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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 17957
)	
SYLVESTER HAYES,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for first degree murder affirmed over his contentions that (i) the identifications of six eyewitnesses were not sufficiently reliable to prove him guilty beyond a reasonable doubt, and (ii) the jurors' response to the trial court's admonishments demonstrated that they did not understand and accept the principles enumerated in Illinois Supreme Court Rule 431(b) (effective July 1, 2012).

¶ 2 After a jury trial, defendant Sylvester Hayes was found guilty of first degree murder and sentenced to 55 years' imprisonment. Hayes appeals, arguing that the State failed to prove him guilty of first degree murder beyond a reasonable doubt, because the identifications made by six

eyewitnesses were unreliable. We disagree. Having closely reviewed the evidence, and viewing it in the light most favorable to the State, we conclude that Gilmore's identification of Hayes as the shooter and the corroborating identification testimony of five other witness is sufficiently reliable to prove Hayes guilty of first degree murder beyond a reasonable doubt. Hayes also contends that he was prejudiced by the trial court's error in questioning potential jurors under Illinois Supreme Court Rule 431 (b) (eff. July 1, 2012). Again, we disagree. Hayes has failed to make a showing that the trial court's phrasing was fatal to the jurors' understanding acceptance or opportunity to respond.

¶ 3 Background

¶ 4 Hayes was charged with 24 counts of first degree murder of the death of Fredrick Giles, 2 counts of attempt first degree murder of Rivianna Gilmore, and 1 count of aggravated discharge of a firearm toward Rivianna Gilmore. The State elected not to prosecute both counts of attempt murder, and all but four counts of first degree murder, and the case proceeded to jury selection.

¶ 5 In making its introductory remarks to the prospective jurors, the trial court stated:

“THE COURT: I'm going to ask you three questions or read you three principles of law that apply in the case of Mr. Hayes.

Once I've done that, I'm going to ask each juror collectively basically, as a possible juror, if they understand or accept that instruction. If you don't understand or don't accept it, [let] us know. If you both understand and accept it, you don't need to do anything whatsoever.”

Hayes's counsel requested that the trial court not address the fourth principle on a defendant's right not to testify. After the jurors were sworn, the trial court, in explaining the 431(b) principles, stated:

“THE COURT: I'm going to read to you at this point three legal instructions or principles. After each one, I'm going to ask you the same question. And if as a possible juror, do you accept and accept instruction. If so, raise your hand now. Don't understand it, don't accept it, let us know. If you both understand and accept it, nothing to do at all at this point.

First of all, under the law, Mr. Hayes is presumed to be innocent to the charge against him. This presumption remains with him throughout every stage of the case and is not overcome unless from all the evidence you are convinced beyond a reasonable doubt that Mr. Hayes is guilty.

As a possible juror, do you understand and accept this instruction? If so, raise your hand now.

No hands. No response.

Secondly, and these all go pretty much hand-in-hand together – the state in this case, Ms. Dillon and Ms. Miller, the state has the burden of proving the defendant guilty beyond a reasonable doubt. The burden sits with them throughout the entire case.

As a possible juror, do you understand and accept that instruction? If so, raise your hand now.

And, again, no hands, no response.

And, thirdly, Mr. Hayes is not required to prove his innocence, call witnesses in his own behalf.

As a possible juror, do you understand and accept that instruction? If so, raise your hand now.

Again, no hands, no response.”

¶ 6 In conducting individual *voir dire* (questioning of prospective jurors), the trial court asked each juror “[d]id you raise your hand for any question I asked you earlier today” and if there was “[a]ny reason you feel you could not be a fair and impartial as a juror on this case?” Each juror eventually selected to serve on the jury answered “no” to each question.

¶ 7 Rivianna Gilmore testified that, on August 5, 2012, she lived with her boyfriend, Fredrick Giles, in an apartment at 5510 South Wabash Avenue. At 7 p.m., the couple was walking back to their apartment from a local convenience store. The weather was nice and the streetlights in the area had not been turned on yet. As the couple walked east on West 55th Street, Giles stopped to talk to a friend and Gilmore turned south onto Wabash Avenue.

