 36 Defendant contends the trial court erred in imposing extended-term sentences on his Class 4 felony convictions of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2024)) and unlawful restraint (*id.* § 10-3(a)) because defendant’s conviction of aggravated domestic battery (*id.* § 12-3.3(a-5)) was a more serious class of offense. As we are already vacating defendant’s conviction and sentence for domestic battery, we will limit our discussion to defendant’s claim regarding his sentence for unlawful restraint. Further, defendant contends the authorized MSR term for a Class 4 felony was six months, so the court erred in imposing a four-year MSR term on his unlawful restraint conviction. The State concedes the extended-term sentence and MSR term for defendant’s unlawful restraint conviction were not authorized by statute.

¶ 37 Although he failed to preserve this issue, defendant argues we can review the issue as plain error or ineffective assistance of counsel. The State agrees defendant’s forfeiture may be excused. As “[t]he imposition of a statutorily unauthorized sentence affects substantial rights,” we may review the issue even though not properly preserved in the trial court. *People v.*

Bell, 2020 IL App (4th) 170804, ¶ 144.

¶ 38 When “a defendant is convicted of multiple offenses that are part of a continuing course of conduct, an extended-term sentence may be imposed only for those offenses that are within the most serious class.” *People v. Brusaw*, 2023 IL 128474, ¶ 30; see 730 ILCS 5/5-8-2(a) (West 2024). Here, defendant was convicted of aggravated domestic battery, a Class 2 felony and a more serious class of felony than defendant’s conviction of unlawful restraint, a Class 4 felony. See 720 ILCS 5/12-3.3(a-5) (b), (West 2024); *id.* § 10-3(a), (b).

¶ 39 The State concedes defendant’s conviction for unlawful restraint was not eligible for extended-term sentencing. Defendant asks this court to reduce his sentence for unlawful restraint to three years’ imprisonment, the statutory maximum for a nonextended Class 4 felony. See 730 ILCS 5/5-4.5-45(a) (West 2024). We accept the State’s concession and modify defendant’s five-year sentence for unlawful restraint, reducing it to the statutorily authorized sentence of three years. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967) (stating a reviewing court has the power to reverse, affirm, or modify the judgment or order on appeal).

¶ 40 The State also concedes the trial court erred in imposing a four-year term of MSR on defendant’s unlawful restraint conviction. It is undisputed defendant’s conviction of unlawful restraint was a Class 4 felony, and the statutorily mandated MSR term was six months. See 730 ILCS 5/5-8-1(d)(3) (West 2024). The court had no discretion but to impose that term on defendant. See *People ex rel. Berlin v. Bakalis*, 2018 IL 122435, ¶ 18 (holding, because a four-year MSR term was statutorily mandated, the trial court had no discretion but to impose that term). Thus, we further modify the sentence imposed on defendant’s conviction for unlawful restraint, reducing the MSR term to six months.

¶ 41 D. Preliminary *Krankel* Hearing

¶ 42 In his *pro se* posttrial motions, defendant alleged his defense counsel provided ineffective assistance of counsel. Defendant contends the trial court's preliminary inquiry into those allegations, in accordance with *Krankel*, was inadequate because the court failed to ascertain the factual bases for each claim to determine if they had possible merit. In addition, defendant made further comments regarding his counsel at the conclusion of the hearing on his motion to reconsider his sentence, and the court failed to conduct further *Krankel* proceedings. The State contends the court adequately examined defendant's allegations and the later remarks did not trigger a new *Krankel* inquiry.

