2019 IL App (3d) 170078-UB

Order filed April 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-17-0078
v.	)	Circuit No. 16-CF-181
	)	
MALIK D. LOWE,	)	Honorable
	)	Jodi M. Hoos,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to find defendant guilty. (2) The circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) and the evidence was closely balanced.

¶ 2 Defendant, Malik D. Lowe, appeals his convictions for armed robbery with a firearm and burglary, arguing, *inter alia*, (1) that he "was not proven guilty of robbery and burglary beyond a reasonable doubt" and (2) that the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). We vacate his convictions and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2016)) and burglary (*id.* § 19-1(a)). The case proceeded to a jury trial. To the first panel of jurors during *voir dire*, the court said:

> "[W]hile I have the floor again here, I'm going to ask the four of you a series of questions. Do you understand and accept—this applies to those principles of law that I mentioned earlier, the four principles of law. Do you understand and accept that the defendant is presumed innocent of the charges against him? Everybody agree with that?
>
> Do you understand and accept that before a defendant can be convicted, the State must prove the defendant's guilt beyond a reasonable doubt?
>
> Do you understand and accept that the defendant is not required to offer any evidence on his own behalf?
>
> And finally, do you understand and accept that the defendant has the right to testify or not testify, and that if he chooses not to testify, that cannot be held against him?
>
> Does anybody have any questions about those four principles?
>
> Okay. All right. Why don't we turn back to [the State]."

For the next two panels and the alternate juror, the court stated almost the exact same thing. The first panel was accepted. One member of the second panel was excused and another potential juror took her place. The following conversation took place between the court and the potential juror:

"THE COURT: Okay. Let's talk about those principle[s] of law. Do you understand and accept that the defendant is presumed innocent of the charges against him?

POTENTIAL JUROR: Yes.

THE COURT: Do you understand and accept that before a defendant can be convicted, the State must prove the defendant's guilt beyond a reasonable doubt?

POTENTIAL JUROR: Yes.

THE COURT: Do you understand and accept that the defendant is not required to offer any evidence on his own behalf?

POTENTIAL JUROR: Yes.

THE COURT: And do you understand and accept that the defendant has the right to testify or not testify, and if he chooses not to testify, that cannot be held against him?

POTENTIAL JUROR: Yes."

¶ 5 At trial, Janiquia Mann testified that on March 8, 2016, she was a cashier at the Family Dollar. At approximately 1:22 p.m., she was working at the cash register with Pierre Miller, the manager, when a man entered the store wearing "a blue jacket" with a bandana across his face. A hood covered the man's head. The only portion of the man's face that was visible was his eyes and the bridge of his nose. Mann stated that she recognized the man to be defendant. Defendant came into the store regularly to buy Pop-Tarts. Though they "didn't know each other outside of the store," they were Facebook friends. Mann stated that she did not know anything about defendant's personal background or his brother. Defendant pulled a gun out of his pocket and

held it toward Mann's face. Mann stated it was "a silver revolver" and agreed it was "[l]ike a cowboy gun." Defendant then stated, "Give me all the money out the register." Defendant walked toward Miller while Miller typed a code into the register so that it would open. Miller then hit the silent alarm. While walking over to Miller, defendant hit the gun on the counter and it made "[a] banging sound." Mann stated the gun appeared to be metal. Defendant took the money out of both the cash registers and then ran out of the store. Mann stated that she believed defendant turned left once he was outside of the store. The store was equipped with security cameras, and the videotape from the incident was played in court. Mann went to the police station to look at a photographic lineup of suspects. She selected defendant's photograph as the perpetrator.

¶ 6 On cross-examination, Mann stated that she told the police she was sure that the perpetrator was her friend on Facebook, but she did not initially tell them it was defendant. Mann looked through her Facebook. She said "his name clicked" so she typed defendant's name in on Facebook, saw defendant's face, and said that she "recognized his eyes." Mann stated that while on Facebook, she remembered that defendant's brother had passed away and she remembered his last name. She showed defendant's Facebook photograph to Miller, who agreed that he was the perpetrator. After viewing the photograph on Facebook, she showed it to the police. Mann stated that she was paying close attention to the gun in defendant's hand during the incident. She did not personally own a weapon, had no firearms training, and defendant never actually stated that he had a gun.

