

No. 132427

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 4-24-0933.
Plaintiff-Appellant,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of the Eleventh Judicial Circuit,
	)	McLean County, Illinois, No. 21-CF-
	)	374.
BRENT J. BURTON,	)	
	)	Honorable
Defendant-Appellee.	)	William A. Yoder,
	)	Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Supreme Court Rule 431(b), as amended in 2012, requires trial courts to ask prospective jurors whether they understand and accept “that if a defendant does not testify it cannot be held against him or her.” In this case, the court asked jurors if they understood and accepted “that the defendant’s *failure* to testify cannot be held against him [emphasis added],” as the pre-amended rule provided. Thus the issue on review is:

Whether the appellate court’s order holding that the Rule 431(b) principles must be strictly complied with after this Court’s 2012 amendment to the Rule, which eliminated the word “failure” from the fourth principle, should be affirmed where it is consistent with this Court’s stringent application of the Rule as held in *People v. Thompson*, 238 Ill. 2d 598, 607 (2010), and *People v. Sebby*, 2017 IL 119445, ¶ 49, and the failure to do so constituted prong one plain error in this closely-balanced case.

Alternatively, even if this Court finds that Rule 431(b) does not require strict compliance, whether substantial compliance nevertheless requires a trial court to use the language provided in the 2012 amendment, as the amended language was an intentional change and designed to not prejudice a defendant by the court indicating that a defendant “fails” if he does not provide his account to the trier of fact.

STATUTES AND RULES INVOLVED

Rule 431 (Voir Dire Examination) (2007).

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

(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charges) 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 a defendant's *failure to testify* cannot be held against him or her; however no inquiry of a prospective juror shall be made into the defendant's *failure to testify* [emphasis added].

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

Rule 431 (Voir Dire Examination) (2012).

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

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

STATEMENT OF FACTS

By all accounts, Brent Burton and C.B. had an on-again/off-again dating relationship for at least five months. On April 7, 2021, the State charged Burton with three counts of criminal sexual abuse, one count of residential burglary, four counts of home invasion, and one count of aggravated DUI. (C. 56-58) The charges were based on a March 28, 2021, incident where Burton entered C.B.'s home - allegedly without her permission - got into bed with her, and rubbed against her. (C. 56-58) On March 14, 2023, the State dismissed all but one count of criminal sexual abuse and one count of home invasion. (C. 239; R. 166-68) The case proceeded to trial on those two charges. (R. 168)

Voir Dire

Prior to selecting the jury, the judge instructed the venire pursuant to Supreme Court Rule 431(b) as follows:

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

[emphasis added] (R. 227)

Jury Trial

At trial, C.B. testified she lived in Colfax, Illinois, in a house she purchased in 2001. (R. 341) She said she usually kept her doors unlocked unless she left town. (R. 342) She met Burton at Finish Line, a bar where she used to work, in September or October of 2020 and they became friends. (R. 342-43) She hired him to cut down trees in her yard and she helped him with his taxes. (R. 342) They started dating

in October of 2020 and would see each other daily. (R. 344) C.B. testified that she and Burton had “ups and downs” starting in December and that she tried ending the relationship with him multiple times. (R. 445) During each “down phase,” Burton would call and text her excessively. (R. 445) They would reconcile and the pattern would begin anew. (R. 345)

They went out on New Year’s Eve and on January 1, 2021, C.B. thanked Burton for the Christmas gifts he had given her and her son. (E. 198) Later that day, they fought via text because C.B. wanted to spend time alone and she said she would return the necklace he gave her. (E. 196) They made up later. (E. 196) At 11:05 pm. on January 2, C.B. texted Burton, “Where r u??” (E. 195) C.B. testified that this was an invitation to come to Finish Line, where she worked. Burton later came to the bar. (R. 423) At 12:48 a.m., Burton texted C.B. and asked if he could come over after her shift. (E. 195) She testified that she told him “no.” (R. 425) There was no text message reflecting that C. B. had told Burton not to come over. (R. 492-93) C.B.’s call log shows an accepted call from Burton at 12:55 a.m. that lasted nine seconds. (E. 207) C.B. said she did not invite him over during that call. (R. 501)

After C.B. finished her shift at Finish Line around 1:00 a.m., she and her friend went to a bar. (R. 423) Burton followed them there and then left. (R. 424) When C.B. arrived home, Burton’s truck was in her driveway and Burton was in the kitchen as her door had been unlocked. (R. 425-26) C.B. confronted Burton and asked him what he was doing there. (R. 426) They argued and Burton left. (R. 426) C.B. was very angry because Burton messed up her house - there were skittles all over the kitchen floor - and he did not let the dog out. (R. 489-92)

After he left, Burton called her eight times between 1:59 a.m. and 2:06 a.m., and C.B. did not answer. (E. 72) At 2:20 a.m., C.B. and Burton exchanged text messages in which C.B. told him to leave her alone and that she was not in a relationship with him. (E. 198-200) On January 5, C.B. texted him again that she wanted nothing more to do with him, specifically stating: “I don’t want you in my life and especially, I don’t want you in [my son’s] life” and “Im f*** done.” (E. 189; R. 446-47) C.B. characterized this as “[a]nother attempt” to break up with Burton. (R. 441-43; 446-47) After this, C.B. expressed jealousy over an old girlfriend of Burton’s, saying: “So you must be talking to her now. Nice.” (E. 187) And, “so you texted her thinking you were texting me?” (E. 187)

The next day, on January 6, C.B. reinitiated contact with Burton, apologized, and explained why she had been in a bad mood the day before. (E. 185) She had forgotten to take her medication and was physically ill and mentally drained and wanted to be alone. (E. 185) He came over later that night, brought C.B. cigarettes and spent the night. (E. 187-88) On January 7, the two flirted by text. (E. 180-86) C.B. told Burton to come over and that she would leave her side door unlocked. (E. 180-86; R. 434, 440-48, 452) On January 11, Burton sent C.B. a message that he would be there in 15 minutes and she told him to lock the door after he arrived. (E. 172; R. 436) On January 27, Burton asked if the door would be unlocked for him and she said “yes.” (E. 144) C.B. acknowledged that she often left the door unlocked for Burton. (E. 144; R. 434-35)

On January 28, 2021, C.B. once again tried to break up with Burton. She texted, (1) “F*** you you stupid mother f***! Leave me the f*** alone. I’ll be damned if I support another worthless mother f***” and (2) “All I said was I can’t have

you living at my house for free and especially on nights I have my son, I'm breaking my custody.. and you get pissed. Shows your true f*** colors and intentions. F*** off. Keep texting and calling, I will go to the cops.” (E. 132-43; R. 454) This was not the end of their relationship. (R. 457)

C.B. and Burton began texting back and forth again starting on February 3, 2021. (E. 135-43) Once again, C.B. and Burton were jealous of each other's old relationships . C.B. accused him of texting with Lynne - a former girlfriend - and Burton did not like the way C.B.'s customers and friends joked around with her. (E. 135-43) After the couple made up, on February 4, C.B. invited Burton for dinner and told him “he might get lucky.” (E. 127-30, R. 461-62) On February 6, she changed her mind again and texted ““After tonight, I am DONE. I don't need a man in my life, and you f*** proved it to me” and “Leave me alone.” (E. 121) Burton texted her multiple times between February 7 and 9, and she did not respond until February 9. (E. 118) C.B. testified that she told Burton she wanted to slow things down and be friends. (R. 346) A few days later, on February 12, Burton spent the night at C.B.'s house. (R. 461-62) On Valentine's night, they went out to dinner with friends. (R. 346) C.B. paid for dinner because Burton did not have any money. (R. 346) C.B. did not invite him back to her home after that dinner, and on February 19, she broke up with him “for good,” in part based on money issues. (R. 344-46, 464, 474)

After this “break-up,” between February 19 and March 28, Burton came into Finish Line when C.B. was working and contacted her by text and phone. (R. 347) On February 22-23, C.B. responded to some of Burton's texts in an attempt to get some of her belongings returned. (R. 347) She wanted him to put her things

outside, so she could pick them up without seeing him. (R. 350, E. 65) When her things were not there, she accused him of lying about leaving them. (R. 357; E. 62) During this time, Burton asked for help with his taxes and she refused. (R. 355) She also told him not to come to Finish Line when she was working. (R. 353)

In his messages and voicemails between February 26 and 28, Burton again attempted to rekindle the relationship. (R. 364-68; E. 58-65) Those messages included Burton professing his love, saying he missed her, describing his suicidal thoughts, apologizing for calling her, and referencing that he had just driven by her house and knows he has been replaced. (R. 350-51, 373; E. 56) C.B. did not respond. (R.72)

In a series of texts between March 1 and 14, Burton inquired about a certificate of insurance. (E. 92) On March 8, Burton wrote C.B. a check for \$500 he owed her for taxes. (R. 484-85) C.B. initially denied that the check was for taxes; however, the check's memo read "taxes." (R. 199) And Burton texted C.B. on March 16, telling her he was glad she had cashed the check. (E. 88) On March 14 and 17, C.B. texted Burton, asking him to stop waking her up and to leave her alone. (E. 88) In the March 17 message, she threatened to get an order of protection. (E87)

