FIRST DIVISION
May 9, 2011

No. 1-09-1941

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 17334
	)	
JIMMY BOOKER,	)	
	)	The Honorable
Defendant-Appellant.	)	Stanley J. Sacks,
	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concurred in the judgment.

O R D E R

HELD: The trial court failed to comply with Supreme Court Rule 431(b); however, the error did not constitute plain error. The trial judge's attempt to inject humor into *voir dire* did not thwart the selection of an impartial jury. Defendant's sentence was not excessive.

Defendant, Jimmy Booker, was convicted by a jury of second degree murder and sentenced to 20 years' imprisonment. On appeal, defendant contends: (1) he is entitled to a new trial

because the trial court failed to comply with the dictates of Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)); (2) the trial court interfered with the selection of a fair and impartial jury; and (3) his sentence was excessive in light of mitigating factors. Based on the following, we affirm.

FACTS

On June 17, 2004, defendant accompanied Brenetta Ingram[1], Latasha Ingram, and Shaun Patterson to the apartment of the victim, Raymond Green, where the victim was ultimately beaten and stabbed to death. Brenetta, Latasha, and Shaun earlier had learned that Green was no longer willing to let them stay in his apartment. They decided to confront the victim regarding the rent already paid for the month and to obtain their belongings. Defendant went with the group.

Latasha testified that the victim initially denied entry into the apartment to everyone but Latasha; however, defendant, Brenetta, and Shaun eventually gained entry. Brenetta and the victim engaged in a verbal altercation and then the victim retrieved a baseball bat from the bedroom. The victim swung the bat at Brenetta, causing defendant to attempt to gain control of

[1]This court affirmed Brenetta's first degree murder conviction and sentence in an opinion filed March 31, 2011. *People v. Ingram*, No. 1-07-2229 (March 31, 2011).

the bat. While defendant and the victim struggled for control, the victim hit defendant with the bat two or three times. Defendant ultimately gained control of the bat and began hitting the victim. The victim responded by grabbing Brenetta and holding her. Brenetta, however, retrieved a knife and stabbed the victim in the forehead. At that point, Latasha gathered all of her belongings and left. According to Latasha, "[t]hey was fighting, but I just kept walking past."

Latasha further testified that she and Shaun were picked up by the police the next day and transported to the police station. Latasha said she provided a police statement. In the statement to police, Latasha reported that defendant pushed his way into the victim's apartment and the victim demanded that he leave. The victim pointed a baseball bat at defendant, which defendant eventually wrestled out of the victim's hands. Defendant repeatedly hit the victim with the bat. Both defendant and Brenetta verbally argued with the victim. The victim continued to demand that they leave. As she and Shaun left the apartment with their belongings, Latasha heard the victim say, "Please stop. I'm sorry." Latasha reported seeing a shovel on the porch of the apartment and that defendant and Brenetta hit the victim with the shovel. Latasha testified that she could not hear what her mother said, but admitted that she told the police that she heard her mother say she was going to kill the victim. After

initially leaving, Latasha returned to the apartment to try to break up the fight. Latasha told the police that defendant left the apartment 20 to 30 minutes before Brenetta.

Latasha additionally testified that she spoke to an Assistant State's Attorney (ASA) and agreed to provide a handwritten statement. Latasha signed each page of the statement and initialed corrections made to the statement. In the statement, Latasha reported that defendant pushed his way into the victim's apartment. While inside, defendant and Brenetta used knives, sticks, and bats to fight the victim. Latasha heard the victim say, "Please stop. I'm sorry." Latasha and Shaun then left the apartment and defendant and Brenetta remained. Latasha saw the victim lying on the porch bleeding while defendant hit the victim with a bat and Brenetta hit the victim with a shovel. In her statement, Latasha said that she was not involved in the fight and did not steal anything from the victim; however, "they was stealing stuff. They robbed the man." Specifically, defendant took a television, microwave, silverware, and "stuff." While outside the apartment in the adjacent alley, Latasha saw Brenetta on the apartment porch hit the victim with a shovel. The victim was moaning. Prior to leaving the apartment, Brenetta changed her t-shirt. Latasha watched from a distance as defendant and Brenetta hid the victim's items in a nearby shed.

Latasha admitted that she drank a "teaspoon" of Tanqueray "vodka" prior to the events in question.

Chicago Police Officer Paul Galiardo testified that defendant arrived at the police station on July 2, 2004, identifying himself as a possible suspect in a murder investigation. Defendant was arrested after a search of his name revealed an investigative alert. Detectives retrieved defendant and took him to Area 4 to be interviewed.

