

2019 IL App (1st) 170023-U

No. 1-17-0023

September 4, 2019

Third Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 3192
	)	
NATHANIEL JACKSON,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions of possession of a controlled substance with intent to deliver and delivery of a controlled substance are affirmed where (1) the trial court failed to comply with Illinois Supreme Court Rule 431(b), but the error did not justify application of the *Sprinkle* doctrine or rise to the level of plain error; (2) the trial court did not prevent the selection of a fair jury by questioning a venire member regarding her general unwillingness to serve on a jury or by asking leading questions of the venire; and (3) the trial court properly inquired into defendant's *pro se* ineffective assistance of trial counsel claim in a preliminary *Krankel* inquiry.

¶ 2 Following a jury trial, defendant Nathaniel Jackson was convicted of one count of possession of a controlled substance with intent to deliver and one count of delivery of a controlled substance, and sentenced to 8½ years' imprisonment for possession of a controlled substance with intent to deliver. On appeal, defendant argues the trial court (1) violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (2) discouraged venire members from admitting bias, and (3) failed to properly conduct a preliminary inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm.

¶ 3 Defendant was charged by indictment with one count of possession of 1 gram or more but less than 15 grams of heroin with intent to deliver (720 ILCS 570/401(c)(1) (West Supp. 2015)) and one count of delivery of less than 1 gram of heroin (720 ILCS 570/401(d) (West Supp. 2015)), arising from an incident in Chicago on January 28, 2016. The trial court appointed counsel, who represented defendant throughout the proceedings.

¶ 4 At a hearing prior to trial, defendant personally addressed the court to request a “speedy trial.” He also stated that he provided counsel “some witnesses’ names,” but counsel was “not doing anything.” Counsel stated defendant was referring to another case in which counsel did not represent him. The court told counsel to speak with defendant, and recalled the case. Counsel then stated that defendant had identified two potential witnesses.

¶ 5 The court began setting a date for the defense to file a new answer to discovery, but defendant reiterated his demand for a speedy trial. The court explained that investigating new witnesses would stop the demand, and asked counsel if he knew the witnesses. Counsel stated that defendant identified Anton Martin,<sup>1</sup> whom defendant “believe[d]” was in custody, and

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<sup>1</sup> The transcript reflects that “Anton Martin” is a phonetic spelling.

Denise Hudson, whose address defendant provided. Defendant added that while Martin was not present when he was arrested, Martin could testify that defendant does not sell drugs. The court stated:

“[Defendant] wants to demand trial without [defense counsel] interviewing the witnesses. He’s in custody, he wants to do it this way—

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You understand this is against your lawyer’s advice, Mr. Jackson, because he doesn’t even know what these witnesses are going to say because he hasn’t had a chance to speak to them yet.”

Defendant asserted that he informed counsel about the witness “three weeks ago,” and stated it was “not [his] problem” when the court observed that counsel had other clients. The case was set for a jury trial.

¶ 6 During *voir dire*, the trial court asked the venire members to raise a hand if they had a “disagreement” or “problem” with the propositions that defendant is presumed innocent, that the State must prove defendant guilty beyond a reasonable doubt, that defendant is not required to present evidence, and that if defendant chooses not to testify, the decision cannot be held against him. No venire members raised a hand in response to any of the propositions. The court also explained defendant’s charges and asked the venire members to raise a hand if they were unable to give the parties a fair trial due to the nature of the charges. No venire members raised a hand.

¶ 7 Then, the court asked multiple questions to the venire members individually, including whether they could decide the case fairly. The court asked, variously, whether each would be a “fair man” or “fair woman,” whether defendant could “get a fair trial from you,” and whether

information they volunteered would hinder them from giving either side a fair trial. With some venire members, the court asked a second time, “You will be fair?”

¶ 8 The court asked the fourth venire member, C.P., what her retired husband did for a living, and C.P. responded, “I’m so sorry. I’m just nervous.” Then, the following colloquy occurred:

“Q. You’ll be a fair woman in this case?”

A. I—my religion. I’m very—I’m very religious and I feel like I cannot judge people.

Q. Now, come on. Look. Look.

A. I’m sorry. I’m sorry. I hold my respect to you.

Q. Let me tell you something, if I understand correctly, you don’t want to \*\*\* judge somebody as a juror. So if somebody—and I hope this never happens. I’m just using this as an example. Some drunk driver runs over one of your loved ones, the insurance company won’t settle and you need people to sit in court—

A. I understand. Sir.

Q. \*\*\* [Y]ou want people to help, but you won’t be a judge for somebody else?

A. No, I get nervous. No, sir. I get nervous.

Q. I don’t care—

A. With all my respect to the Court. It’s fine.

Q. No, you’re telling me about religion. Is it against your religious belief, is it really against your religious belief to be a juror; is that what you’re saying?