¶ 7 Christopher White testified that he had been a Peoria police officer for 10 years. On March 8, 2016, at approximately 1:26 p.m., he received a dispatch call regarding an armed robbery at the Family Dollar. At the time he received the dispatch, he was approximately four or

five blocks away so it took him approximately one minute to arrive. Another officer was already on the scene. White spoke with Mann, and she showed him defendant's photograph from Facebook. White went to search for defendant. About 20 to 25 minutes after hearing the dispatch call, White found defendant approximately a block from the Family Dollar with a group of men and women. Defendant was wearing a white t-shirt and did not have any type of jacket or sweatshirt about his person. White did not stop defendant because he was waiting on Detective Clinton Rezac, the investigating detective, to give him a positive identification. Defendant continued walking with the group down the street while White kept him in sight. Approximately three blocks later, defendant separated from the group and approached a man standing on the porch of a house. White knew the man to be Kendrick Wilson, but White did not stop to talk to Wilson or check to see what defendant had given him. Defendant handed "something" to Wilson and then rejoined the group. White did not see what he had handed Wilson. White stated that from his vantage point he would not have been able to see the object, even if it was a large object. After a while, White returned to the police station since he had not heard from Rezac. He spoke to Rezac at the police station, and Rezac stated that there was probable cause for defendant's arrest. White then went back to look for defendant. White went to defendant's residence and found defendant walking about 2½ blocks from his house, which was approximately six blocks from the Family Dollar. White drove up to defendant and "told him to come here." Defendant "took off running" and White chased him. Other officers responded, and defendant was apprehended and taken into custody.

¶ 8 Brian Terry testified that he had been a detective with the Peoria police department for four years. He presented a photographic lineup of six individuals to Mann. Terry read Mann the advisory form. Mann identified defendant as the perpetrator. A videotape of the identification

was shown to the jury. The videotape showed Mann looking at her cell phone before the identification process began.

¶ 9 Miller testified that he was the manager at Family Dollar. He said that he was working on a seasonal display at the store when a man walked in wearing a hooded sweatshirt. The man pulled out a gun and said, "You already know what this is. Open the drawer." Miller went behind the registers, typed a code into the first register, opened the drawer, and the man took the money. The man then told him to open the second drawer. Miller and Mann both put their codes into the register. The man said, "Open the drawer. Open the drawer." The man hit the gun on the counter and it made "a hard, loud noise." The man took the money out of the register and left the store. Miller testified that he was not able to identify anyone as the robber because "[h]e had a hoodie on and he had a black scarf tied around his face" so that only his eyes were visible. Miller agreed that it was actually a white bandana with a black design around the man's face. Miller said the man was wearing a white t-shirt under the sweatshirt. He never told the police the man was wearing a white t-shirt, but instead mentioned it for the first time at trial. Miller stated that he told the police that the man was wearing "a blue hoodie with a white scarf." When the man left the store, Miller hit the panic button. The security system had live audio and video so when Miller pressed that panic button, a woman stated, "I need a member of management to pick up the black handset." Miller did so and the women asked if the store was robbed by "the person in the blue hoodie." Miller said "yes," and the woman said she would dispatch the police. The police arrived about three or four minutes later. Miller stated that around $270 was taken from the registers, but he did not remember the exact amount. He agreed that $260 "sound[ed] like [it] would be correct." Miller never looked at a live or photographic lineup. He never identified defendant as the perpetrator at the time or in court.

¶ 10 Joshua Feeney testified that he had been a police officer with the Peoria police department for three years. He helped White apprehend defendant and place him in custody. Feeney checked defendant for weapons. Defendant did not have a gun in his possession, but did have "a large wad of cash."

¶ 11 Paul Tuttle testified that he dusted the Family Dollar for fingerprints and did not find any.

¶ 12 Laginia Lowe testified that she was defendant's mother. On March 8, 2016, in the late afternoon the police came and told her that they had arrested defendant. Earlier that day around 1 p.m., she left the house to go to Walgreens. The Walgreens was located less than a mile from her house. Defendant had owed her $50, and before she went to Walgreens, she told him, "if you be gone before I get back, leave my money." The parties stipulated that security video shows Laginia leave Walgreens at 1:26 p.m. When she left Walgreens, she drove by her daughter's house before driving home. Defendant was not home when she arrived. She thought she was home about 5 or 10 minutes before defendant arrived. When defendant arrived home, he gave her the $50 that he owed her. He told her he had gone to get some change. Defendant was wearing a white t-shirt and jeans and was not wearing a "blue-green hoodie" and did not own one. She told an officer that he had a sweatshirt of a similar color, but it did not have a hood. She had last seen that sweatshirt a week or two previously "on the stairs." She told the officer she would look for it, but she did not find it. The surveillance video from the Family Dollar was played for Laginia in court. She was asked if the "hoodie" in the video was consistent with the "sweatshirt" that she saw at home. She stated that it was not; the sweatshirt she saw at home was a lighter blue and had "some white [o]n the front of it." Laginia stated that defendant had received his tax refund check in the mail the day before and had cashed it.