Detective Kevin Bor testified that defendant waived his *Miranda* rights, and he and his partner, Patrick Golden, interviewed defendant for a couple of hours during which defendant inculpated himself in the victim's murder. While interviewing defendant, Detective Bor inquired about several injuries visible on defendant's arms. According to defendant, his right index finger was injured while "junking," his right forearm was injured when the victim struck him with the bat, and the cut on his right bicep was caused by Brenetta "accidentally stabb[ing]" him. The injuries did not appear new; rather, they appeared to be healed or in the process of healing. Photographs were taken of the injuries. ASA Patrick Morley was called and, when he arrived, Detective Bor informed him of the contents of defendant's interview. Defendant again waived his *Miranda* rights and agreed to speak to ASA Morley. After the interview with ASA

Morley, defendant agreed to memorialize his statement in video format. When the videographer arrived, defendant signed a video consent form.

In the videotaped statement, defendant said that he ran into Brenetta late on June 16, 2004, or early on June 17, 2004. Brenetta informed defendant that she needed help to "f*** this man up" for taking her daughter's money. Brenetta and defendant joined Latasha and Shaun and walked to 3804 W. Chicago Avenue, Chicago, Illinois. Defendant stated that he was not under the influence of drugs or alcohol at that time. Brenetta knocked on the apartment door and the victim answered. Brenetta pushed her way into the apartment and defendant followed. Brenetta demanded that the victim pay Latasha. The victim refused. Brenetta and the victim then engaged in a "scuffle," during which the victim swung a baseball bat at Brenetta. Defendant attempted to disarm the victim, asking Shaun for help. Shaun hit the victim with an unknown object allowing defendant to gain control of the bat. The victim fell into a chair and defendant hit him "about seven times" while Brenetta simultaneously stabbed the victim with a knife. The victim begged them to stop.

Defendant then dropped the bat and washed his hands. Defendant asked Brenetta for a change of clothes and was given a new shirt. Defendant removed his blood-stained shirt and changed into the new one. The victim remained seated in the chair while

defendant retrieved a radio and microwave that Brenetta identified as belonging to her. Defendant brought the items outside and went back into the apartment to retrieve Brenetta's television. As defendant left the apartment, the victim was laying outside on the porch. The victim was covered in blood and groaning.

Shaun carried the television while defendant carried the microwave to a nearby abandoned building where defendant had been sleeping. Defendant proceeded to go to sleep in the building. A couple of hours later, Brenetta arrived at the building with a man pushing a shopping cart. Brenetta informed defendant that the man was going to sell the items. The items were placed in the shopping cart. The man later returned with the microwave and television. That morning, defendant took the microwave and television out of the building to attempt to sell them. While out, a man informed defendant that Brenetta had killed someone the night before. Defendant responded that he did not want to hear about the events and walked away. Defendant pushed the shopping cart into a set of bushes and abandoned the items because he did not want to be seen with property from the victim's home.

At the close of defendant's statement, he identified photographs of the victim, Brenetta, Latasha, and Shaun. Defendant further identified his signature on the photographs.

Defendant said that he had been treated well by the police, that the police and the ASA had not made any threats or promises in exchange for his statement, that he was not under the influence of drugs or alcohol, and that his statement was "the truth and nothing but the truth." Defendant admitted that he signed the video consent form.

Evidence technicians testified that the victim was found shirtless, face down, and covered in blood on the second floor back porch of the apartment. A shovel and a serrated kitchen knife were found beneath the victim's body and a small butter knife was found near the victim's hand. The victim had visible lacerations on his hands, face, and head. A large pool of blood had collected underneath the porch. The apartment was found in disarray with blood spattered on the walls, kitchen counter, and appliances. The police recovered a blood-stained baseball bat, a blood-stained long, thin piece of wood, some clothing, two shoes, a pot with a broken handle, and a dental retainer, in addition to the shovel, serrated knife, and kitchen knife.

Doctor Mitra Kalelkar testified that she performed the victim's autopsy. Dr. Kalelkar identified 16 abrasions and lacerations to the victim's head and face, 3 abrasions to his neck, 15 abrasions, contusions, and a stab wound to his trunk, 18 abrasions, contusions, lacerations, and stab wounds to his upper extremities, 6 abrasions and contusions to his lower extremities,

multiple hemorrhages underneath his scalp, skull fractures, and brain contusions. Dr. Kalelkar opined that the victim's injuries were consistent with being hit with a baseball bat, shovel, and stick, and being stabbed with a serrated kitchen knife and a butter knife. Dr. Kalelkar concluded that the victim died as a result of multiple blunt and sharp force injuries. According to Dr. Kalelkar, a cocaine metabolite was found in the victim's blood indicating that the victim had taken cocaine sometime before his death.

Defendant testified that, on June 16, 2004, Brenetta asked for help moving out of the victim's apartment. Defendant agreed and walked to the apartment with Brenetta, Latasha, and Shaun. Defendant had been drinking that day, as he typically did, having consumed three 40-ounce beers and a wine.