A. I feel like I cannot be able to judge. I get nervous. I get—

Q. I think it’s shameful that—

A. I'm sorry. I understand.

Q. I don't want to hear any more from you. I'm sorry. I'm done with you."

Outside the presence of the venire, the court *sua sponte* excused C.P. for cause without objection from either party. The court questioned 24 more venire members, none of whom expressed an inability to be fair.

¶ 9 At trial, Chicago police officer Terrance Looney testified that on January 28, 2016, at about 6:35 a.m., he was working undercover on the 700 block of North St. Louis Avenue with other officers. While driving an unmarked vehicle, Looney saw an individual wearing a black hat, black coat, and blue jeans, whom he identified in court as defendant. Defendant was "a few feet off the curb on the west side of the block" and appeared to be selling narcotics. Looney stopped next to defendant and rolled down the driver's side window. Defendant approached and asked, "what you want?" Looney said he wanted "two." Defendant then gave Looney two plastic bags containing a white powder-like substance, and Looney gave defendant \$20 in prerecorded funds.

¶ 10 Looney drove away, radioed his team about the transaction, and provided defendant's description and location. Three or four minutes later, Looney learned that enforcement officers detained defendant. He returned to the area and identified defendant, then went to the police station and inventoried the two bags of powder that defendant sold him.

¶ 11 On cross-examination, Looney confirmed that the sun had not fully risen during the transaction, which lasted 5 to 10 seconds and occurred in an area where "a lot of people" buy and sell drugs. On redirect examination, Looney testified that he did not film the transaction because two "lookouts" were posted nearby and it would have been "difficult."

¶ 12 Chicago police officer Saud Haidari testified that he wore street clothes and drove an unmarked vehicle behind Looney. Over the radio, Looney told Haidari there was “a guy in the middle of the street” he wanted to “try,” whom Haidari identified in court as defendant. According to Haidari, defendant was wearing a black hat, black coat, and blue jeans, and no one else on the block wore similar clothing. Haidari watched Looney interact with defendant, who “look[ed] up and down the street, retrieve[d] items from his hand and reach[ed] into the window” of Looney’s vehicle, “and then pull[ed] back.” At that time, Haidari saw “lookouts all over the place.” Looney drove away and radioed that he purchased narcotics from defendant. Haidari continued watching defendant and radioed defendant’s location and description to enforcement officers. Haidari pointed out defendant to the enforcement officers when they approached, and they detained him. Haidari went to the police station, where Officer Lauretto<sup>2</sup> gave him a plastic bag containing 14 bags of a powder substance, and Haidari inventoried the bags.

¶ 13 Chicago police officer Rickey Washington testified that surveillance officers directed him and his partner to the 700 block of North St. Louis and provided a description of an individual. There, Washington saw a person matching the description, whom he identified in court as defendant, crossing the street from the west side. Washington told two nearby individuals to leave. Then, Washington and his partner searched defendant and recovered about \$100. Washington inventoried the money at the police station and found that it included \$20 in prerecorded funds.

¶ 14 Chicago police officer Raphael Mitchem testified that he was parked two or three blocks from the 700 block of North St. Louis, when he received a radio transmission that an undercover

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<sup>2</sup> Officer Lauretto’s first name does not appear in the transcript of the trial proceedings.

officer had purchased narcotics from an individual. Mitchem relocated to the location of the transaction and saw Washington and Laretto detain defendant. Washington walked away to detain another person, and Mitchem assisted Laretto. Laretto searched defendant, reached into a pocket on the right, inside part of his jacket, and recovered a plastic bag containing multiple bags of “suspect heroin.”

¶ 15 Katherine Frost Klimek, an Illinois State Police forensic scientist, testified that the white powder in the 14 inventoried plastic bags weighed 4.062 grams and testified positive for heroin. The powder in two other inventoried plastic bags weighed 0.428 grams and also contained heroin. The State entered into evidence the 2 inventoried bags that defendant gave to Looney, as well as the 14 bags that were recovered from defendant’s jacket.