On March 23, Burton came into Finish Line. (R. 474) He later texted C.B. that he had left her a \$20 tip under an ash tray. (E. 87) C.B. responded that it was not there as "the kid" had stolen it. (E.88) C.B. testified that she had received a \$20 tip during that week. (R. 474)

On March 28, 2021, C.B. was out with friends at several different bars. (R. 374-78) C.B. was the designated driver and drank four light beers across several

hours. (R. 375, 377, 378) The last bar of the evening was Finish Line for Karaoke night, where the group stayed for three hours. (R. 378) C.B. saw Burton there at around midnight, which made her uncomfortable, so she decided to leave. (R. 379) According to C. B., she and Burton did not speak. (R. 381, 474-75) After checking to see if her friends could get rides home, she went home and went to bed. (R. 381-82) Her arrival at around 12:30 a.m. was captured on her ring camera. (R. 383)

At 1:43 a.m., Ring camera footage shows Burton's truck backing into C.B.'s driveway. (R. 385, 401; St. Ex. 1A-1E) At 1:46 a.m. Burton can be seen entering C.B.'s home through the unlocked side door. (R. 385, 402; St. Ex. 1A) At 2:58 a.m., the Ring camera showed that C.B.'s dog was let outside. (R. 385; St. Ex. 1A-E) C.B. was not the one who let her dog out at that time. (R.403)

C.B. testified that sometime after 2:30 a.m., she woke up when she felt Burton rubbing his penis against her back and butt and rubbing her back, while saying he was sorry. (R. 404-05) She rolled on her belly and pretended to be asleep as she was trying to figure out a plan. (R. 406) She eventually got up and screamed at Burton, telling him to leave. (R. 406) Burton apologized and kept saying, "[Y]ou brought me here," to which C.B. responded "that's not true, you need to get out of my house, you need to leave." (R. 406) Burton said "I can tell you're mad, I'll let you cool off." (R. 408) According to C.B., he left her bedroom angrily, slammed her door, and went downstairs. (R. 407-08) C.B. locked the door behind him, loaded her shotgun, and called the police. (R. 406-09)

C.B. testified that she was yelling at Burton to get out of her bedroom for three to four minutes. (R. 480) When asked to demonstrate how much time had actually passed between her waking up, yelling at Burton, and him leaving her bedroom, it was approximately 30 seconds. (R. 480) C.B. was not sure what time

she called the police, but it may have been around 3 a.m. (R. 478-79) She acknowledged the hour-long gap between Burton arriving at her house at 1:45 a.m. and her call to the police, but said she did not know what happened during that time until she realized he was in her bed. (R. 479)

While C.B. waited for the police, which she said was 25 minutes, she heard scratching and rattling at her bedroom door and thought Burton was trying to come in again. (R. 410-11) She threatened to shoot him if he came in again and the rattling stopped. (R. 412)

When C.B. saw the police drive up, she opened her bedroom window and told the officers to go in the side door. (R. 312, 413) Officer Jack Shepard and two officers went in the side door where they found Burton seated at the kitchen table. (R. 314) They arrested him. (R. 314-15) Burton appeared to be intoxicated. (R. 315) Burton's prints were taken at the station. (R. 534)

Deputy Seth Wiseman arrived after Burton was in custody and, with Corporal Robert King, went upstairs to C.B.'s bedroom. (R. 413) C.B. unlocked the door and let them in. (R. 413, 525-26) As Wiseman unloaded C.B.'s gun, C.B. told him what happened. (R. 414, 526) King's body-worn camera shows that C.B. denied that Burton had been trying to enter her bedroom again after she had told him to leave. (R. 505)

The officers then accompanied C.B. downstairs where they sat at the kitchen table. (R. 414-15) There were two dirty cups in the sink. (E. 15; R. 506) C.B. denied they were hers and Burton's; rather she explained they were hers and her son's. (R. 507) She told police that she must have forgotten to lock the door that night. (R. 438) She testified that on the night of the incident she was expecting another friend, and had left the door open, but had not mentioned that to the police because she was embarrassed. (R. 438)

The next day, C.B. found a butter knife in her upstairs hallway, did not touch or move it, and reported it to the police. (R. 417-18) Deputy Aaron King returned to C.B.'s home, took pictures of the bedroom door jamb and knife, and collected the knife as evidence. (R. 418-19, St. Ex. 6A-M) The State introduced responding officer Robert King's body cam footage showing a silver object on the second floor of C.B.'s house, which he identified as a butter knife. (R. 563-65, St. Ex. 5, 5A) One of two prints on the knife was identified as belonging to Burton. (R. 586) Robert Reneau testified that he did not know how long the print was on the knife and that it could have been left if the knife was sitting on the counter and someone placed their hand on it. (R. 606-07)

The State rested its case. (R. 611)

Steve Tjarks, one of Burton's friends, testified for the defense. (R. 617) He said that he met Burton at Finish Line the night of March 28. (R. 619) Burton was upset because he had just lost his step-father. (R. 620-21) Burton was pretty intoxicated. (R. 644) After Tjarks and Burton talked for about 30 minutes, a woman approached Burton and talked to him. (R. 623) Before she left, Tjarks overheard that woman, who had appeared to have been drinking, tell Burton, who was intoxicated, to come over later and that the door would be unlocked. (R. 624-25, 644) Tjarks left the bar shortly thereafter. (R. 624)

A year later, Tjarks saw Burton on his tractor. (R. 626) He had learned of Burton's arrest and asked Burton about it. (R. 628) Burton told him and mentioned the woman who had been at the bar. (R. 637) Shortly after this conversation, Tjarks was contacted by a private detective who asked him questions about the woman in the bar that night. (R. 628-29) The detective sent Tjarks a photo of C.B. (R. 640). Tjarks confirmed she was the woman who he had seen talking to Burton on March 28. (Def, Ex. 19; R. 629-32, 637) Tjarks "probably" told Detective Henkel that he would not have recognized the woman if he saw her again after that night. (R. 641)

Burton opted not to testify. (R. 648) The defense rested its case. (R. 651)

The jury deliberated until about 5:00 pm that afternoon and returned the next morning. (R. 730-31) During the following day's deliberations, at 1:22 p.m., the jury sent out a question asking: "what constitutes reasonable doubt?" (R. 735; C. 270) The court responded: "it is for the jury to decide what constitutes a reasonable doubt. You have been given the instructions on the law in this case and should rely on those instructions." (R. 735; C. 270) Two hours later, the jury returned a verdict of guilty on both counts. (R. 737; C. 298-99) The total deliberation time was at least eight hours. (R. 727-37)

At sentencing, the court merged the abuse count into the home invasion count and sentenced Burton to 8 years in prison. (R. 781; C. 317)

On direct appeal, the Fourth District Appellate Court found that Rule 431(b) requires strict compliance with the language set forth in Rule 431(b) when reading the four principles to the venire. *People v. Burton*, 2025 IL App (4th) 240933-U, ¶¶ 53, 55-56. The court then determined that the use of the phrase "failure to testify" was a violation of the rule, as that phrase had been deleted in favor of the phrase "chooses not to testify," in 2012. *Burton*, 2025 IL App (4th) 240933-U, ¶¶ 60-64. Finally, the court reversed Burton's conviction and remanded this cause for a new trial where this clear and obvious error possibly tipped the scales of justice against Burton unduly in this closely-balanced case. *Id.* at ¶¶ 59, 65, 67-69.

This Court granted the State's leave to appeal. 274 N.E.3d 107.

ARGUMENT

The Trial Court Erred in Admonishing Potential Jurors on Rule 431(b)'s Fourth Principle When it Used the Phrase "Failure to Testify" Codified in the Prior Version of the Rule Rather than the Amended Language which Removed the Word "Failure," Regardless of Whether the Rule Requires Strict or Substantial Compliance.

Supreme Court Rule 431(b) requires the reading of four specific principles to prospective jurors. The purpose of the rule is to ensure that prospective jurors both "understand and accept:" 1. the presumption of innocence afforded a defendant, 2. that the State has the burden to prove the defendant guilty beyond a reasonable doubt, 3. that the defendant is not required to offer evidence, and 4. that if a defendant chooses not to testify, it cannot be held against him. Ill. S. Ct Rule 431(b). Since 2010, this Court has stringently applied Rule 431(b) when holding that the rule mandates a "specific question and response process" in the reading of these four principles. *People v. Thompson*, 238 Ill. 2d 598, 607 (2010); *People v. Wilmington*, 2013 IL 112938, ¶ 32; *People v. Sebby*, 2017 IL 119445, ¶ 8. This is to ensure that the jurors will adhere to these important principles.

Prior to the April 26, 2012, amendment, the fourth principle of the rule read: "the defendant's *failure* to testify cannot be held against him or her." [emphasis added] Ill. Sup. Ct. Rule 431(b) (2007). The current rule reads: "that if a defendant does not testify it cannot be held against him or her." Ill. Sup. Ct. Rule 431(b) (2012). In this case, which was tried in 2024, well after the enactment of the amendment, the trial judge used the language from the 2007 version of the Rule when reading the fourth principle to the venire. The trial judge's use of the pre-amendment language was error. Defense counsel failed to object. However, as held by the Fourth District Appellate Court, this clear and obvious error tipped

the scales of justice against Burton in this closely-balanced case. *People v. Burton*, 2025 IL App (4th) 240933-U, ¶¶ 59, 65. This Court should therefore affirm the appellate court’s order reversing Burton’s convictions and remand this cause for a new trial.