¶ 8 Gilmore was walking with her head down, and noticed a pair of feet “tiptoeing” in the grass to her left. As she started to look up, she noticed a large, black gun that “somebody would need two hands to hold.” She continued looking upward, and saw a man, whom she identified in court as Hayes, standing 10 feet away. The man was wearing dark clothing. Nothing covered his face. Gilmore shouted to Giles, and Hayes fired two shots in her direction. Gilmore dropped to the ground and lay on her stomach, with her head facing north toward 55th Street. With her head down, she was still able to see Hayes’s feet walk past her, toward 55th Street. When she heard one more shot, she looked up and saw Hayes standing over Giles, who was now lying on the

ground. Hayes shot Giles “at least five or six more times.” Hayes then ran southbound down Wabash Avenue.

¶ 9 Gilmore ran over to Giles and started shouting for help. A detective who happened to be in the area approached Gilmore. She pointed south down Wabash. The detective ran southbound, but shortly returned to Gilmore. Later that evening, Gilmore went to a police station to speak with detectives. On August 28, 2012, after signing a lineup advisory form, Gilmore identified a photograph of Hayes from a photographic lineup consisting of 55 photographs. The next day, Gilmore went to a police station to view a physical lineup. After signing a lineup advisory form, Gilmore identified Hayes as the man who shot Giles.

¶ 10 On cross-examination, Gilmore testified that she told the police that the man with the gun was about five foot six inches or five foot seven inches tall, only a few inches taller than herself. She did not give the police a description of the shooter’s weight. She testified that the incident lasted less than a minute, and that Hayes looked directly at her for one or two seconds. She remembered Hayes’s eyes, “square head,” and dark skin complexion. She could not recall if she gave these details to police. She did not know Hayes at the time of the shooting, and did not believe that Hayes and Giles knew each other.

¶ 11 Faydra Brookshire testified that, on August 5, 2012, she lived in an apartment at 5506 South Wabash Avenue, and was in her bedroom watching television with her two children when she heard four to seven gunshots. After telling her children to get down on the floor, Brookshire “peeked out of the window” that looked onto Wabash. She saw a “young gentleman” with a gun in his hand running towards a car. She made an in-court identification of Hayes. The man got into the passenger side of a red car which was double parked on Wabash, and the car headed southbound. Later that evening, a police investigator came to her apartment, and she told the

investigator what she saw. On August 29, Brookshire went to a police station to view a physical lineup. After signing a lineup advisory form, she identified Hayes as the man she saw with the weapon in his hand.

¶ 12 On cross-examination, Brookshire testified that she observed the offender from a side view for about five seconds, and that the car Hayes fled in was about five feet from her window. The man wore dark clothes. She could not recall if he had a mustache. She told the police that he man was tall, dark, and slender.

¶ 13 Kevin Neely testified that, on August 5, 2012, he lived in an apartment at 5504 South Wabash Avenue. At 7 p.m., he heard gunshots and looked out of a window that faced Wabash. He saw a young, black man wearing all black and holding a gun with a “clip that was hanging out of it” run south on Wabash and get into the passenger-side of a burgundy car. On August 29, he went to a police station to view a physical lineup. After signing a lineup advisory form, Neely identified Hayes. Neely also made an in-court identification of Hayes as the man with the gun.

¶ 14 On-cross examination, Neely testified that he shouted out of the window, and the shooter turned and looked directly at him for “less than a second” before entering the car. The shooter had “a little” mustache but did not have a beard. He told police that the offender was dark skinned, wearing dark clothes, and shorter than 5 foot 11 inches tall.

¶ 15 Jasmine Bell testified that, on August 5, 2012, she heard gunshots and looked out of her fourth story window onto Wabash Avenue. She saw a man, whom she identified in-court as Hayes, standing over Giles. After Hayes shot Giles at least three times, he ran south on Wabash and got into a “dark burgundy” SUV. On August 29, Bell went to a police station to view a physical lineup. After signing a lineup advisory form, she identified Hayes as the man who shot Giles.