¶ 16 Defendant testified that on January 28, 2016, at 6:30 a.m., he was on the 700 block of North St. Louis to buy heroin, which he intended to use and not sell. Defendant was carrying between \$210 and \$230 to make the purchase. He encountered a person he had previously purchased from, but that person “didn’t have what [he] needed.” Defendant then approached a second person, who told defendant he suspected police officers were in a nearby van. That second person went to “check \*\*\* out” the van and returned after the van “took off.” Defendant paid him \$110 for a “jab” of heroin and put the heroin in the breast pocket outside his jacket. Defendant explained the term “jab,” stating that it was a “bundle” of 13 or 14 individual packages of heroin, and that “[t]he workers bust them open, sell them, give the man his money and then they take [their] cut out.” The person who sold defendant the heroin left, and the police approached defendant from behind, searched him, and found the heroin.

¶ 17 On cross-examination, defendant testified that he did not have a job at the time but confirmed that he had more than \$200 in cash. He expected the “jab” that he purchased to contain 14 bags of heroin. He also denied speaking to a person in a vehicle, or seeing or speaking with Looney.

¶ 18 The jury found defendant guilty of possession of a controlled substance with intent to deliver and delivery of a controlled substance.

¶ 19 At a posttrial hearing, the court denied defendant’s amended motion to set aside the jury verdict or for new trial, which argued, *inter alia*, that the court erred in denying multiple objections to the State’s evidence, and that the State did not prove defendant guilty beyond a reasonable doubt. Then, defendant brought a motion alleging ineffective assistance of counsel. Defendant asserted that counsel failed to investigate his case, did not adequately communicate with him, and failed to call the two witnesses that defendant mentioned to the court before trial. According to defendant, one of those witnesses was arrested on the same day as him and would have corroborated his claim that the officers lied in court. Defendant conceded that he surrendered drugs to a police officer “when they caught [him],” but denied selling drugs. The court stated, “Okay. I’m considering it a Krankel hearing now.”

¶ 20 The court then asked defendant and counsel if they were ready to proceed, and both answered affirmatively. Defendant continued that counsel did nothing to prepare for his case and should have contacted the other people arrested that day. According to defendant, he was only charged because he would not identify the person who sold him heroin. Defendant concluded that he was not challenging counsel’s “trial strategies,” but rather, alleging that counsel was “ineffective with [his] whole case.”

¶ 21 In response, counsel stated that when he first spoke with defendant, defendant said that “he wasn’t concerned about this case,” and that he had a pending case in Minnesota, which he refused to discuss in detail. According to counsel, defendant disclosed two possible witnesses, Martin and Hudson, and demanded trial. Counsel then told defendant he needed to interview the two witnesses first, but defendant’s trial demand was accepted. Counsel asked his investigator to seek out Martin and Hudson, but his investigator was only able to contact Martin, and defendant “insisted on going to trial without our witnesses.” According to counsel, Martin reported that he was inside his house when the incident occurred and did not see defendant interact with the police officers.

¶ 22 In response, defendant accused counsel of lying and having a conflict of interest. The court stated:

“When you raise claims saying that your conviction is his fault, then I have to listen to both what you have to say and what he has to say. It’s called a Krankel hearing. \*\*\* I’m doing exactly what the law requires me to do, that’s to ask you what your issues are and then for him to respond to it. \*\*\* It’s not necessarily a conflict of interest, but he’s fulfilling the requirements of this hearing.”

The court then noted that defendant had demanded a speedy trial, and counsel “needed time to talk to witnesses.” Defendant stated that he remembered the court previously told him counsel might not be prepared. The court responded, “Yeah, because that’s what he was telling me, he wanted more time.” The court further stated, “The point is that he asked for time, and you didn’t want to afford him that chance, you wanted a speedy trial.”

¶ 23 The court asked counsel whether he had “notes or a report” stating the investigator spoke with one of the witnesses and was unable to locate the other. Counsel stated that the investigator did not prepare a written report nor had counsel requested one. The court requested counsel to produce the investigator, and continued the hearing.

¶ 24 Later that day, the investigator, Nadine Smith, arrived in court and was sworn in. In response to questioning by the court, Smith stated that she contacted Martin and asked him what happened on the day of the incident. Martin stated that he was at his house waiting for his girlfriend to pick him up and when he and his girlfriend drove away, the police pulled them over and arrested Martin for selling drugs. Martin saw another man in the police vehicle, whom Smith assumed was defendant. At the police station, Martin saw police officers search defendant, and he did not see the officers take any items from defendant’s pocket. Smith was unable to contact Denise Henderson,<sup>3</sup> the other witness whom defendant identified.

¶ 25 Defendant stated that he wanted Martin to testify because he “was also arrested for no reason.” According to defendant, he saw the officers curb and arrest Martin without recovering drugs, the “same way they got [him].” The court responded that Martin’s testimony would have had “nothing of value” because he did not see defendant’s arrest and might have invoked the fifth amendment against self-incrimination.