¶ 13 Rezac testified that he was a detective with the Peoria police department and was assigned to this case. He and another detective conducted an interview with defendant on the day of the incident, which was recorded. The videotape of the first portion was played in court. In the videotape, defendant was wearing a white t-shirt. Defendant said that he received his tax refund check the day before and his uncle took him to cash it in the afternoon. The check was for $111. On the day of the incident, defendant said he woke up at 1 or 2 p.m., closer to 2 p.m., and his mom was home. He said he owed his mom $20, so repaid her. He then walked to play basketball and won some money. He was last at Family Dollar a couple of days prior to buy Pop-Tarts. Defendant stated that he ran from the police because he had over $200 in his pocket and did not want the police to think it was drug money. He received the money from gambling on basketball that day, playing dice the night before, and his tax refund. Rezac recovered $237 from defendant's pocket in the following denominations: one $50 bill, four $20 bills, two $10 bills, eleven $5 bills, and thirty-two $1 bills.

¶ 14 Rezac testified that during the interview, he took a break to go to defendant's house and talk to Laginia. Laginia told Rezac that she had seen a blue-green sweatshirt a couple of days before the robbery. She did not call it a "hoodie." She also told him that defendant had left to get her change for a $50 bill when she went to Walgreens. Laginia said defendant returned home 10 to 15 minutes after she arrived home from Walgreens.

¶ 15 A second videotape was played in court from the resumption of the interview. Defendant said that on the day of the incident, he woke up, ate some noodles, took a bath, went to play basketball, and then walked toward his home. On his way home, he stopped at his sister's house across the street. He was home when Laginia left for Walgreens, but when she returned home he was at his sister's house. After Laginia came home, he walked home and gave her the money.

Rezac told defendant that Laginia said he had a distinct sweatshirt sitting on the stairs a couple of days ago. Defendant said he did not have the blue sweatshirt anymore because it was in his bag that was stolen a few days earlier. Rezac stated that he never told defendant what color sweatshirt Laginia had mentioned. Defendant said that he knew which sweatshirt Laginia was talking about. Defendant stated that there were security cameras at the location where he was playing basketball.

¶ 16 Rezac testified that he tried to retrieve the videotape from the security cameras at the location defendant was playing basketball, but the video had not been preserved.

¶ 17 The jury found defendant guilty, and he was sentenced to 22 years' imprisonment for armed robbery with a firearm and 3 years' imprisonment for burglary.

¶ 18 On appeal, this court vacated defendant's convictions because the circuit court failed to comply with Rule 431(b) where it did not give potential jury members the opportunity to respond to its questions and the evidence was closely balanced. Because we vacated the convictions and remanded for a new trial, we did not reach the other issues defendant raised on appeal. Defendant filed a motion for supervisory order with the supreme court. The supreme court granted the motion, ordering this court to vacate its judgment, and directing us "to address [defendant's] argument that he was not proven guilty beyond a reasonable doubt as set forth in Issue I of [defendant's] appellate court briefs, and determine if a different result is warranted." *People v. Lowe*, No. 124633 (Ill. Mar. 22, 2019). We, thus, vacate our original judgment.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues, *inter alia*,[1] that (1) he was not proven guilty beyond a reasonable doubt, and (2) the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). We find that defendant was proven guilty beyond a reasonable doubt. However, because the court did not give the potential jury members the opportunity to respond to its questions, error occurred. Moreover, the error rose to the level of plain error because the evidence was closely balanced.

¶ 21 A. Sufficiency of the Evidence

¶ 22 Based on the order of our supreme court, we first consider defendant's argument from issue I of his brief, which states he

> "was not proven guilty of robbery and burglary beyond a reasonable doubt where there was no physical evidence tying him to the crime and he made no incriminating statements to the police, and the witness who identified [defendant] as the suspect picked him out of a line-up based on her search of Facebook, not on her memory of the suspect at the scene."

¶ 23 In a challenge to the sufficiency of the evidence, our inquiry is " '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 crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We draw all reasonable inferences from the evidence in favor of the prosecution and we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or credibility of the witnesses. *People v. Martin*, 2011 IL 109102, ¶ 15; *People v.*

[1]We note that defendant raises multiple other contentions. Based on our resolution of these issues, we need not consider his other arguments. Further, after the briefs were filed, defendant filed a motion to cite additional authority in support of one of these other contentions. As we do not reach the issue, we find that the motion is moot.