¶ 16 On cross-examination Bell testified that 30 seconds elapsed from the time that she saw the man shoot Giles until he got into the car. She told the police that the man was six feet tall, but did not recall if she told them whether the man had a beard. She testified that the man “had one of those faces you’re not going to forget” and that he “looked like a demon.”

¶ 17 Edward Reed testified that he lived in an apartment at 5504 South Wabash Avenue and was in his bedroom playing a video game when he heard four gunshots coming from the corner of 55th Street and Wabash. He called out to his family in another room to make sure that they were ok. He then heard three more gunshots and looked out the window onto Wabash. He saw a man, whom he identified in-court as Hayes, running toward a red SUV. The man was holding a “semi-automatic” firearm with “an extended clip instead of a regular clip that enclosed into the handle.” Before opening the door of the SUV, Hayes turned around to look behind him. Hayes was 15 feet away from Reed’s window, and Reed got a “full frontal” view of his face before he fled. Later that night, police interviewed Reed at his apartment. Reed gave the officers a description of the offender. On August 29, Reed went to a police station to view a physical lineup. After signing a lineup advisory form, he identified Hayes as the man who got into the red SUV.

¶ 18 On cross-examination, Reed testified that the man turned around for “four or five seconds” before he got into the SUV. The man he saw had no facial hair, was 5 foot 9 inches or 5 foot 10 inches tall, with a medium build and a dark complexion.

¶ 19 Chicago Police Officer Irene Singleton testified that, on August 5, 2012, she was off duty and driving in the area of 55th Street and Michigan Avenue. She was stopped at the stoplight at that intersection and looking west toward Wabash Avenue when she saw a man, whom she

identified in-court as Hayes, take out a gun and shoot seven or eight times toward a man and a woman. Hayes fled south on Wabash. Singleton drove to the intersection of 56th Street and Wabash, where she spoke to police detectives. On August 28, Singleton met with one of the detectives to view a photographic lineup. After signing a photo spread advisory form, Singleton identified a photograph of Hayes from a photo spread of six individuals. On August 29, Singleton identified Hayes from a physical lineup as the man who shot the victim.

¶ 20 On cross-examination, Singleton testified that the incident lasted for six to eight seconds. She never had a “full facial view,” but had left and right side-views of the offender’s face for three seconds each. The offender wore a black shirt and black pants. She was a block away from the incident. She recognized the “round shape” of Hayes’s head, his distinctive ears, and his complexion. She told the detective on the scene that the shooter was between 23 and 26 years of age, was 5 foot 8 inches to 5 foot 10 inches tall, and weighed between 150 and 160 pounds.

¶ 21 Sergeant Marvin Otten testified that, on August 5, 2012, he was working as forensic investigator and was assigned process to a homicide scene at the intersection of 55th Street and Wabash Avenue. There, he recovered and inventoried nine 9 millimeter cartridge casings that were located near the body. In court, Otten identified photographs and a video of the crime scene, and the nine cartridge casings. On cross-examination, Otten testified that he was not aware if any evidence he recovered was sent to the crime lab for fingerprint or DNA testing.

¶ 22 Detective Thomas Carr testified that, on August 5, 2012, he and a partner were leaving an unrelated assignment in a building at the intersection of 55th Street and Wabash Avenue when he heard several gunshots. Carr ran eastbound on 55th Street toward Wabash. At the corner, he saw a man lying on the ground and a woman standing over him. The woman pointed south on

Wabash, and Carr ran that way to try to find and apprehend the shooter. He did not find the shooter, but spoke to Officer Singleton about the shooting. He returned to the corner of 55th and Wabash and spoke to Rivianna Gilmore

¶ 23 On August 28, Carr compiled a group of 55 photographs of “individuals from the area” and conducted a photo-spread with Gilmore. From the photo-spread, Gilmore identified Hayes as the shooter. Later that day, Officer Singleton identified Hayes from a six-person photo-spread. Hayes was arrested on August 29, and was identified in a physical lineup by Faydra Brookshire, Kevin Neely, Edward Reed, Officer Singleton, and Rivianna Gilmore.