¶ 26 The court concluded that counsel had tried to do “exactly what [defendant] asked him to do, locate these witnesses, have them interviewed, see if they had something of value to add.” The court noted that counsel had explained why he did not call Martin, and did not have time to locate the second witness because defendant demanded a speedy trial. The court also observed

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<sup>3</sup> While the second witness is referred to as “Denise Hudson” elsewhere in the record, the parties do not dispute that both names refer to the same person.

that while defendant was entitled to a speedy trial, “that also means your lawyer may not have been as ready as he could have been.” The court concluded, “We’ve had a Krankel hearing, and I don’t believe that \*\*\* any relief is available.”

¶ 27 Following a sentencing hearing, the court sentenced defendant to 8½ years’ imprisonment for possession of 1 gram or more but less than 15 grams of heroin with intent to deliver.

¶ 28 On appeal, defendant first argues, and the State concedes, that the trial court violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) by failing to ask the venire members whether they understood and accepted the four principles enumerated in the rule.

¶ 29 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) provides that, during *voir dire*, the trial court “shall ask each potential juror” whether he or she “understands and accepts” four 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.”

¶ 30 Rule 431(b) enumerates the four principles set forth in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), and “was designed to ensure that the defendant has a fair and impartial jury.” *People v. Sebby*, 2017 IL 119445, ¶ 67. “[C]ompliance with Rule 431(b) is mandatory.” *People v. Albarran*, 2018 IL App (1st) 151508, ¶ 64. The trial court must use the words “understand and

accept,” and “asking jurors if they disagree with these principles does not suffice.” (Internal quotation marks omitted.) *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 37. The trial court’s compliance with Rule 431(b) is subject to *de novo* review. *People v. Space*, 2018 IL App (1st) 150922, ¶ 62.

¶ 31 Here, the trial court asked the venire members whether they had “a disagreement or problem with” the Rule 431(b) principles, and did not ask whether they “understand and accept” the principles. Accordingly, we agree with the parties that the trial court erred in delivering the Rule 431(b) admonishments. *Jackson*, 2017 IL App (1st) 142879, ¶ 37.

¶ 32 Defendant concedes that he failed to preserve this issue, as he did not “both object at trial and include the alleged error in a written posttrial motion.” *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) (finding the defendant forfeited his challenge to a court’s Rule 431(b) violation). However, defendant asserts that we may consider his challenge under *People v. Sprinkle*, 27 Ill. 2d 398 (1963).

¶ 33 The *Sprinkle* doctrine provides that “the forfeiture rule may be relaxed when a trial judge oversteps his or her authority in the presence of the jury or when counsel has been effectively prevented from objecting because it would have fallen on deaf ears.” (Internal quotation marks omitted.) *Thompson*, 238 Ill. 2d at 612. The *Sprinkle* doctrine can only excuse the failure to raise improper judicial conduct before the trial court “under extraordinary circumstances, such as when a trial judge makes inappropriate remarks to a jury [citation] or relies on social commentary, rather than evidence, in sentencing a defendant to death [citation].” *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009). The Illinois Supreme Court has “stressed the importance of applying the forfeiture rule uniformly except in compelling situations” (*Thompson*, 238 Ill. 2d

at 612), and therefore has “seldom applied *Sprinkle* to noncapital cases” (*McLaurin*, 235 Ill. 2d at 488). This emphasis on uniformly applying the forfeiture rule is based on the principle that “failure to raise a claim properly denies the trial court an opportunity to correct an error or grant a new trial, thus wasting time and judicial resources.” *Thompson*, 238 Ill. 2d at 612.

¶ 34 In arguing for the application of the *Sprinkle* doctrine here, defendant notes that in *People v. Starks*, 2014 IL App (1st) 121169, ¶ 79, the same judge who presided over his trial delivered the Rule 431(b) inquiry using similar language, and this court found it did not satisfy Rule 431(b). Consequently, defendant claims that an objection before the trial court would have fallen on deaf ears. We disagree.

¶ 35 Here, defendant was convicted in a noncapital case, and there is no indication in the record that the trial court would have refused to ask the venire members whether they understood and accepted the Rule 431(b) principles had defense counsel objected. *Id.* Moreover, there is nothing indicating that this case involves any “extraordinary circumstances” that would justify relaxing the forfeiture rule. *McLaurin*, 235 Ill. 2d at 488. Accordingly, the *Sprinkle* doctrine does not apply.