Standard of Review

When reviewing the plain language of Rule 431(b), and the case law interpreting the rule, this Court’s review is *de novo*. *People v. Abdullah*, 2019 IL 123492, ¶ 18; *Nolan v. Weil-McLain*, 233 Ill. 2d 416, 429 (2009).

Argument and Analysis

A. This Court’s previous decisions establish that Rule 431(b) requires strict compliance.

The State argues that the trial court substantially complied with Rule 431(b) and this Court has never required strict compliance with Supreme Court Rules. (St. Br. 15-16) On the contrary, this Court has required strict compliance where it has “mandated a specific question and response process” when questioning the venire. *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). In *Thompson*, although the trial court informed the prospective jurors as a group of the four principles, the court did not question any of the prospective jurors on whether they understood and accepted the third principle and that the defendant was not required to produce any evidence on his own behalf. 238 Ill. 2d at 602, 607. Further, the trial court asked the prospective jurors whether they “understood” the presumption of innocence, but failed to ask whether they “accepted” that principle. *Id.*

The State argued on appeal to this Court, as it does in this case, that the trial court substantially complied with Rule 431(b). *Id.* at 605. But this Court disagreed, finding that the trial court did not comply with Rule 431(b) because

the rule “mandates a specific question and response process.” *Id.* at 607. In so finding, this Court observed that the jurors could be questioned individually or in a group, but that the language of Rule 431(b) clearly and unambiguously established the method of inquiry; the trial court “must ask each potential juror whether he or she understands and accepts each of the principles in the rule[.]” and must “provide each juror an opportunity to respond to specific questions concerning the [Rule 431(b)] principles.” *Id.* As such, more than 15 years ago, the *Thompson* Court implicitly rejected the same “substantial compliance” analysis the State asserts is applicable here, when determining if the trial court complied with Rule 431(b).

In *People v. Wilmington*, 2013 IL 112938, prior to the *voir dire* of individual panel members, the trial court admonished the entire group of potential jurors about each of the principles set forth in the rule. 2013 IL 112938, ¶28. The defendant asserted on appeal that the trial court violated Rule 431(b) in two ways: (1) it did not ask whether the prospective jurors understood and accepted the fourth principle, and (2) it only asked if the prospective jurors accepted the other three principles, not whether they also understood them. 2013 IL 112938, ¶30.

The *Wilmington* Court reiterated that “Rule 431(b) requires that the trial court ask potential jurors whether they *understand* and *accept* the enumerated principles, mandating ‘a specific question and response process.’” (Emphasis in original.) 2013 IL 112938, ¶ 32, citing *Thompson*, 238 Ill. 2d at 607. While the *Wilmington* Court noted that “it may be arguable that [trial] court’s asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles[.]” the defendant did not argue on appeal that the trial court erred by using the word

“disagreement,” only that the court erred when it failed to ask the jurors if they “understood” the principles. (Emphasis in original.) 2013 IL 112938, ¶¶ 30, 32. And the *Wilmington* Court ultimately agreed with the defendant, finding that the court erred by failing to: ask jurors if they “understood” the four principles and inquire into the jury’s understanding and acceptance of the fourth principle. 2013 IL 112938, ¶ 32.

More recently, in *People v. Sebbly*, this Court rejected the use of words other than “understand” and “accept” when instructing prospective jurors under Rule 431(b), which again supports that strict compliance is required under Rule 431(b). 2017 IL 119445, ¶ 49. In *Sebbly*, the trial court asked the jurors whether they “had any problems with” or “believed in” the Rule 431(b) principles rather than whether they understood and accepted them. 2017 IL 119445, ¶ 49. The parties agreed the trial court violated Rule 431(b). *Id.*; see *Beacham v. Walker*, 231 Ill. 2d 51, 60 (2008) (stating a reviewing court is not bound by a party’s concession of error). Citing to *Thompson* and *Wilmington*, this Court agreed there was clear error. *Id.*

Thompson, *Wilmington*, and *Sebbly* establish that trial courts must strictly comply with Rule 431(b). This Court did not conduct a “substantial compliance” analysis in those cases; it did not analyze whether the trial courts there “impart[ed] to [the] defendant largely that which is specified in the rule, or the rule’s ‘essence,’ as opposed to ‘wholly’ what is specified in the rule.” *People v. Dominguez*, 2012 IL 111336, ¶ 19. Rather, this Court in *Thompson*, *Wilmington*, and *Sebbly* consistently held that Rule 431(b) “mandates a specific question and response process,” and ultimately found error in all three cases because the trial courts did not specifically use the terms “understand” and “accept” in ensuring the jurors’

willingness to follow the law. *Thompson*, 238 Ill. 2d at 607; *Wilmington*, 2013 IL 112938, ¶ 32; *Sebby*, 2017 IL 119445, ¶ 49.

B. The 2012 amendment to Rule 431(b) required strict compliance with the reading of principles contained in the rule.

Although this Court has never expressly addressed whether Rule 431(b) requires strict compliance, this Court has addressed the precise wording of the fourth principle through the rule-making process when it amended the language of Rule 431(b). *Burton*, 2025 IL App (4th) 240933-U, ¶ 54-55.

Rule 431 has only been amended three times. Before 1997, the rule read as follows: “In criminal cases, the *voir dire* examination of jurors shall be conducted in accordance with Rule 234.” Ill. Sup. Ct. Rule 431, Historical Notes. Rule 234 is the general rule governing *voir dire* instructing the court to ask questions it deems appropriate to ascertain their qualifications to serve as jurors and to permit the parties to submit additional questions. It does not require any specific question-and-response format. Ill. Sup. Ct. Rule 234. In 1997, this Court rewrote the rule to include the four principles. The wording change was intended to ensure compliance with the requirements of *People v. Zehr*, 103 Ill.2d 472 (1984), and “end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the jurors’ willingness to follow the law.” Ill. Sup. Ct. Rule 431(b), Committee Comments. After this amendment, trial courts were required to read these four principles if the defendant so requested.

In 2007, this Court made Rule 431 mandatory when it removed the language indicating the principles would only be read “at the request of the defendant.” Ill. Sup. Ct. Rule 431(b) (2007), Historical Notes. But the fourth principle still read: “the defendant’s *failure* to testify cannot be held against him or her.

However, no inquiry of a prospective juror shall be made into the defendant's *failure* to testify when the defendant objects [emphasis added]." Ill. Sup. Ct. Rule 431(b) (eff. May 1, 2007). The last time the rule was amended was on April 26, 2012. At that time, this Court changed the fourth principle to read: "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. Sup. Ct. Rule 431(b) (eff. July 1, 2012).

The interpretation of Supreme Court rules is controlled by the same principles applicable to the construction of statutes. *Thompson*, 238 Ill. 2d at 606, citing *People v. Santiago*, 236 Ill.2d 417, 428 (2010). With Supreme Court rules, as with statutes, "[i]t is presumed that every amendment is made for some purpose, and effect must be given to the amended law in a manner consistent with the amendment." *People v. Burge*, 2021 IL 125642, ¶ 33. When interpreting a rule, the objective is "to ascertain and give effect to the drafters' intent." *Thompson*, 238 Ill. 2d at 606, citing *Santiago*, 236 Ill. 2d at 428. "The best indication of intent is the language of the rule, given its plain and ordinary meaning." *Thompson*, 238 Ill. 2d at 606, citing *People v. Marker*, 233 Ill. 2d 158, 165 (2009).

The only change this Court made to Rule 431(b) in 2012 was to remove the word "failure" and restructure the sentence correspondingly. "The April 26, 2012 amendment, in subsec. (b) substituted 'if a defendant does not testify it' for 'the defendant's failure to testify,' and substituted 'decision not' for 'failure'." Ill. Sup. Ct. Rule 431(b) (2012), Historical Notes. The presumption is that was an intentional change. *Burton*, 2025 IL App (4th) 240933-U, ¶55.

But a presumption of intention is not even needed; the rule-making process demonstrates exactly why this rule was amended and why the "failure" language

was removed. In eliminating the phrase “the defendant’s failure to testify,” specifically the word “failure,” this Court recognized the negative connotations associated with that word when the amendment was proposed to the Rules Committee. This amendment was proposed by Mr. Robert Loeb, who testified in front of the committee on January 23, 2012. Annual Report, Illinois Supreme Court Rules Committee, 2011-2012. *See* Appendix, pp. A3-A4.¹ In explaining the reasons behind the proposal, Mr. Loeb stated that the use of the word “failure” violated the very spirit of the rule, which is that not testifying is not a failure. *See* Appendix, p. A2. In addition, as pointed out at the hearing on the rule change, the proposal utilized the same language that is used in IPI 2.04 which is titled “Failure of Defendant to Testify,” but the body of the instruction that is read to the jury does not utilize the word “failure.” *See* Appendix, pp. A3-A4, A8-A11. At the hearing, the committee indicated that it had concerns about the wording of the fourth principle in its discussion of the origin of the use of the word “failure.” *See* Appendix, pp. A9-A10. Mr. Loeb recognized that the word “failure” was in the *Zehr* opinion itself, but unfortunately had made its way into other opinions and the rule because of its ubiquitous use as shorthand by attorneys. He pointed out that the word is not consistent with the spirit of *Zehr* or the corresponding IPI. *See* Appendix, pp. A8-11. The committee seemed to agree where, following the hearing, the Committee adopted the amendment as proposed with no additional modifications. March Term 2012 Submissions and Disposition. *See* Appendix, pp. A12-A14.