Jackson, 232 Ill. 2d 246, 280-81 (2009). In determining defendant's guilt, the trier of fact may draw inferences that flow normally from the evidence before it. *Jackson*, 232 Ill. 2d at 281. However, the trier of fact need not search out all possible explanations consistent with innocence. *Id.* A defendant's conviction is subject to reversal only where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 24 Here, the evidence at trial, when taken in the light most favorable to the State, showed that Mann was working at the Family Dollar with Miller at 1:22 p.m. on March 8, 2016, when a man entered the store wearing a blue jacket with a bandana across his face. She testified that she recognized the man to be defendant as defendant was a regular customer. Defendant pulled out a gun and told her to give him the money from the register. Approximately $260 was taken from the cash register. Miller testified that the perpetrator was wearing "a blue hoodie" and had a white t-shirt underneath it. About 20 minutes after the incident, Officer White located defendant about a block from the Family Dollar, wearing a white t-shirt with no jacket or sweatshirt. White followed at a distance and saw defendant approach a man and hand him something. He did not check to see what the recipient had been given. No jacket or sweatshirt, bandana, or gun was ever found in the possession of defendant or anywhere on the route between the store and where he was first located by the police. When White eventually approached defendant, defendant "took off running." Defendant was then arrested. He did not have a weapon, but had $237 in his pocket: one $50 bill, four $20 bills, two $10 bills, eleven $5 bills, and thirty-two $1 bills. Although she was never asked to identify the perpetrator in a lineup or photo array where the faces of the participants were covered by a bandana, Mann did identify defendant as the perpetrator in a photographic lineup.

¶ 25 Laginia testified that defendant had a sweatshirt of a similar color to the one the perpetrator was wearing. She left her house around 1 p.m. and had told defendant to leave the $50 he owed her if he left before she returned. She left Walgreens at 1:26 p.m., and defendant was not home when she arrived. When he did arrive home, he was wearing a white t-shirt and gave her the $50 he owed her. Laginia stated that she assumed the money came from defendant's tax refund that he had received the day before. In the videotaped interview, defendant was wearing a white t-shirt. He said that he had cashed his tax refund for $111. On the day of the incident, he woke up close to 2 p.m., Laginia was home, and he paid her the $20 he owed her. He then went to play basketball. At the time he was apprehended by the police, he had over $200 in his pocket from gambling on basketball earlier that day, playing dice the night before, and his tax refund. He stated that he ran from police because he did not want them thinking it was drug money.

¶ 26 Defendant changed his story during a second interview. He told Rezac that on the day of the incident he woke up, ate noodles, took a bath, went to play basketball, and then went home. He said he was home when Laginia went to Walgreens, but was at his sister's when Laginia arrived home. When Laginia got home, defendant walked home and gave her the money. Rezac told defendant that Laginia had stated that he had a sweatshirt sitting on the stairs a couple of days ago. Defendant said that he did not have the blue sweatshirt anymore because it was stolen, but Rezac said he never told defendant what color the sweatshirt was.

¶ 27 Mann stated at trial that, before she even arrived at defendant's Facebook profile, she remembered his name and that he was the perpetrator. The jury could have found that defendant's Facebook profile only solidified her memory of defendant as the perpetrator and could have found her credible. A credible identification, alone, is sufficient to sustain a

conviction. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Moreover, a rational jury could have found that defendant did not have the money that he owed his mother when she left for the store because he had gambled it away. He thus donned his blue sweatshirt and took the money from the Family Dollar. Although there was no evidence about the denominations of the bills that were actually taken, a jury could have inferred that the denominations of bills that were found in his pocket were similar to those which were typically kept in a cash register at a store. It does not matter that no physical evidence linked defendant to the crime as circumstantial evidence alone is sufficient to sustain a conviction. See *People v. Brown*, 2013 IL 114196, ¶ 49. He was found guilty by a jury, and we cannot say definitively that the verdict was based on evidence so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. See *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 28 B. Compliance with Illinois Supreme Court Rule 431(b)

¶ 29 Defendant next contends that the circuit court failed to comply with Rule 431(b) as it did not give potential jury members the opportunity to respond to its questions. Though defendant admits that he failed to preserve this issue by raising it in the circuit court, he asks us to consider it under the plain-error doctrine.

¶ 30 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) states:

> "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.

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."