¶ 36 Defendant also argues that we can consider the issue under plain-error review. *People v. Wilmington*, 2013 IL 112938, ¶ 31. The plain-error doctrine applies where “a clear or obvious error occurred” and (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) the “error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” (Internal quotation marks omitted.) *Sebby*, 2017 IL 119445, ¶ 48.

¶ 37 Defendant asserts that the first prong of the plain-error doctrine applies because the evidence at trial was closely balanced. In determining whether the evidence at trial was closely balanced, we “must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Id.* ¶ 53. Our “inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses’ credibility.” *Id.* “Whether the evidence is closely balanced is \*\*\* a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge.” (Internal quotation marks omitted.) *People v. Jamison*, 2018 IL App (1st) 160409, ¶ 44.

¶ 38 Defendant was convicted of possession of a controlled substance with intent to deliver under section 401(c)(1) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(1) (West Supp. 2015)), and delivery of a controlled substance under section 401(d) of the Act (720 ILCS 570/401(d) (West Supp. 2015)). Section 401 of the Act (720 ILCS 570/401 (West Supp. 2015)) provides that “it is unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver” certain controlled substances. Section 401(c)(1) provides that it is unlawful to violate section 401 with regard to “1 gram or more but less than 15 grams of any substance containing heroin, or an analog thereof.” 720 ILCS 570/401(c)(1) (West Supp. 2015). Section 401(d) provides that it is unlawful to violate section 401 with regard to less than one gram of a controlled substance. 720 ILCS 570/401(d) (West Supp. 2015).

¶ 39 At trial, the State presented the testimony of four officers. The evidence showed that defendant approached Officer Looney’s vehicle and gave him two plastic bags containing a white powder-like substance in exchange for \$20 in prerecorded funds. Officer Haidari was in

another vehicle behind Looney and saw him interact with defendant. Looney drove away and radioed his team, giving them defendant's location and describing him as wearing a black hat, black coat, and blue jeans. Haidari corroborated Looney's description of defendant at trial, and testified that he maintained his view of defendant and described defendant to enforcement officers, including Officer Washington. Haidari pointed defendant out to the other officers. Then, Washington searched defendant and recovered about \$100, which included \$20 in prerecorded funds. Officer Mitchem testified that he observed Officer Lauretto search defendant and recover multiple bags of a white powder-like substance. Additionally, the State presented testimony showing that the recovered white powder contained heroin, and the bags were entered into evidence. Thus, although defendant notes the officers did not investigate the "lookouts" or produce the prerecorded funds at trial, the State's evidence at trial strongly established defendant's guilt of possessing a controlled substance with the intent to deliver and delivering a controlled substance. *People v. Boston*, 2018 IL App (1st) 140369, ¶ 100 (finding the evidence was not closely balanced, and did not turn solely on witness credibility, where the State presented the testimony of multiple officers corroborated by physical evidence).

¶ 40 Defendant, in his testimony, did not contest that he knowingly possessed heroin, or that he was in the area where the officers alleged the transaction occurred. Rather, defendant denied accepting money from any of the officers in exchange for heroin. Defendant also testified that he purchased a "jab" of heroin, and explained that people purchase jabs of heroin to "bust \*\*\* open" and sell to others. Thus, defendant's denial of the evidence showing defendant sold heroin does not render the evidence at trial closely balanced, where the State presented a large amount of consistent, corroborated evidence. *People v. Willis*, 409 Ill. App. 3d 804, 805-06, 811 (2011)

(finding the evidence was not closely balanced where the testimony of two officers showed that the defendant sold heroin to an undercover officer, but the defendant testified that he did not sell drugs).

¶ 41 Notwithstanding, defendant asserts that Looney's identification of him when he was arrested, which was "essential" for proving he delivered the heroin, was unreliable and resulted from a "cross-racial" custodial show-up. In evaluating the reliability of identification testimony for purposes of determining whether evidence was closely balanced, our supreme court has applied the factors set forth in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007). These factors are: "(1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation." *Id.*

¶ 42 We find that the five *Biggers* factors weigh in favor of finding Looney's identification reliable. As to the first factor, Looney had ample opportunity to observe defendant as they exchanged the heroin and money through the driver's side window of Looney's vehicle. *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 60 (finding the first *Biggers* factor favored reliability where an identifying officer engaged in a hand-to-hand drug transaction with the defendant through the window of a vehicle). As to the second factor, nothing in the record shows Looney was distracted, and he had surveillance officers monitoring the surrounding area for him while he conducted the transaction.