¶ 24 On cross-examination, Carr testified that he had showed a photo array to a person named “Percy,” but that he could not recall whether Hayes’s photograph was in the array. “Percy” did not make an identification of the shooter.

¶ 25 Detective Roger Murphy testified that, on August 29, he conducted a physical lineup with Jasmine Bell. From that lineup, Bell identified Hayes as the shooter.

¶ 26 Officer Tim Wood testified that, on November 15, 2012, he and a partner entered a house located at 4124 West West End Avenue and searched the residence. In the rafters of the basement, Wood recovered and inventoried a semi-automatic handgun with a 30-round magazine. In court, he identified the handgun as a 9 millimeter Glock pistol with an extended magazine.

¶ 27 The parties stipulated that Dr. Adrienne Segovia of the Office of the Medical Examiner of Cook County would testify that that Fredrick Giles died from injuries caused by multiple gunshot wounds, and the manner of death was homicide. Also, the parties stipulated that Peggy Konrath of the Illinois State Police crime laboratory would testify that the cartridge casings

recovered from the crime scene contained no latent fingerprints that were suitable for comparison. And the parties stipulated that Illinois State Police firearms expert Fred Tomasek would testify that the cartridge casings recovered from the scene were all fired from the gun officers recovered from 4124 West West End Avenue. The State rested its case-in-chief.

¶ 28 Nicole Smallwood testified that Hayes was a friend of her son, Marcus Gilbert. On August 5, 2012, Smallwood, Gilbert, and Hayes drove from her home at 99th Street and Union Avenue to her godson's birthday party at 115th Street and Normal Avenue. Hayes and Gilbert drove in a different car. Smallwood arrived at the party at 4 p.m. and left around 11:30 p.m. Hayes remained in her line of sight for the duration of the party. She did not see Hayes go into the basement of the apartment to use the washroom.

¶ 29 On cross-examination, Smallwood testified that she could not recall the color or type of car that Hayes and Gilbert drove to the party. At 7 p.m., Hayes and Gilbert were at the party. Sometime between 11:30 p.m. and 12 a.m., someone in an alley near the house fired a gun into the air, and police arrived at the party. After Smallwood left the party, she returned home. Hayes and Gilbert returned to her house "right after the party." She admitted to speaking to Hayes's attorney in the presence of Gilbert before she testified, but that they did not discuss the details of her testimony.

¶ 30 Marcus Gilbert testified that on August 5, 2012, he and Hayes drove to his friend's party at 115th Street and Normal Avenue. He could not recall the make or color of the car, as the car belonged to his mom's friend. They arrived at the party between 3 and 4 p.m. Hayes stood at his side for the entire party, which lasted until 11 p.m. or 12 a.m. Neither he nor Hayes used the bathroom while at the party. When a person fired a gun, and the police came to the party, Gilbert

and Hayes got into a car “with some females” and went to nightclub located on 75th Street between Martin Luther King Drive and Cottage Grove Avenue. Gilbert and Hayes returned to Gilbert’s house, and Hayes spent the night there.

¶ 31 On cross-examination, Gilbert testified that he and Hayes were at the party at 7 p.m., and they did not leave until after the shots were fired. The men rode to the nightclub with the women because Gilbert did not have a driver’s license and “didn’t want to risk a chance of getting arrested while suspended.” He and Hayes returned to his house between 2 and 3 a.m. on August 6. Gilbert did not find out that Hayes was in jail for murder until two weeks after Hayes’s arrest. After he learned that Hayes was accused of a murder which took place on August 5, he did not tell police that Hayes was with him on that day.

¶ 32 Hayes testified that, on August 5, 2012, he was at a party at 115th Street and Normal Avenue with Smallwood and Gilbert. He and Gilbert had driven to the party in “a grey, four-door” car and arrived at the party close to 4 p.m. He did not leave the party between 6 and 8 p.m. Hayes never knew Fredrick Giles. His height is 5 foot 11 inches, he weighs 168 pounds, and he had a mustache and a beard when he was arrested on August 29, 2012.