¶ 43 A *Krankel* inquiry is triggered when a defendant clearly raises a *pro se* posttrial allegation of ineffective assistance of counsel. *People v. Ayres*, 2017 IL 120071, ¶ 18. No specific procedure is required; a defendant only needs to bring his allegation to the trial court's attention. *Id.* ¶ 11. When a defendant makes such an allegation, "the trial court must conduct an inquiry into the factual basis of the defendant's claim to determine whether new counsel should be appointed to assist the defendant." *People v. Bell*, 2018 IL App (4th) 151016, ¶ 35. After conducting the inquiry, if the court determines there is no merit to the allegation or it pertains only to matters of trial strategy, then it is not necessary to appoint new counsel. *Ayres*, 2017 IL 120071, ¶ 11. If the allegation shows possible neglect, though, new counsel should be appointed to represent the defendant at an adversarial and evidentiary hearing on the defendant's claims. *People v. Cook*, 2023 IL App (4th) 210621, ¶ 53. The question of whether defendant's statements were sufficient to trigger a *Krankel* inquiry is reviewed *de novo*. *People v. Bates*, 2019 IL 124143, ¶ 14; *People v. Patton*, 2022 IL App (4th) 210561, ¶ 103. However, if the court has properly conducted a *Krankel* inquiry and has reached a determination on the merits of the defendant's *Krankel* motion, we will reverse only if the trial court's decision was manifestly

erroneous. *People v. Jackson*, 2020 IL 124112, ¶ 98.

¶ 44 Here, in his posttrial motions, defendant alleged his defense counsel was ineffective for failing to call important witnesses, utilize key evidence, and effectively cross-examine the witnesses at trial. The trial court determined defendant's motions raised issues triggering a preliminary *Krankel* inquiry, so the court asked defendant to elaborate on his claims. Defendant stated he requested counsel bring to light evidence West had made prior reports to the police and the reports were false; West had a no-contact order against defendant but allowed defendant to live with her; and West called the apartment office on him numerous times. Also, defendant asked counsel to admit the police body camera footage. Counsel argued defendant's allegations of ineffectiveness involved trial strategy. For example, she made a strategic decision not to seek to admit the body camera footage because, in her opinion, it corroborated what was said on the stand. Also, her questioning of the witnesses was a matter of trial strategy. The court found defendant's allegations were matters of trial strategy, and counsel's trial strategy was sound. See *Jackson*, 2020 IL 124112, ¶ 106 (holding matters of trial strategy include which witnesses to call and what matters to object to and when to object). We hold the court did not manifestly err in denying defendant's motion without appointing *Krankel* counsel. See *id.* ¶ 101 (holding a trial court need not appoint new counsel and may deny the *pro se* motion if it determines the claim lacks merit or pertains only to matters of trial strategy).

¶ 45 Defendant also contends he made further allegations of ineffective assistance of counsel when, at the close of the hearing on his motion to reconsider his sentence, he made a request for transcripts. Defendant told the trial court he wanted the transcripts so he could "put details in there" and participate in his appeal. The court responded by stating it would appoint the appellate defender and defendant could discuss access to the transcripts with his appointed

appellate counsel. We conclude defendant's statements at the close of the motion hearing were not sufficient to trigger any further preliminary *Krankel* inquiries. While defendant's statements could be construed to imply he was alleging his defense counsel was ineffective, defendant did not make an explicit or clear complaint of counsel's performance beyond what was already considered by the court at the preliminary *Krankel* hearing. See *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26 ("In instances where the defendant's claim is implicit and could be subject to different interpretations, a *Krankel* inquiry is not required."); see also *People v. Haley*, 2026 IL App (4th) 250357-U, ¶ 35 (holding a supplemental *Krankel* inquiry was not required where the defendant reiterated the same allegations of ineffective assistance of trial counsel). Thus, this court declines to remand this matter for further *Krankel* inquiries.

¶ 46

III. CONCLUSION

¶ 47

For the reasons stated, we vacate defendant's conviction and sentence for domestic battery. We modify defendant's sentence for unlawful restraint, reducing it from five years' imprisonment and four years of MSR to the statutorily authorized sentence of three years' imprisonment and six months of MSR. We affirm the remainder of the trial court's judgment.

¶ 48

Affirmed in part, as modified, and vacated in part.