The reasoning behind the amendment is sound. A “failure” suggests neglecting to do or omitting something that is otherwise required. *See* www.merriam-

¹This text was created by the Illinois Supreme Court Library and has no page numbers for reference purposes. For this Court's convenience, counsel has attached the relevant pages as an appendix. *See* (A1 - A15)

webster.com/dictionary/failure. An instruction to prospective jurors that tells them that a defendant may “fail” to testify indicates that he may not complete a task that he should be expected to complete. However, the admonishments were meant to convey the exact opposite meaning, as a defendant has never been *required* to testify at trial. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 10; *Griffin v. California*, 380 U.S. 609, 612–613 (1965). The defendant’s decision to not testify is a *choice* to exercise a constitutional right from which nothing should be inferred by the jury. Indeed, any reference by the prosecution or the judge to a defendant’s “failure” to testify, thus commenting on the defendant’s exercise of his constitutional right, could be a basis for reversal. *People v. Hopkins*, 52 Ill. 2d 1, 6 (1972); *see also People v. Roman*, 2013 IL App (1st) 110882, ¶¶ 41, 46 (noting that the removal of the language regarding a defendant’s “failure to testify” improved Rule 431(b)).

This rationale supports the application of strict compliance when reading the principles. The constitutional guarantee of a fair and impartial jury includes the right to an adequate *voir dire* to identify and “remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence,” *Morgan v. Illinois*, 504 U.S. 719, 729-30 (1992), due to their own biases and prejudices. *People v. Cloutier*, 156 Ill. 2d 483, 495-96(1993) (citing *Wainwright v. Witt*, 469 U.S. at 424). *See also People v. Burge*, 2021 IL 125644, ¶ 89, *Justice Neville, dissenting*.

This Court, in its wisdom, decided that the question-and-answer format when disseminating the four principles is a valuable way to reach this goal and has chosen the language best suited to communicate these principles. And, although not yet explicitly determined to be mandatory by this Court, strict compliance

with the language of the principles has been pointed to favorably in many decisions. *People v. Burge*, 2021 IL 125644, ¶27 (majority cited to the verbatim recitation of the rules in support of its finding that the trial court complied with Rule 431(b)); *People v. Curry*, 2013 IL App (4th) 120724, ¶ 65 (best practice to comply with Rule 431(b) is for the trial court to read the principles verbatim to the venire and then ask if the jurors understand and agree with the principles); *People v. Joseph*, 2021 IL App (1st) 170741, ¶28 (by tracking the rule’s language verbatim, the trial court complied with the rule). Conversely, the failure to strictly comply with Rule 431(b) and read the principles verbatim makes it difficult to gauge each juror’s understanding of the principles and thwarts the purpose of the rule as stated in the committee notes: the rule “seeks to end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the juror’s willingness to follow the law.” Ill. S. Ct. R. 431, Committee Comments. *People v. Burge*, 2021 IL 125644, ¶¶ 120-125, *Justice Neville, dissenting*.

The State asserts that the 2012 amendment actually confirmed that strict compliance is not required because this Court acquiesced to appellate court decisions that did not require such compliance when it did not amend the rule to include the words “strict compliance.” (St. Br. 19) The State references *People v. Ware*, 407 Ill. App. 3d 315, 355 (1st Dist. 2011); *People v. Chester*, 409 Ill. App. 3d 442, 447 (4th Dist. 2011); and *People v. Atherton*, 406 Ill. App. 3d 598 (2nd Dist. 2010), as examples of cases which pre-dated the 2012 amendment and did not require strict compliance, in support. (St. Br. 19) Contrary to this argument, the Illinois Supreme Court was not required to add in the words “strict compliance” to the rule to require strict compliance with the rule. For example, this Court requires

strict compliance with the certificate requirement of Rule 604(d) even though the rule itself does not contain the words “strict compliance.” *People v. Janes*, 158 Ill. 2d 27, 35 (1994); Ill. Sup. Ct. Rule 604(d) (“The defendant’s attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant’s contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.”).

Moreover, although the State cites to Rule 605(c) to support its position that substantial compliance is all that is required here, the rule itself undermines the State’s position. (St. Br. 16) The plain language of Rule 605(c) expressly includes a “substantial compliance” standard. Ill. Sup. Ct. Rule 605(c) (Emphasis added) (“In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant *substantially* as follows”). And this Court in *People v. Dominguez*, 2012 IL 111336, relied on that language in finding that Rule 605(c) only requires substantial compliance. *Dominguez*, 2012 IL 111336, ¶ 16 (Emphasis in original) (“The rule itself requires the defendant be *substantially* advised of certain rights.”). The plain language of Rule 431(b), on the other hand, contains no such language.

In fact, the 2012 amendment to Rule 431(b) - the only amendment since the rule was created which changed very specific language - was enough to convey that this Court requires strict compliance with the rule. If substantial compliance is all this Court requires and the trial court can substantially comply by using

the pre-2012 language, then there would be no reason for this Court to amend Rule 431(b) in 2012 in the manner it did.

The State also references the *Chester*, *Atherton*, and *Ware* decisions, as well as *People v. Kidd*, 2014 IL App (1st) 112854, in support of its assertion that substantial compliance with the rule is sufficient. (St. Br. 16-18) Contrary to the State's argument, those cases are not supportive or instructive on that point.

For instance, in *Chester*, the trial court failed to tell potential jurors about the third and fourth Rule 431(b) principles: that the defendant does not need to present any evidence and that his decision not to testify could not be held against him. 409 Ill. App. 3d at 447. The Fourth District Appellate Court in 2011, without the benefit of this Court's 2012 amendment to Rule 431(b), found that the trial court's substantial compliance with the fourth principle was sufficient. The *Chester* court ultimately found the trial court erred by failing to address the fourth principle, but concluded the error did not rise to second-prong plain error where the defendant could not successfully argue that the jury was biased. *Id.* at 448-49.

Since then, and after this Court's 2012 amendment, the Fourth District Appellate Court has repeatedly held that strict compliance with Rule 431(b) is required. *People v. McGuire*, 2017 IL App (4th) 150695, ¶35 ("Our conclusion [that counsel acquiesced in the misreading of the principle] does not lift the requirement that trial judges must strictly comply with Rule 431(b)."); *People v. Neal*, 2020 IL App (4th) 170869, ¶¶172-73 (the trial court did not "strictly comply" with Rule 431(b) where it admonished the venire with the pre-2012 version of the fourth principle, which included the word "failure.").

Atherton and *Ware* are similarly not dispositive because both decisions pre-date this Court's 2012 amendment of the rule and thus neither court analyzed

the implication of the amendment when determining that Rule 431(b) only requires substantial compliance. Again, “[i]t is presumed that every amendment is made for some purpose, and effect must be given to the amended law in a manner consistent with the amendment.” *Burge*, 2021 IL 125642, ¶ 33.

In both of those cases, the respective trial courts did not ascertain whether the jurors “accepted and understood” these principles. In *Ware*, the trial court asked the jury whether “anybody ha[d] any difficulty” with each of the principles. 407 Ill. App. 3d at 356. The *Ware* court observed: “The language used by the trial court encompasses both understanding and acceptance; an individual who did not understand the principle or did not accept the principle would “have * * * difficulty” with the principle.” *Id.* In *Atherton*, the trial court asked the venire only whether they would “have any difficulty” with some of the propositions and whether, if given instructions on the propositions, they would be “willing to follow” others. 406 Ill. App. 3d at 611. In both cases, the reviewing courts held that these questions substantially complied with Rule 431(b). However, the holdings in both decisions are in contravention of *Thompson*, where this Court held that the language of the rule was clear and unambiguous in establishing the method of inquiry which must “provide each juror an opportunity to respond to specific questions concerning the [Rule 431(b)] principles” to ensure that they both “understand” and “accept” each principle. 238 Ill. 2d at 598, 607. Notably, *Atherton*, despite being released two months after *Thompson*, relied on *Chester* rather than *Thompson* in finding that the trial court substantially complied with the rule. *Atherton*, 406 Ill. App. 3d at 611.

Moreover, *Ware* and *Atherton* cannot survive after this Court’s 2017 decision in *Sebbly*. Citing to *Thompson* and *Wilmington*, the *Sebbly* Court accepted the parties’s

concession and agreed there was clear error where the trial court asked the prospective jurors whether they “had any problems with” or “believed in” the Rule 431(b) principles rather than whether they understood and accepted them. *Sebby*, 2017 IL 119445, ¶49. There is no appreciable difference between asking whether the *Sebby* jurors “had any problems with” or “believed in” the principles, and asking the *Ware* jurors whether “anybody ha[d] any difficulty” with the principles or asking the *Atherton* jurors whether they would “have any difficulty” with some of the propositions and whether, if given instructions on the propositions, they would be “willing to follow” others. *Ware*, 407 Ill. App. 3d at 356; *Atherton*, 406 Ill. App. 3d at 611. The State's reliance on these cases thus fails.