¶ 33 On cross-examination, Hayes stated that he did not leave to go to the bathroom at any point during the party, and could not recall if Gilbert or Smallwood ever used the bathroom. Hayes left the party after the shooting, which he thought occurred around 12 a.m. After going to the night club with Gilbert and the two women, Hayes and Gilbert returned to Gilbert’s house. He did not see Gilbert again before Gilbert’s arrest. While incarcerated, Hayes spoke with Gilbert twice on the phone and wrote him two letters. In the same period, he spoke with Smallwood on the phone once and wrote her one letter. Hayes was familiar with the area around 55th Street and Wabash Avenue, but was more frequently present near 55th and Indiana Avenue.

¶ 34 In rebuttal, the State offered two stipulations into evidence. First, the parties stipulated that Hayes was convicted of attempted first degree murder on December 18, 2008. Second, the parties stipulated that an investigator from the Cook County State's Attorney's office would testify that Smallwood denied having any contact with Hayes while he was in jail. He would further testify that Gilbert told him that he arrived at the party at 12:15 p.m., and that he only received one letter from Hayes while he was in jail. Third, the parties stipulated that a law clerk for the State's Attorney's office would testify that he overheard Gilbert, Smallwood, and Hayes's attorney talking in the hallway about the contents of their testimony before they testified.

¶ 35 After closing arguments, the jury found Hayes guilty of first degree murder, but not guilty of aggravated discharge of a weapon toward Gilmore. The trial court denied Hayes's motion for a new trial. Hayes received a sentence of 55 years.

¶ 36 Analysis

¶ 37 Hayes first argues that the State failed to prove beyond a reasonable doubt that he shot Giles. Specifically, Hayes contends that the identifications made by the State's witnesses were unreliable, where the witnesses only saw the offender for a few seconds and gave police varied descriptions of the offender.

¶ 38 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except on proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When a court reviews the sufficiency of evidence, it determines “ ‘whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318). A reviewing court decides whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. The trier of fact resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from the facts. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 9. A reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses, and will reverse a defendant's conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt regarding defendant's guilt remains. *Id.*

¶ 39 After examining the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Hayes shot and killed Giles. Although there was no direct physical evidence, Hayes was identified as the shooter by six eyewitnesses. Contrary to Hayes's argument, we cannot say that their identifications were so unreliable that there exists a reasonable doubt as to Hayes's guilt.

¶ 40 "It is well established that a single witness's identification is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Starks*, 2014 IL App (1st) 121169, ¶ 48. When assessing identification testimony, this court relies on the factors set out by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). *Id.* Those factors are: (i) the opportunity the witness had to view the offender at the time of the offense; (ii) the witness's degree of attention; (iii) the accuracy of the witness's prior description of the offender; (iv) the level of certainty demonstrated by the witness at the identification confrontation; and (v) the length of time between the crime and the identification confrontation. *Id.* (citing *Biggers*, 409 U.S. at 199-200).

¶ 41 We find that the *Biggers* factors weigh in favor of the reliability of Rivianna Gilmore's identification of Hayes. Regarding her opportunity to observe the offender, Gilmore testified that, at 7 p.m. on August 5, 2012, the sun was still out and the streets lights in the area had yet to turn on. Before he fired the gun, Hayes looked directly at her for two seconds. Gilmore testified that Hayes was standing 9 or 10 feet from her when he began to shoot. Although she dropped to the ground after Hayes fired, she testified looked at his face while he was standing over Giles. On cross-examination, Gilmore agreed that the incident took less than a minute. Our supreme court has upheld identifications made after viewing the offender for similar amounts of time, even under less than ideal lighting conditions. *People v. Herrett*, 137 Ill. 2d 195, 201, 204 (1990) (finding witness had sufficient opportunity to view offender when he saw him for "several seconds" in dimly lit pawnshop). Here, the circumstances surrounding Gilmore's opportunity to view Hayes weigh in favor of her identification of Hayes.