¶ 43 Also, nothing suggests that Looney provided an inaccurate description of defendant, as his description was corroborated by Haidari. The fact that Looney omitted certain features from his description, such as defendant's height, build, or face, does not tilt this factor in defendant's favor. See *People v. Clarke*, 391 Ill. App. 3d 596, 611 (2009) (finding a witness identification was reliable despite a discrepancy in testimony regarding whether defendant had a tattoo, and noting that “ ‘[t]he presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made' ”). As to the fourth and fifth factors, although Looney identified defendant in court about eight months after the incident, he did not express any doubt in identifying him. *People v. Simpson*, 172 Ill. 2d 117, 141-42 (1996) (witness had adequate independent recollection where she identified the offender in court 21 months after the offenses).

¶ 44 Defendant's identification also did not hinge entirely on Looney's testimony. Haidari watched defendant interact with Looney, provided a description of defendant, and maintained his view of defendant until the arresting officers arrived. *Jackson*, 2016 IL App (1st) 133741, ¶ 60 (finding the defendant's identification was reliable where a surveillance officer watched the defendant sell drugs to another officer from a distance). Haidari then pointed defendant out to the officers, who arrested defendant and recovered the \$20 in prerecorded funds that Looney gave him. Based on the foregoing, the evidence was not closely balanced and strongly favored the State. Accordingly, we will honor defendant's forfeiture of the Rule 431(b) issue.

¶ 45 Next, defendant argues that the trial court's discussion with C.P. discouraged other venire members from disclosing potential biases. The State responds that the court's questioning of C.P. was unrelated to the issue of fairness or bias. Rather, the State asserts that C.P. attempted to

avoid jury duty by citing religious beliefs and nervousness, and the court exercised its discretion in dealing with her nonresponsive answers.

¶ 46 Defendant concedes that he failed to preserve this issue, but asserts that we may consider it under the *Sprinkle* doctrine. As we have explained, however, no “extraordinary circumstances” justify relaxing the forfeiture rule on this basis. *McLaurin*, 235 Ill. 2d at 488. Alternatively, defendant submits that we may consider this issue under the plain-error doctrine. Our first inquiry is whether an error occurred at all. *People v. Rinehart*, 2012 IL 111719, ¶ 15.

¶ 47 “The constitutional right to a jury trial encompasses the right to an impartial jury.” *Id.* ¶ 16; see Ill. Const. 1970, art. 1, § 8. In furtherance of this right, “inquiry is permitted during *voir dire* to ascertain whether the juror has any bias, opinion, or prejudice that would affect or control the fair determination by him of the issues to be tried.” (Internal quotation marks omitted.) *People v. Encalado*, 2018 IL 122059, ¶ 24. While “[t]he manner and scope of *voir dire* rest within the sound discretion of the trial court,” the court must nonetheless “exercise its discretion in a manner that is consistent with the goals of *voir dire*.” *People v. Dixon*, 382 Ill. App. 3d 233, 243 (2008). An abuse of that discretion “occurs when the conduct of the trial court thwarts the purpose of *voir dire* examination—namely, the selection of a jury free from bias or prejudice.” *Rinehart*, 2012 IL 111719, ¶ 16.

¶ 48 Here, the trial court asked C.P. whether she could “be a fair woman” in the case, and C.P. first responded that she is “very religious” and “cannot judge people.” After further questioning, the court asked C.P. whether she would “be a judge for somebody else,” and C.P. stated, “No, sir. I get nervous.” The judge asked C.P. to clarify whether serving on a jury was “against [her] religious belief,” but C.P. instead explained, “I feel like I cannot \*\*\* judge. I get nervous.” The

judge expressed that C.P.'s answer was "shameful" and said, "I don't want to hear any more from you. I'm sorry. I'm done with you." C.P. was not selected to serve on the jury.

¶ 49 Defendant asserts that the court "publicly shame[d]" C.P. for confessing an inability to be fair, therefore chilling other venire members from admitting any biases. However, C.P. never stated she could not be fair. Rather, C.P. expressed a general unwillingness to serve as a juror due to nervousness, and reiterated that serving on a jury was against her religion. It was within the judge's discretion to determine the manner in which *voir dire* was conducted. *Dixon*, 382 Ill. App. 3d at 243. By expressing dissatisfaction with C.P.'s unwillingness to cooperate, the court did not abuse its discretion in conducting *voir dire*.