The State also cites to *People v. Kidd*, 2014 IL App (1st) 112854. (St. Br. 16) In *Kidd*, the trial court did not instruct the jurors that the defendant was not required to offer any evidence on her own behalf and asked the jurors if they “disagreed” with the principles rather than whether they “understood” and “accepted” them. 2014 IL App (1st) 112854, ¶ 37, 7. Relying on *Chester* and *Atherton*, the appellate court found that telling the jurors that the “defendant is not required to prove his innocence” is the equivalent of telling them that the defendant need not offer evidence. 2014 IL App (1st) 112854, ¶38. The *Kidd* court also found that asking the jury if they “disagreed” with the principles was the same as asking if they “accepted” and “understood” them. *Id.* at ¶¶40-41.

But, again, the *Sebby* Court has since held that questioning the jurors on whether they “had any problems with” or “believed in” the Rule 431(b) principles, rather than whether they understood and accepted them, is clear error. *Sebby*, 2017 IL 119445, ¶49; see *Burton*, 2025 IL App (4th) 240933-U, ¶56 (acceptance

of confession of error is equivalent to approval where the reviewing court is not bound by it); *see also Wilmington*, 2013 IL 112938, ¶32 (although the use of the word “disagreement” could arguably be an substitute for “acceptance,” it does not adequately ascertain if the jurors “understood” the four principles). *Kidd* is therefore inapposite.

In this case, the trial court did not strictly comply with Rule 431(b) when it admonished the venire with the pre-2012 language. And critically, this error was not cured by defense counsel or a jury instruction. A violation of Rule 431(b) during *voir dire* cannot later be cured by using a proper instruction, such as IPI Criminal No. 2.04, prior to jury deliberations. *Sebbby*, 2017 IL 119445, ¶¶ 73-77. Likewise, defense counsel cannot cure a trial court’s erroneous Rule 431(b) admonition by properly reciting the principle during *voir dire*, as “the court itself is required to address this principle.” *Chester*, 409 Ill. App. 3d at 447. Thus, any error could not have been cured by defense counsel’s restatement of the fourth principle during *voir dire* or by the post-trial instruction given to the jury in this case. (R. 237, 720)

As observed by the appellate court: “Trial courts must exercise diligence when admonishing potential jurors under Rule 431(b), especially in those cases involving charges and rights as serious as those at issue here. The easiest way to ensure compliance with the rule is to recite the precise language chosen by the Supreme Court.” *Burton*, 2025 IL App (4th) 240933-U, ¶ 66; *See also People v. Neal*, 2020 IL App (4th) 170869, ¶¶ 188-89 (acknowledging that “[b]eing a trial judge can be a difficult job, often requiring careful study to properly apply difficult legal concepts and to ensure that a jury is properly instructed on the law” but

emphasizing that “there is no excuse for a trial judge to not strictly comply with the clear and explicit directions the Illinois Supreme Court has provided for trial courts when admonishing prospective jurors”).

C. Alternatively, even if Rule 431(b) does not require strict compliance, substantial compliance requires that trial courts use the language provided in the 2012 amendment because the amended language was intentionally chosen to avoid prejudicing defendants.

However, even if this Court does not require strict compliance, the use of the word “failure” when reading the fourth principle does not constitute substantial compliance with the plain language of the rule. The State maintains that because the trial judge engaged in the specific question-and-response process as outlined in *Thompson*, *Wilmington*, and *Sebby*, and communicated the fourth principle using the “language of *Zehr*,” the trial court substantially complied with the rule. (St. Br. 21) But Rule 431(b) was specifically amended to remove the word “failure” at the Rules Committee hearing held on January 23, 2012. *See* Appendix, pp. A3-A4, A8-A11. Therefore, the State’s argument that the trial court substantially complied with the rule fails.

As discussed in Section B of this brief, in amending the rule in 2012, the Illinois Supreme Court Rules Committee removed the word “failure” in two sections of the rule and replaced it with different phrasing which mirrored the IPI given when defendant does not testify. *See* Appendix, pp. A12-A14. (*supra*, pp. 19-20) The proposal to amend the rule as well as the transcript of the hearing on the amendment illustrates the reasoning behind removing the word “failure,” *i.e* it has a negative connotation and it violates the spirit of the rule, which is that not testifying is anything but a failure. *See* Appendix pp. A2-A4, A8-A11. And the

Committee had concerns about the use of the word “failure.” *See* Appendix, A9-A10. Consequently, following the hearing, the Committee adopted the amendment as proposed with no additional modifications. March Term 2012 Submissions and Disposition. *See* Appendix, pp. A12-A14. Such a considered discussion on the proposal and an adoption of the proposed amendment after the hearing, supports the conclusion that the use of the word failure when admonishing the jury does not constitute substantial compliance.

The key substantive change made by the 2012 amendment was the removal of the word “failure” from two places in the rule. Therefore, even if this Court finds that substantial compliance is sufficient, and all the principles do not have to be read verbatim, the word “failure” - which was deliberately removed from the rule - cannot be used when questioning the venire or the amendment would be rendered meaningless, leaving lower courts rudderless in determining how to implement Supreme Court Rules. *Burge*, 2021 IL 125642, ¶33.

D. The evidence is closely balanced.

Because Burton has established clear and obvious error, the only remaining question is whether the evidence was closely balanced. The State asserts that “a ‘common-sense assessment’ makes clear that the evidence was not ‘closely balanced.’” (St. Br. 23) An examination of the record leads to the conclusion that under such an assessment, it was exactly that. *Sebby*, 2017 IL 119445, ¶61. In determining whether the evidence is closely balanced, “a reviewing court must make a commonsense assessment of the evidence within the context of the circumstances of the individual case.” *People v. Belknap*, 2014 IL 117094, ¶ 52. This analysis “does not involve the sufficiency of close evidence but rather the closeness of sufficient evidence.” *Sebby*, 2017 IL 119445, ¶ 60. “For purposes

of plain-error analysis, ‘closely balanced’ means that the key testimony is uncorroborated by extrinsic evidence and the testimony presents a choice between competing and plausible accounts.” *People v. Saulsberry*, 2021 IL App (2d) 181027, ¶ 103.

Here, there were only a few pieces of nontestimonial evidence—the front door being unlocked, the photos from C.B.’s Ring camera, the photo of two cups in the sink, the bent butter knife with Burton’s fingerprints, and the hour-long gap between Burton’s arrival at C.B.’s house and C.B.’s call to the police—and they did not directly corroborate or conflict with either C.B.’s or defense witness Steven Tjarks’s testimony. (R. 385, 401, 418-9, 478-79, 493, 506; St. Ex. 1A-1E, 6A-M, 15) *Burton*, 2025 IL (4th) 240933-U, ¶60. For example, although C.B.’s front door was unlocked that night, it was unclear from her testimony whether she routinely left it unlocked or left it unlocked only when she was expecting Burton or a different friend to come over. (E. 144; R. 434-35) *Burton*, 2025 IL (4th) 240933-U, ¶60. Either way, the fact that the door was unlocked that night does not conclusively support either account. *Burton*, 2025 IL (4th) 240933-U, ¶60. The unaccounted for hour between Burton’s arrival and C.B.’s call to the police in conjunction with the fact that there were two cups in the sink, could support an inference that C.B. and Burton had a conversation during that time. (R. 383-85) *Burton*, 2025 IL (4th) 240933-U, ¶60. The bent butter knife with Burton’s fingerprints might support C.B.’s testimony that Burton attempted to unlock her bedroom door after she told him to leave, but is not dispositive of whether he was invited to her house that night in the first place or whether he sexually assaulted her. (R. 506, 563-65, 586; St. Ex. 5, 5A, 15) *Burton*, 2025 IL (4th) 240933-U, ¶60.

As there was no conclusive nontestimonial evidence presented at trial, the case hinged entirely on a credibility contest between C.B. and Tjarks and the text

messages between C.B. and Burton. *Burton*, 2025 IL (4th), ¶61. C.B. testified that on the night of the offense, Burton entered her home without authority and rubbed her back through her clothes with his penis while she slept. (R. 404-05) Tjarks, on the other hand, supported the defense with his testimony that C.B. invited Burton over to her house on the night in question. (R. 620-24)

The State points to the angry text messages that C.B. sent to Burton as corroboration of C.B.'s testimony that the relationship was over and Burton was no longer welcome at her home. (St. Br. 23) However, that testimony was impeached by the numerous mixed messages C.B. had communicated to Burton for the two months prior to this incident. For example, C.B. would break up with Burton and say she was done, only to invite him over in the next few days. (E. 59-78; 86-198; R. 454) Angry texts would be followed by flirtatious texts. (E. 127-30, 132-43; 185-96, 182-85, 180) Indeed, each time after she attempted to end the relationship, C.B. would send a text message to Burton, telling him to leave her alone and even threatened, on January 28, 2021, to "go to the cops." (R. 456) However, just a few days later, she invited Burton to come to her house again. (R. 462) This pattern was repeated through January and February with C.B. breaking up and getting back together with Burton three to four times. (R.. 448, 453-54) Therefore, although C.B. testified that the relationship was "done-done" after February 19, 2021 and there were no conciliatory texts and call after this, the evidence discussed above shows that C.B. got back together with Burton many times after being done in a two-month period. Thus, rather than being unbelievable, Tjarks' testimony that C.B. invited Burton to her home when she saw him at Finish Line that night is evidence that this pattern between them continued.