¶ 42 Regarding Gilmore's degree of attention, Hayes cites law review articles and scientific studies, arguing that this factor weighs against the reliability of her identification as the presence of a weapon diverted her attention to the gun and away from the offender. But, Gilmore testified that she first saw a pair of feet tiptoeing in the grass, then looked up and saw a large black gun being held by two hands, and continued scanning upward to view Hayes's face. She described Hayes as wearing a black shirt and dark pants and how he fired two shots toward her, one shot after she dropped to the ground, and "five or six" shots while standing over Giles. Gilmore's detailed narration of events demonstrates a high degree of attention. So this factor weighs in favor of the reliability of her identification of Hayes. *People v. Mister*, 2016 IL App (4th) 130180, ¶ 106.

¶ 43 Regarding Gilmore's prior description of the offender, Gilmore told police that the shooter was about five foot six inches tall and wearing all dark clothing. Gilmore remembered Hayes's big eyes, "square head," and dark skin complexion, but could not recall if she gave the police these details. Hayes argues that the vagueness of this description, and the fact that he is 5 foot 11 inches tall, makes this factor weigh against the reliability of her identification. Our supreme court, however has stated that "a witness is not expected or required to distinguish individual and separate features of a suspect in making an identification. Instead, a witness' positive identification can be sufficient even though the witness gives only a general description based on the total impression the accuser's appearance made." *People v. Slim*, 127 Ill. 2d 302, 308-09 (1989). Further, the presence of discrepancies or omissions in a witness' description of the accused, like the difference between Gilmore's testimony that the shooter was 5 foot 6 inches tall and Hayes's actual height of 5 foot 11 inches, do not in and of themselves generate a reasonable doubt, but simply affect the weight to be given to the identification testimony. *Slim*, 127 Ill. 2d at 308-09.

¶ 44 Viewing Gilmore's degree of certainty in identifying Hayes, Hayes argues, citing scientific studies and cases regarding expert testimony about eyewitness identifications, that "this specious factor should not be accorded any weight." While social science research may call into question the reliability of eyewitness identifications, all five *Biggers* factors "are undisputedly the law in Illinois for the purpose of assessing the reliability of an identification." *People v. Polk*, 407 Ill. App. 3d 80, 109 (2010). And unlike the defendants in the cases that he cites, Hayes did not attempt to call an expert witness to testify at trial regarding the psychology of eyewitness identifications. See *People v. Lerma*, 2016 IL 118496, ¶ 25 (holding trial court abused its discretion by denying defendant's motion to allow expert witness testify regarding psychology of

eyewitness identifications). The evidence showed that Gilmore chose Hayes from a photographic lineup consisting of photographs of 55 different individuals, and never expressed any doubt about her identification. Thus, this factor weighs in favor of the reliability of Gilmore's identification of Hayes.

¶ 45 Considering the length of time between the crime and the identification, Gilmore viewed the photographic lineup 23 days after the shooting and picked Hayes out a physical lineup 24 days after the shooting. Illinois courts have found that longer periods of time do not necessarily render identifications unreliable. See *People v. Chatman*, 32 Ill. App. 3d 506, 510 (1975) (identification reliable where made one month after crime); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (identification reliable where made a year and four months after crime). Thus, this factor weighs in favor of the reliability of Gilmore's identification.

¶ 46 Moreover, Gilmore's identification was supported by five additional identifications of Hayes, which were made under similar conditions. Faydra Brookshire, Kevin Neely, Jasmine Bell, Edward Reed, and Officer Irene Singleton viewed the offender from similar distances (between five feet and one city block away) and for similar periods of time (ranging from "a few seconds" up to "like 30 seconds"). Each of these witnesses turned their attention toward Hayes after hearing a series of gunshots. Each of them saw Hayes run south on Wabash Avenue, and Bell, Brookshire, Neely, and Reed saw Hayes enter the front passenger-side door of a red or burgundy colored car which was double-parked on Wabash Avenue. These witnesses identified Hayes in physical lineups 24 days after the shooting, and the record does not indicate that they displayed any level of uncertainty in their identifications.