¶ 50 Defendant relies on *People v. Brown*, 388 Ill. App. 3d 1 (2009), where a venire member told the trial court he could not be fair and impartial because he had "property on the west side," was familiar with "drug problems," and had family members struggling with addiction. (Internal quotation marks omitted.) *Brown*, 388 Ill. App. 3d at 2. The trial court pressed the venire member, explaining that "[a]ll of us, including myself, have come in contact with this world of drugs," and asking whether he had already determined defendant was guilty. (Internal quotation marks omitted.) *Id.* at 2-3. The defendant stated "[n]ot necessarily," but added that he could not be impartial in deciding the case. (Internal quotation marks omitted.) *Id.* The court then excused the venire member, thanked him "for being frank," and ordered him to return to court the next morning because he "[needs] an education as to how the system works." (Internal quotation marks omitted.) *Id.* at 3. This court found that the trial court's treatment of the venire member was unnecessary, as was the further "education" ordered by the court, and observed that "a

citizen may have a legitimate inability to set aside a bias.” (Internal quotation marks omitted.) *Id.* at 5.

¶ 51 The trial court’s conduct in *Brown* is clearly distinguishable from the trial court’s conduct in this case. Here, the trial court simply voiced dissatisfaction with a venire member’s lack of cooperation and general unwillingness to serve on a jury. Unlike in *Brown*, the court here did not press C.P. for holding a bias, as C.P. did not clearly identify one, and the court also did not order C.P. to return to court despite not being selected for the jury. Because the trial court did nothing to thwart “the selection of a jury free from bias or prejudice” in defendant’s trial, no error occurred. *Rinehart*, 2012 IL 111719, ¶ 16.

¶ 52 Relatedly, defendant also asserts that the trial court improperly used “leading” questions in asking the venire members whether they could decide the case fairly. However, defendant does not identify any specific questions that he interprets as leading.

¶ 53 The court used different phrasings when asking the venire members whether they could decide the case fairly. For instance, the court asked the venire members whether they would be a “fair man” or “fair woman” in the case, whether defendant can “get a fair trial from you,” and whether information they volunteered would make it difficult to give either side a fair trial. With certain venire members, the court reiterated the question by asking, “You will be fair?” Our review of the record does not show that the trial court’s *voir dire* questions regarding the venire members’ ability to be fair were leading. Accordingly, the trial court’s questioning during *voir dire* did not prevent the selection of a jury free from bias or prejudice. Because we have found no error occurred, plain-error review is unmerited. *Id.* ¶ 15.

¶ 54 Lastly, defendant asserts that the trial court conducted an improper *Krankel* inquiry by allowing trial counsel to respond adversely to defendant's ineffective assistance claim. Defendant also asserts that the court erred by considering new evidence during the inquiry when it heard the testimony of defense counsel's investigator. Consequently, defendant claims that the court improperly merged a first-stage preliminary inquiry with a second-stage contested hearing. The State responds that the court adequately inquired into the merits of defendant's claim, and that no merger of the first and second stages occurred because defendant never made a showing of possible neglect by counsel.

¶ 55 In *Krankel*, our supreme court described the procedure for when a defendant brings a *pro se* posttrial claim of ineffective assistance of trial counsel. *People v. Jolly*, 2014 IL 117142, ¶ 29. The goal of the proceeding "is to facilitate the trial court's full consideration of a defendant's *pro se* claims of ineffective assistance of trial counsel and thereby potentially limit issues on appeal." *Id.*

¶ 56 Once a claim is raised, the trial court must "first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). In doing so, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim." (Internal quotation marks omitted.) *Jolly*, 2014 IL 117142, ¶ 30. The court may deny the *pro se* motion if "the claim lacks merit or pertains only to matters of trial strategy." *Moore*, 207 Ill. 2d at 78. If the defendant's claim shows "possible neglect of the case," the defendant must be appointed new counsel to represent the defendant at a hearing on the ineffective assistance claim. *Id.* In

determining whether to appoint new counsel, the trial court may consider: “(1) the trial counsel’s answers and explanations; (2) a brief discussion between the trial court and the defendant; or (3) its knowledge of defense counsel’s performance at trial and the insufficiency of the defendant’s allegations on their face.” (Internal quotation marks omitted.) *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 22. “Because a defendant is not appointed new counsel at the preliminary *Krankel* inquiry, it is critical that the State’s participation at that proceeding, if any, be *de minimis*.” *Jolly*, 2014 IL 117142, ¶ 38.

¶ 57 Our “operative concern” on review “is whether the trial court conducted an adequate inquiry into the defendant’s *pro se* allegations of ineffective assistance of counsel.” *Moore*, 207 Ill. 2d at 78. Whether the trial court properly conducted a preliminary *Krankel* inquiry is a question of law reviewed *de novo*. *Jolly*, 2014 IL 117142, ¶ 28.