In addition, the evidence that Burton entered C.B.'s home without her permission was not as clear-cut and wholly supported as the State would have

this Court believe. (St. Br. 23-24) Aside from the pattern of their relationship, there was an hour unaccounted for between when Burton entered the home and C.B. called the police at about 3:00 a.m. (R. 478-79) C.B. said she did not know what happened during that time until she realized Burton was in her bed. (R. 479)

But, based on non-testimonial evidence such as the ring camera footage and the two cups in the sink, the inference that Burton let out C.B.'s dog, as he had done during the course of their relationship, and the unaccounted for hour. (R. 385, 403; St. Ex. 1A-E) There were other inconsistencies in C.B.'s testimony as well. For instance, C.B. testified that she was yelling at Burton to get out of her bedroom for three to four minutes. (R. 480) However, when asked to demonstrate how much time had actually passed between her waking up, yelling at Burton, and him leaving her bedroom, it was only 30 seconds, indicating her memory of the events was not as clear as the State portrays. (R. 480) This is supported by Tjarks's testimony that C.B. was drinking at Finish Line earlier that evening. (R. 624-25, 644)

The State attempts to discredit Tjarks's testimony on the grounds that he did not know C.B., had not seen her before or after the night at the bar, and had to be reminded of the night a year later only after talking to Burton. (St. Br. 24-25) On the contrary, even though it was a year later, Tjarks was aware of Burton's arrest and asked him about it when they ran into each other. (R. 628) Therefore, it is not implausible that he would remember that night during his conversation with Burton. Moreover, as discussed above, C.B.'s testimony also presented credibility issues. As Tjarks's account was plausible, it was the jury's job to determine which witness was more credible in order to decide the pivotal disputed issue of Burton's innocence or guilt. Because the outcome of the case depended

on a credibility contest between C.B. and Tjarks, who had competing but plausible testimonies, the evidence presented at trial was closely balanced. *Saulsberry*, 2021 IL App (2d) 181027, ¶ 103.

Furthermore, as recognized by the court below, the length of jury deliberations supports this conclusion. 2025 IL App (4th) 240933-U, ¶64. The jurors began their deliberations in the afternoon of January 18, 2024. (R. 727) They were dismissed at 5:00 p.m., and returned the next day. (R. 731) After deliberating throughout the morning on day two, the jury sent a note to the trial court at 1:30 p.m. on January 19, 2024, asking about the definition of reasonable doubt. (R. 735; C. 270) After being told that they had their instructions, the jurors deliberated two more hours and returned a verdict at 3:30 p.m. (R. 737) As already established, the evidence against Burton was certainly not overwhelming. And the jury note suggests that jurors were uncertain about how confident they had to be to convict Burton. The length of deliberations in conjunction with the note support an inference that the jurors themselves believed the evidence to be close. *See People v. Ehlert*, 274 Ill. App. 3d 1026, 1035 (1st Dist. 1995) (noting the length of jury deliberations and the jury's note demonstrated that the evidence was closely balanced); *People v. Palmer*, 125 Ill. App. 3d 703, 712 (4th Dist. 1984) (same). Because the evidence was so closely balanced, the trial court's clear instructional error alone may have tipped the scales in favor of the State. *Sebby*, 2017 IL 119445, ¶ 78.

E. Invited Error

The State asserts that the appellate court erred when it engaged in a plain error analysis where it was unavailable because defense counsel acquiesced to the error. (St. Br. 12-14) In so arguing, the State posits that because the judge

used the word “failure” as codified in the prior rule when asking defense counsel if he wanted the fourth principle read to the jury, defense counsel’s response of “yes,” was invited error and therefore cannot be analyzed as plain error. (St. Br. 13)

However, it is apparent from the colloquy between the trial judge and defense counsel that counsel’s purported acquiescence was to the judge’s reading of the fourth principle in general, not the precise language to be used. The State quotes the judge in a manner that suggests he was quoting exactly what he would tell the jurors, to which counsel agreed. (St. Br. 13) This is not what happened. What the judge actually said was, “Ms. Wong, in relation to the fourth *Zehr* principle that the defendant’s failure to testify cannot be held against him, do you wish to have *that principle* read? [emphasis added].” (R. 180) In other words, the judge was just asking counsel if he should read the principle. Counsel’s confirmation that the court admonish the venire about the fourth Rule 431(b) principle was not an agreement to the outdated language.

The State’s reliance on *People v. McGuire*, 2017 IL App (4th) 150695, on this point is misplaced. (St. Br. 14) In *McGuire*, after the trial court asked the prospective jurors whether they “disagree[d]” with the *Zehr* principles, it “always asked whether ‘the State and defense counsel believe that [the prospective jurors] ha[d] been properly admonished as far as *Zehr* principles,’ [and d]efense counsel always responded in the affirmative.” *People v. McGuire*, 2017 IL App (4th) 150695, ¶¶ 31-32. The *McGuire* court found there was clear error but it could not reach the error under plain error review because defense counsel affirmatively acquiesced to the court’s style of questioning. *Id.* at ¶¶ 32-35.

Here, unlike *McGuire*, the trial court did not ask defense counsel to confirm its recitation of the 431(b) principles was correct after it admonished the jurors. Rather, it just asked counsel, before reading all four principles, if she wanted the

fourth one read. (R. 180) Her positive response was to the reading of the principle, not to the use of the word “failure.” As such, counsel did not affirmatively acquiesce to the error, which would have required her to do more than what she did here. *McGuire* 2017 IL App (4th) 150695, ¶¶ 31-32; *See also People v. Baker*, 2022 IL App (4th) 210713, ¶ 63 (where counsel not only failed to object to the trial court’s answer to a jury note, but suggested the wording of the court’s response, counsel affirmative acquiesced to the trial court’s actions).

Accordingly, as confirmed by the Fourth District Appellate Court, who did not reach invited error or ineffective assistance of counsel, a plain error analysis is appropriate here. *Burton*, 2025 IL App (4th) 240933-U, ¶67.

F. Ineffective Assistance of Counsel

Should this Court find that defense counsel did acquiesce to the court using the outdated language when reciting the four principles, she was ineffective.

A defendant has a constitutional right to the effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. In order to establish that counsel was ineffective, a defendant must establish that counsel’s performance was deficient and this deficiency prejudiced defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show deficient performance, the defendant must demonstrate that counsel’s conduct fell below an objective standard of reasonableness. *People v. Veatch*, 2017 IL 120649, ¶ 30. And the defendant can show that his counsel’s deficient conduct prejudiced him by establishing that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

In so doing, a defendant need only demonstrate that his counsel's deficient performance rendered the result of the trial unreliable or deprived the defendant of a fair proceeding. *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

To the extent that trial counsel acquiesced in the trial court's failure to strictly comply with Rule 431(b), her performance was deficient. *People v. Johnson*, 207 Ill. App. 3d 122, 125 (4th Dist. 1990) (strict compliance with Supreme Court rules is mandatory). As explained herein, the passage of the 2012 amendment removing the word "failure" requires that the amended version of the fourth principle be read verbatim, but at the very least without including the word "failure," which was deleted from the rule years prior to this trial. *See* Appendix, pp. A3-A4; A8-A11. Moreover, the Fourth District has required strict compliance with Rule 431(b) since at least 2013. *See People v. Curry*, 2013 IL App (4th) 120724, ¶64; *People v. McGuire*, 2017 IL App (3d) 150695, ¶35; *People v. Stevens*, 2018 IL App (4th) 160138, ¶25. Indeed, the record shows that counsel knew the amended version of the principle as she later stated it to the jury. (R. 237) Thus counsel's performance was deficient. Moreover for the reasons set forth above, Burton was prejudiced where the faulty 431(b) admonishment deprived him of a fair trial. Again, the "failure" language sent a message to the jury that Burton did not do something he was expected to do. And, as discussed above, the evidence was closely balanced where it disclosed a he-said, she-said relationship that stopped and started numerous times over the course of several months, and C.B.'s testimony about her relationship with Burton and whether she invited him over that night was impeached. (*See supra*, pp. 28-31) The closeness of the evidence is also supported by the jury's lengthy deliberations and its question about the definition of reasonable doubt. Significantly,

“closely balanced” and *Strickland* prejudice are equivalent standards. *See People v. Holt*, 2019 IL App (3d) 160504-B, ¶ 47 (The analysis applicable to the prejudice prong of the *Strickland* inquiry is similar to the analysis applicable to the first prong of the plain-error inquiry. [internal citations omitted]).

G. Conclusion

In this case, the Appellate Court recognized that the trial court failed to strictly comply with the current version of Supreme Court Rule 431(b) when reading the principles to the venire. Indeed, after the amended rule, the trial court did not even substantially comply where this Court acted to remove the word “failure” from the rule, which the trial court completely ignored. Because every amendment to the Supreme Court Rules has meaning, the trial court’s use of the out-dated language which includes the word “failure,” in place of the proper wording where “failure” was removed, constituted first-prong plain error in this closely-balanced case. In the alternative, trial counsel was ineffective for failing to preserve this issue. Accordingly, this Court should affirm the appellate court’s order remanding this case for a new trial.