¶ 47 Hayes argues that discrepancies among these witnesses' descriptions of the offender render their identifications unreliable. Specifically, Hayes points out that Gilmore told police that the shooter was 5 foot 6 inches tall and Neely testified that the shooter was shorter than 5 foot 11 inches tall; that Brookshire testified that the shooter had a "little hair on the top and bald on the side like a box cut" while Neely only described the shooter's hair as "short"; and that Neely stated the shooter had "a little mustache" while Reed believed the shooter was "clean shaven." Insofar as these descriptions actually conflict, as noted, the trier of fact resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from the facts. See *Murphy*, 2017 IL App (1st) 142092, ¶ 9.

¶ 48 Viewing the evidence in the light most favorable to the State, we find that Gilmore's identification of Hayes as the shooter—which was corroborated by five additional witness identifications of Hayes as the shooter—was sufficiently reliable to prove Hayes guilty of first degree murder beyond a reasonable doubt.

¶ 49 Hayes next contends that the record unambiguously shows the prospective jurors did not understand or accept the Rule 431(b) principles and that his case should be remanded for a new trial before an impartial jury.

¶ 50 Initially, Hayes concedes that he did not raise this claim in a posttrial motion. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) ("To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion."). He argues, however, that we may review his claim under either prong of the plain error doctrine, which allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and (i) the evidence is so closely balanced that the error alone threatened to tip the scales of

justice against the defendant or (ii) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Nowells*, 2013 IL App (1st) 113209, ¶ 18. Our supreme court recently held that “[a] Rule 431(b) violation is not cognizable under the second prong of the plain error doctrine, absent evidence that the violation produced a biased jury.” *People v. Sebby*, 2017 IL 119445, ¶ 52. Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Nowells*, 2013 IL App (1st) 113209, ¶ 19. A reviewing court conducting plain error analysis must first determine whether an error occurred, as “[w]ithout reversible error, there can be no plain error.” *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010).

¶ 51 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), requires that a trial court ask potential jurors whether they understand and accept 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.”

Each of these principles goes to the heart of a particular bias or prejudice which would deprive a defendant of his right to a fair and impartial jury. *People v. Zehr*, 103 Ill. 2d. 472, 477 (1984). Rule 431(b) requires that the trial court ask potential jurors whether they understand and accept the enumerated principles in a “specific question and response process.” *People v. Wilmington*, 2013 IL 112938, ¶ 32 (quoting *People v. Thompson*, 238 Ill. 2d 598, 607 (2010)). A trial court's

method of inquiry complies with Rule 431(b) when it is sufficient to ascertain the acceptance and understanding of the potential jurors. See *People v. Vargas*, 409 Ill. App. 3d 790, 796 (2011).

¶ 52 Hayes does not argue that the trial court erred by failing to ask the potential jurors whether they understood and accepted the 431 (b) principles. Rather, he argues that the jurors' responses to the questioning indicated that they did not understand or accept the principles as stated. We find this contention to be belied by a commonsense reading of the record.

¶ 53 In its preliminary remarks, the trial court repeatedly instructed the potential jurors to let it be known if they did not understand and accept the 431(b) principles. Immediately before articulating the 431(b) principles, the trial court told the panel of jurors "[i]f you both understand and accept [a principle], nothing to do at all at this point." Thus, the trial court made clear that a juror should let it be known if he or she did not understand or accept a 431(b) principle. Even though the court later told the potential jurors to raise their hand if they *did* understand and accept the principles, after addressing each 431(b) principle individually, the court allowed time for the jurors to respond. During this time not one potential juror expressed any confusion regarding the principle or the method to communicate acceptance and understanding. The trial court proceeded as if the jurors indicated their acceptance and understanding of the principles, and neither the trial court nor the parties made note on the record of any expression of confusion on the part of any juror, such as a half-raised hand or a distressed look. Based on our reading of the record, we find that Hayes has failed to make a showing that the trial court's phrasing was fatal to the jurors' understanding acceptance or opportunity to respond. See *Nowells*, 2013 IL App (1st) 113209, ¶ 19 ("Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant"). Because we find no error, there can be no plain error. See *McGee*,

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398 Ill. App. 3d at 794 (“[w]ithout reversible error, there can be no plain error.”). Hayes’s claim that he was denied the right to an impartial jury is forfeited.

¶ 54 Affirmed.