¶ 58 During the preliminary *Krankel* inquiry, defendant asserted that counsel had not adequately communicated with him or spent time on his case and failed to present two witnesses that defendant had identified. Counsel responded that he had asked his investigator, Smith, to seek out the two witnesses, but Smith was only able to contact one witness, Martin. Because counsel did not request Smith to prepare a report, the court requested to hear from her personally. Smith stated that she spoke with Martin, who did not witness defendant’s arrest, but rather saw a man, whom Smith assumed was defendant, in a police vehicle and later saw officers search defendant at the police station. Based on this information, the court concluded that counsel had done “exactly what [defendant] asked him to do,” but defendant’s demand for a speedy trial prevented the additional investigation that defendant claimed should have been conducted.

Further, the court considered earlier proceedings, in which defendant demanded a speedy trial despite being warned that it would hinder a full investigation of the case.

¶ 59 Defendant asserts that allowing counsel to respond to his claims rendered the preliminary *Krankel* hearing adversarial. However, the trial court was allowed to discuss the facts and circumstances of defendant's claim with counsel in order to assess whether any further action was necessary. *Id.* ¶ 30. The mere fact that the court called on counsel to respond to defendant's claim did not transform the preliminary *Krankel* inquiry into an improper adversarial proceeding. *People v. French*, 2017 IL App (1st) 141815, ¶¶ 76-77 (finding that a preliminary *Krankel* hearing was not improperly adversarial where "trial counsel was given a chance to describe or explain her actions or decisions, and then defendant had the opportunity to respond to trial counsel's statements"). Moreover, the State did not participate in the preliminary *Krankel* hearing. Thus, the court performed a proper, non-adversarial *Krankel* inquiry.

¶ 60 Defendant also claims that the trial court improperly considered evidence beyond the record by hearing testimony from the investigator who spoke with Martin. According to defendant, the trial court used Smith's testimony to address the underlying merits of his ineffective assistance claim, instead of simply deciding whether there was possible neglect.

¶ 61 We find the record does not show that the court improperly addressed the underlying merits of defendant's ineffective assistance claim, as defendant suggests. Rather, the trial court called Smith to confirm the procedures taken to investigate the two witnesses identified by defendant. Defendant's ineffective assistance claim was largely based on counsel's alleged failure to thoroughly investigate the case. After receiving the explanation of this investigation from counsel and Smith, the court found that this alleged failure was the result of defendant's

demand for a speedy trial. Further, after discussing the value of one proposed witness with defendant, the court explained that defense counsel “was trying to do exactly what [defendant] asked him to do.” Thus, the record shows the trial court called the investigator “to facilitate the trial court’s full consideration of a defendant’s *pro se* claims of ineffective assistance of trial counsel and thereby potentially limit issues on appeal.” *Jolly*, 2014 IL 117142, ¶ 29.

¶ 62 Defendant relies on *People v. Demus*, 2016 IL App (1st) 140420, in arguing that the trial court improperly conducted an evidentiary hearing in calling Smith. In *Demus*, however, the defendant filed a *pro se* motion alleging that an officer who testified against him at a probation hearing had lied about being the officer who arrested him. *Id.* ¶ 13. The court conducted a hearing in which the defendant personally asked the officer a series of questions relating to when the officer arrived at the scene. *Id.* ¶ 14. This court found that the trial court effectively “held an evidentiary hearing, trying to help [the defendant] explore the merits of his perjury claim.” *Id.* ¶ 28. We therefore stated that the trial court improperly “forced [defendant] to participate *pro se*” in the underlying merits of his ineffective assistance claim and deprived defendant “of the benefit of new counsel in exploring his claim.” *Id.* Here, on the other hand, defendant was not forced to question any witnesses to establish the merits of the allegation underlying his ineffective assistance claim. Rather, Smith was called to explain counsel’s investigative procedure, which defendant claimed was insufficient. Under these circumstances, the proceeding conducted by the trial court was consistent with *Krankel* and served to “facilitate the trial court’s full consideration” of defendant’s claim. *Jolly*, 2014 IL 117142, ¶ 29. Accordingly, defendant is not entitled to new *Krankel* proceedings.

¶ 63 In sum, we find that defendant forfeited the Rule 431(b) issue, and that the trial court did not prevent the selection of a fair and impartial jury. We also find that the court conducted a proper preliminary *Krankel* hearing. Therefore, we affirm the judgment of the circuit court.

¶ 64 Affirmed.