CONCLUSION

For the foregoing reasons, Brent J. Burton, defendant-appellee, respectfully requests that this Court affirm the appellate court's order reversing Brent Burton's convictions and remanding this cause for a new trial.

Respectfully submitted,

CATHERINE K. HART
Deputy Defender

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COUNSEL FOR DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is thirty-six pages.

/s/ Maria A. Harrigan
MARIA A. HARRIGAN
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Proposed Amendment to Rule 431(b)	A-1 - A4
Committee Hearing on the Amendment	A-5 - A-11
Adoption of the Amendment without Comment	A-12 -A-15

PART I

Rule 3(d)(1) - Proposals Forwarded to Other Supreme Court Committees

- 11-07 Proposal to amend Supreme Court Rule 402 to create a new paragraph (g) establishing "Conditional Pleas"; forwarded to the IJC Committee on Criminal Law and Probation Administration for its review and recommendations; recommendation pending.
- 11-06 Proposal to create a New Supreme Court Rule concerning Jury Waivers; forwarded to the IJC Committee on Criminal Law and Probation Administration for its review and recommendations; recommendation pending.
- 11-05 Proposal to amend Rules 11, 13, 137 and RPC 4.2 consistent with Final Report, Findings and Recommendations from the Joint Task Force on Limited Scope Legal Representation; forwarded to the Supreme Court Committee on Professional Responsibility for its review and recommendations; recommendation pending.
- 11-03 Proposal to amend Rule 431; forwarded to the IJC Committee on Criminal Law and Probation Administration for its review and recommendations; Public Hearing January 23, 2012; amended rule filed April 26, 2012 (see also Part V of this Report).
- 11-02 Creates a new Supreme Court Rule establishing a procedure for asserting privilege or work product following inadvertent disclosures in discovery; forwarded to the IJC Committee on Discovery Procedures for its review and recommendations; Public Hearing January 23, 2012; proposal pends, awaiting future discussion on Evidence Committee's response to Proposal 11-01 received May 23, 2012 (see below).
- 11-01 Creates new Supreme Court Rule dealing with the inadvertent waiver of attorney-client privilege; forwarded to the Special Supreme Court Committee on Illinois Evidence for its review and recommendations; Public Hearing January 23, 2012; proposal returned to Evidence Committee for additional review in light of public comments; response received May 23, 2012; proposal pending.
- 10-12 Proposal to amend Rule 211(c)(2); forwarded to the IJC Committee on Discovery Procedures for its review and recommendations; returned as not recommended; file closed.
- 10-09 Proposal to amend Rule 208(a); forwarded to the IJC Committee on Discovery Procedures for its review and recommendations; returned with a recommendation to adopt; Public Hearing May 20, 2011; amended rule filed October 4, 2011 (see also Part V of this Report).
- 10-08 Proposal to amend Rule 651(c); forwarded to the IJC Committee on Criminal Law and Probation Administration for its review and recommendations; returned as recommended; Public Hearing January 23, 2012; amended rule filed April 26, 2012 (see also Part V of this Report).

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E-MAIL: ROBERTLOEB@ATT.NET

January 27, 2011

Illinois Supreme Court Rules Committee
c/o Administrative Office of the Illinois Courts
222 N. LaSalle St.
13th Floor
Chicago, IL 60601

Dear Rules Committee:

I am writing to propose a change to the wording of Illinois Supreme Court Rule 431(b). This rule describes the inquiry which a trial judge must make of prospective jurors to ensure that they understand certain fundamental principles of criminal law, and that they will follow these principles.

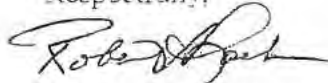
One portion of the inquiry requires the judge to confirm that a juror will not hold a defendant's "failure" to testify against him. I am suggesting that the word "failure" be eliminated. A defendant who chooses not to testify should not be characterized as "failing" when he makes such a decision, as it is a Constitutional right.

It is my belief that the proposed change as a minor tweak that help achieve the real intent of the Rule.

I should note that this issue came up in a recent trial, now completed. The trial judge granted my request to ask the question in the way that is suggested, and so it is not part of the any appeal. Further, I am not aware that this issue is currently pending in court.

I look forward to the Committee's consideration of this proposal, and am available should there be any questions or comments.

Respectfully,



Robert A. Loeb

Proposal to Amend Illinois Supreme Court Rule 431(b)
Offered by Robert A. Loeb

Illinois Supreme Court Rule 431 is designed to protect the rights of a defendant by ensuring that the trial judge asks potential jurors whether they accept certain fundamental legal principles. Rule 431(b) currently reads (with boldface added for emphasis) as follows:

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

The purpose of the rule is to tell the jury that a defendant has a right not to testify and that no adverse inference should be reached when a defendant does not testify. However, the very language of the rule uses the word "failure" in regard to a defendant who does not testify, and that word has a meaning or connotation that *per se* is an adverse comment on the fact that a defendant does not testify. The word "failure" has a negative or pejorative usage, which is exactly what the Rule seeks to avoid.

The committee comments provide as follows:

"The new language is intended to ensure compliance with the requirements of *People v. Zehr*, 103 Ill.2d 472[, 83 Ill.Dec. 128, 469 N.E.2d 1062] (1984). It seeks to end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law." 177 Ill. 2d R. 431(b), Committee Comments, at lxxix.

Therefore, the proposed amendment to Rule 431(b)(4) (with boldface added for emphasis) is as follows;

(4) that **the fact that a defendant does not testify** cannot be held against him or her;

Parenthetically, it is probably understandable how the existing language of the rule was originally drafted. Within the legal community, the shorthand reference to this issue arises in the appellate context comes when a defendant/appellant complains that the

prosecution made an unfair comment or reference to his "failure" to testify, and case law has adopted similar language.

In fact, there is a jury instruction whose title uses the word "failure," but the body of the instruction which the jury gets does not use the word "failure."

I.P.I. 2.04 Failure Of Defendant To Testify

The fact that the defendant did not testify must not be considered by you in arriving at your verdict.

The suggested amendment seeks to eliminate the negative meaning of the word "failure." There is no particular pride in authorship of the proposed amendment, and if the Committee were to re-word the amendment to achieve the same goal, such improvements would be welcome.



State of Illinois
Circuit Court of Cook County

Leonard Murray
Associate Judge

Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-2600

July 14, 2011

Ms. Marcia M. Meis, Secretary
Illinois Supreme Court Rules Committee
Administrative Office of Illinois Courts
222 North LaSalle Street, 13th Floor
Chicago, Illinois 60601

Re: Supreme Court Rule 402(d)-Pleas of Guilty or Stipulation Sufficient to Convict
Supreme Court Rule 431(b)(4)-Voor Dire Examinations
Supreme Court Rule 604(d)-Appeals from Certain Judgment and Orders
Supreme Court Rule 651(c)-Appeals in Post Conviction Proceedings

Dear Ms. Meis:

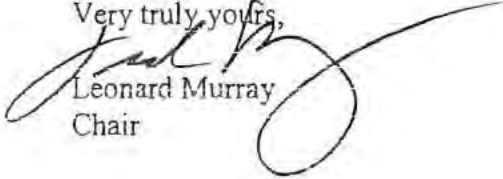
The Illinois Judicial Conference Committee on Criminal Law and Probation Administration (Committee) has reviewed the above mentioned proposals forwarded for our consideration by the Rules Committee.

The Committee has no objection to proposed rules 431(b)(4), 604(d) and 651(c) as submitted.

With regard to the proposed Rule 402(d) forwarded to the Committee for consideration we conclude that it is too narrow in scope in that it limits the request for a plea discussion and agreement conference only to the defense. The Committee envisions scenarios in which the prosecution may also request such a conference. Further, the Committee believes that the proposed amendment does not provide adequate guidance to trial court judges to admonish defendants prior to a Rule 402(d) conference. Based upon our concerns, consultations, and deliberations, in lieu of the proposed rule, we submit to the Committee for consideration, and I have enclosed, our proposed amendment to Rule 402(d).

If anything further is needed, please feel free to contact me. Thank you for your confidence in our Committee.

Very truly yours,


Leonard Murray
Chair

c: Cynthia Y. Cobbs, Director

1 SUPREME COURT RULES COMMITTEE

2 PUBLIC HEARING

3 January 23, 2012

4 10:00 a.m.

5
6 REPORT OF PROCEEDINGS had at the

7 public hearing in the above-entitled matter,
8 before MR. JOHN B. SIMON, Chairman of said
9 Committee, at Room C-500, 160 North LaSalle
10 Street, Chicago, Illinois, on the 23rd day of
11 January, 2012, beginning at the hour of 10:00
12 a.m. and concluding at 12:44 p.m.