¶ 31 At the outset, we note that the parties do not dispute that neither the content of the court's questioning nor the individual questioning of one juror satisfied the rule. The court asked the jurors whether they understood and accepted all four principles. The individual juror was asked each question one by one and responded to each. Instead, defendant argues that there is no indication from the record that the venirepersons understood and accepted the principles.

¶ 32 The rule "mandates a specific question and response process." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010); see also *People v. Magallanes*, 409 Ill. App. 3d 720, 730 (2011) ("Rule 431(b) requires the trial court to address all four *Zehr* principles in a manner that allows each venireperson an opportunity to respond whether he or she understands and accepts those principles."). Courts have held that asking potential jurors to raise their hands if they disagree or do not understand the principles, and then reflecting on the record that no hands were raised, satisfies the rule. See *Magallanes*, 409 Ill. App. 3d at 729-30; *People v. Strickland*, 399 Ill. App. 3d 590, 602 (2010).

¶ 33 Here, the record does not show that the court gave the venirepersons an opportunity to respond to the questions. The court asked each question in succession, and the record does not indicate that the jurors answered the questions or were given time to do so before the next question was asked. Therefore, error occurred.

¶ 34 As we have found that error occurred, we must determine whether the error is reversible under the plain-error doctrine. "Where the defendant claims first-prong plain error, a reviewing

court must decide whether the defendant has shown that the evidence was so closely balanced the error alone severely threatened to tip the scales of justice. [Citation.] If the defendant carries that burden, *** '[t]he error is actually prejudicial.' " *People v. Sebby*, 2017 IL 119445, ¶ 51 (quoting *People v. Herron*, 215 Ill. 2d 167, 193 (2005)). "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case. [Citations.] *** A reviewing court's 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.* ¶ 53. Where the case turns on a credibility contest, the evidence is closely balanced. *Id.* ¶ 63 (quoting *People v. Naylor*, 229 Ill. 2d 584, 607 (2008) (" 'Given these opposing versions of events, and the fact that no extrinsic evidence was presented to corroborate or contradict either version, the trial court's finding of guilty necessarily involved the court's assessment of the credibility of the two officers against that of defendant.' ").

¶ 35 We note that, while we have already found defendant was proven guilty beyond a reasonable doubt, "[w]hether 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." *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). Just because the evidence was sufficient to convict defendant does not mean that it was not closely balanced. See *id.* at 566-68.

¶ 36 Here, the primary evidence tying defendant to the crime was Mann's identification of defendant as the perpetrator. This identification was fairly suspect. The only portion of the perpetrator's face that was visible was the top of his nose and his eyes. The whole encounter lasted just over a minute, and Mann stated that, during that time, she was paying close attention to the gun in the perpetrator's hand. Mann did not initially tell the police that the perpetrator was

defendant, but instead looked through her Facebook and showed the police defendant's photograph. She made no mention of recognizing his voice. When she was shown a photographic lineup at the police station, the photographs did not cover the bottom portion of the suspects' faces in order to portray an accurate photograph of the perpetrator. Instead it showed their whole faces, which would have allowed Mann to just pick out the photograph of defendant as she had previously seen on Facebook. Miller never identified defendant as the perpetrator. Moreover, the officers only pursued defendant based on Mann's previous identification.

¶ 37 On the other hand, Laginia testified that, though defendant had a blue-green sweatshirt, it did not have a hood, was a lighter blue, and had some white on the front. She stated that the hooded sweatshirt on the surveillance videotape was not defendant's sweatshirt. She further stated that defendant owed her $50, had cashed his tax refund the day before, needed to get change, and paid her when returned home. In his videotaped interview, defendant stated that he had gone to play basketball, had the money from his tax refund and gambling, and did not have the sweatshirt that his mother had seen anymore. The timeline of Laginia and defendant's stories did not necessarily line up, and they disagreed about the amount of money that defendant owed Laginia.

¶ 38 No extrinsic evidence, such as the gun or the hooded sweatshirt, was found to tie defendant to the crime. As stated above, both versions of the events were flawed in some way. The evidence amounted to a credibility contest between the witnesses. Therefore, we find that the evidence was closely balanced. See *Sebby*, 2017 IL 119445, ¶ 63.

¶ 39 In sum, we vacate defendant's convictions and remand for a new trial because the circuit court failed to comply with Rule 431(b) and the evidence was closely balanced. Further, "we

find that the evidence was sufficient to convict for reasonable doubt purposes, thereby precluding any double jeopardy claim on remand." *Piatkowski*, 225 Ill. 2d at 567.

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Peoria County is vacated and remanded.

¶ 42 Vacated and remanded.