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23 Reported By: Karen Fatigato, CSR

24 License No.: 084-004072

1 PRESENT:

2 MR. JOHN B. SIMON, Chair

3 MR. BRETT K. GORMAN, Vice-Chair

4 CHIEF JUSTICE THOMAS L. KILBRIDE,

5 Supreme Court Liaison

6 PROF. KEITH H. BEYLER, Reporter

7 MS. MARCIA MEIS, Secretary

8 HON. JOHN C. ANDERSON

9 MR. JAMES R. FIGLIULO

10 HON. ROBERT G. GIBSON

11 MR. JAMES D. GREEN

12 MR. MARVIN J. LEAVITT

13 HON. MARGARET STANTON McBRIDE

4 MR. JEROME E. McDONALD

15 MR. NICHOLAS J. MOTHERWAY

16 MR. ALPHONSE J. PRANAIS

17 HON. PATRICK J. QUINN

18 MR. ANTONIO N. ROMANUCCI

19 MR. RUDOLPH G. SCHADE, JR.

20 HON. DARRYL B. SIMKO

21 MR. STANLEY L. TUCKER

22 MR. EDWARD J. WALSH

23

24

1 plea if the State isn't going to --

2 MR. SPELLBERG: Your Honor, I wouldn't
3 certainly hope that is correct.

4 HON. MCBRIDE: I don't know what
5 authority there would be for that. The judge
6 can't dispose of a count.

7 MR. SPELLBERG: Your Honor, I agree
8 with that completely and that's what our concern
9 is. Your Honor, that's exactly what our concern
10 is, there's a concern that this could be read to
11 give implicit authority in that regard, that's
12 all. Thank you.

13 CHAIRMAN SIMON: Now for the finishing,
14 Mr. Robert Loeb, our speaker on proposal 11-03.
15 This is what you get for proposing a rule to the
16 Illinois Supreme Court Rules Committee.

17 MR. LOEB: Thank you, Mr. Chair. I
18 will be truly brief, if there's a difference
19 between that and just regular brief.

20 This is a proposal to tweak what I
21 think is just an unfortunate word that made its
22 way into current rule -- Supreme Court rule 431.
23 431 is essentially a codification of the case of
24 People versus Zehr, Z-e-h-r, which came out in

1 the mid '80s and directs a judge to advise
2 potential jurors of four basic constitutional
3 principles. And so when they judge in choirs
4 concerning whether or not a juror understands
5 and supports these four propositions, the fourth
6 one, which is grounded in the Fifth Amendment,
7 is currently worded that the judge advises the
8 jurors that the defendant -- that the
9 defendant's failure to testify cannot be held
10 against him. The spirit of this rule is very
11 clearly that not testifying is not a failure.
12 It's the nuance, the connotation from the word
13 failure that I think is unfortunate that it made
14 its way into the rule.

15 And so what I am proposing is that we
16 replace the phrase defendant's failure to
17 testify with the fact that a defendant does not
18 testify and that I think that this is more a
19 matter of form than substance and don't -- I
20 haven't heard any objections, but I will say as
21 a practical matter there are some Judges who so
22 like to cloak themselves in the language of the
23 rule in the same way that a Judge will cloak
24 himself or herself in the language of an IPI

1 instruction that they're resistant to anything
2 that deviates from that form.

3 HON. QUINN: What does the IPI say, 101
4 or 102?

5 MR. LOEB: The IPI at the end of the
6 trial does not use the word failure, it's the
7 fact that the defendant doesn't testify.

8 HON. QUINN: I didn't know. I didn't
9 remember.

10 CHAIRMAN SIMON: Anything else?

11 HON. MCBRIDE: To have the rule be
12 consistent will you suggest or would it be
13 different if no inquiry of a prospective juror
14 shall be made in a decision not to testify?

15 MR. LOEB: I heard that suggestion
16 since I did this proposal and I accept that
17 suggestion as an improvement as well. I was
18 most concerned with what a Judge has to
19 communicate to a potential juror and the harm
20 that comes therefrom.

21 HON. QUINN: If you recall was that in
22 Zehr, is that where it first started, the idea
23 of failure to testify?

24 MR. LOEB: No, I think that -- my

1 impression is that historically that's the
2 phrase that we lawyers use as shorthand for the
3 doctrine when a defendant files an appeal and is
4 complaining that a prosecutor commented on the
5 fact that a defendant didn't testify. The
6 shorthand became failure to testify and it's in
7 lots of Appellate Court decisions.

8 CHAIRMAN SIMON: Anything further?

9 Thank you, Mr. Lobe.

10 We thank everyone who has attended for
11 your insightful comments, they have been very
12 helpful to the Committee. Thank you very much.
13 We're adjourned.

14 (Whereupon, these were all the
15 proceedings had at this time.)
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PART V (con'd)**Rule Proposals Submitted to the Supreme Court for Disposition****March Term 2012 Submissions and Dispositions**

The Rules Committee recommended that the following proposals be adopted by the Court:

- 10-06** Proposal to amend Rule 402(d) - Pleas of Guilty or Stipulations Sufficient to Convict (d) Plea Discussions and Agreements; approved by the Court; amended rule filed April 26, 2012.
- 10-08** Proposal to amend Rule 651(c) - Appeals in Post-Conviction Proceedings - (c) Record for Indigents; Appointment of Counsel; approved by the Court; amended rule filed April 26, 2012.
- 10-11** Proposal to create a new Supreme Court Rule on the Usage of Juror Questions; approved by the Court; amended new rule (numbered Rule 243) filed April 3, 2012.
- 11-03** Proposal to amend Rule 431 - Voir Dire Examination; approved by the Court; amended rule filed April 26, 2012.

either to affirm or to withdraw his or her plea of guilty. If the defendant thereupon withdraws his or her plea, the trial judge shall recuse himself or herself.

(3) If the parties have not sought or the trial judge has declined to give his or her concurrence or conditional concurrence to a plea agreement, ~~he~~ the judge shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his or her plea the disposition may be different from that contemplated by the plea agreement.

(e) **Transcript.** In cases in which the defendant is charged with a crime punishable by imprisonment in the penitentiary, the proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed, and made a part of the common law record.

(f) **Plea Discussions, Plea Agreements, Pleas of Guilty Inadmissible Under Certain Circumstances.** If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding.

Adopted June 26, 1970, effective September 1, 1970; amended effective September 17, 1970; amended January 5, 1981, effective February 1, 1981; amended May 20, 1997, effective July 1, 1997; amended April 26, 2012, eff. July 1, 2012.

Amended Rule 431

Rule 431. Voir Dire Examination

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

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

and (4) that ~~the defendant's failure to testify 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 ~~failure decision not~~ to testify when the defendant objects.

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

Renumbered October 1, 1971; amended April 3, 1997, effective May 1, 1997; amended March 21, 2007, effective May 1, 2007; amended April 26, 2012, eff. July 1, 2012.

New Article V Heading

PART E. Rules and Procedures for Non-Traffic/Non-Conservation Ordinance Violations

[Rules 570 to 579 follow]

Adopted April 26, 2012, eff. immediately.

Amended Rule 651

Rule 651. Appeals in Post-Conviction Proceedings

(a) **Right of Appeal.** An appeal from a final judgment of the circuit court in any post-conviction proceeding involving a judgment imposing a sentence of death shall lie directly to the Supreme Court as a matter of right. All other appeals from such proceedings shall lie to the Appellate Court in the district in which the circuit court is located.

(b) **Notice to Petitioner of Adverse Judgment.** Upon the entry of a judgment adverse to a petitioner in a post-conviction proceeding, the clerk of the trial court shall at once mail or deliver to the petitioner a notice in substantially the following form:

"You are hereby notified that on _____ the court entered an order, a copy of which is enclosed herewith. You have a right to appeal. In the case of an appeal from a post-conviction proceeding involving a judgment imposing a sentence of death, the appeal is to the Illinois Supreme Court. In all other cases, the appeal is to the Illinois Appellate Court in the district in which the circuit court is located. If you are indigent, you have a right to a transcript of

SUPREME COURT OF ILLINOIS
RULES COMMITTEE

ACTIVITY REPORT ON PROPOSED AMENDMENTS TO
CURRENT RULES AND PROPOSED NEW RULES

<i>Proposal Number</i>	11-03
<i>Status</i>	Amended rule filed April 26, 2012.
<i>Proposal Will Amend/Create Rule</i>	Amends Rule 431
<i>Proposal Offered by</i>	Attorney Robert A. Loeb
<i>Referred to Subcommittee</i>	
<i>Supreme Court Clerk No.</i>	P.R. 0191

Summary of Proposal

The proposal would amend Supreme Court Rule 431(b), subpart (4), to eliminate the word "failure" and revise it to state "that the fact that a defendant does not testify cannot be held against him or her ***." Filed amendment revised the language slightly for clarity and grammatical purposes.

No. 132427

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 4-24-0933.
Plaintiff-Appellant,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of the Eleventh Judicial Circuit,
	)	McLean County, Illinois, No. 21-CF-
	)	374.
BRENT J. BURTON,	)	
	)	Honorable
Defendant-Appellee.	)	William A. Yoder,
	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 115 S. LaSalle Street, Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Ms. Erika Reynolds, McLean County State's Attorney, 104 W. Front St., Room 605, Bloomington, IL 61701-2400, stateattny@mcleancountyil.gov;

Mr. Brent J. Burton, Register No. Y62883, Jacksonville Correctional Center, 2268 E. Morton Avenue, Jacksonville, IL 62650

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 17, 2026, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Kaitlyn K. M. Wolke

LEGAL SECRETARY

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Service via email will be accepted at

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