When they arrived at the apartment and the victim opened the door, Brenetta "buzzed" inside and demanded her belongings. The victim told Brenetta to leave. Defendant began to leave, but saw the victim hitting Brenetta with a baseball bat. According to defendant, the victim was six feet three inches tall, weighed 275 pounds, and was in "very good shape." Defendant described himself as five feet nine inches tall and weighing 180 pounds. Defendant alerted Latasha and Shaun that the victim was hitting Brenetta with a bat. Latasha and Shaun attempted to intervene. When they were unsuccessful, defendant attempted to wrestle the

bat from the victim. In the process, the victim hit defendant two to three times on the elbow. Defendant testified that he "knew [the victim] was gonna kill someone" and he "was scared." Defendant obtained control of the bat and struck the victim twice in the shoulders and ribs. Meanwhile, Brenetta retrieved a knife from the kitchen sink and stabbed the victim "like seven times real quick." Defendant told Brenetta to stop. The victim ran into defendant and fell into a chair in the kitchen. Defendant asked Brenetta for a clean shirt because he had blood all over the shirt he was wearing. Defendant changed and washed his hands. Defendant then left the apartment.

When defendant was halfway down the stairs leading to and from the apartment, Brenetta yelled for him to return to retrieve her belongings. Defendant complied and asked Brenetta to identify her belongings. Brenetta indicated that items, including a television, microwave, and other things, gathered on a sheet were hers. Defendant and Brenetta were the only people in the apartment other than the victim. Defendant grabbed the sheet full of items and carried it down the stairs. Brenetta left with defendant. The victim remained in the kitchen. Defendant alerted Brenetta to the existence of a nearby abandoned building. On the way to the building, Brenetta asked a man with a shopping cart to "haul her stuff." Defendant and Brenetta then separated and defendant went home to 4211 W. Iowa, Chicago,

Illinois. The next day, defendant learned the police were looking for him.

Defendant testified that he turned himself in two weeks later on July 2, 2004. Prior to turning himself in, defendant drank two 40-ounce beers and "smoked a joint." Defendant was arrested by two officers. He was read "a little piece" of his rights and placed in a holding cell. Approximately 45 minutes later, Detective Golden and another detective transferred defendant to Area 4. Prior to the transfer, Detective Golden threw defendant up against a wall and called him a murderer. Once at Area 4, defendant was handcuffed to the wall of an interview room. Approximately 20 minutes later, Detective Bor entered the interview room and asked defendant about the "accident." Defendant explained what had occurred. Detective Bor then read defendant his *Miranda* rights. Defendant requested an attorney and Detective Bor left the room. About ten minutes later, Detective Golden informed defendant that he had to answer more questions. Detective Golden added that the "rest of the guys" already had been charged with first degree murder. Defendant requested an attorney and Detective Golden slapped defendant in the face in response. Detective Golden left the interview room and Detective Bor entered about 10 minutes later. Defendant was given a cigarette and offered a soda. Defendant

continued to refuse to answer any questions, so Detective Bor again left the room.

Approximately 20 minutes later, Detective Golden reentered the room and told defendant to sign a statement. Detective Golden informed defendant that he need only answer "yes" to all of the upcoming questions. Defendant said he would not comply and Detective Golden picked up and threw a chair. The chair fell on defendant's legs causing defendant's legs to be "busted" and "bleeding." Detective Golden cleaned up defendant's wounds and gave defendant a pair of jeans and a t-shirt to wear. Detective Golden took defendant's old clothes. Detective Bor also took defendant's shoes at some point because they appeared to have blood on them.

Defendant agreed to make a videotaped statement. Detectives Golden and Bor interviewed defendant for two hours and "rehearsed" defendant's statement. According to defendant, the police offered a "leaner case" and gave him a script of questions and answers. Defendant rehearsed the script three times outside the presence of ASA Morley. Defendant testified that he spoke to ASA Morley alone when ASA Morley arrived to take his statement. As defendant was about to tell ASA Morley that the detectives were forcing him to make the statement, Detective Bor entered the room and told ASA Morley to leave. Defendant said he was intoxicated when he made the videotaped statement.

Defendant testified that aspects of the videotaped statement were true, such as that Brenetta knocked on the victim's door, that Latasha and Shaun were also at the apartment, and that items were placed in the abandoned building. Defendant, however, said he did not go to the victim's apartment to beat him up, he did not hit the victim a number of times, and he was not sleeping in the abandoned building. Defendant testified that he had Brenetta's permission to enter the victim's apartment and retrieve what he thought were her belongings.

Defendant said he did not know how his signature appeared on the video consent form. Defendant added that he thought the police may have drugged his food while at the police station.

The parties stipulated that defendant's shoes were inventoried and tested. The test results revealed that the DNA from the blood stains on the shoes matched defendant's DNA.

In rebuttal, Detective Golden testified that he never slammed defendant into a wall, slapped defendant in the face, or slammed a chair on defendant's legs. Detective Golden said defendant was not handcuffed while in the locked interview room. Defendant was not forced to change clothes. According to Detective Golden, defendant never asked for an attorney. The detectives did not provide a script for defendant's videotaped statement and did not tell defendant what to say in the statement. Detective Golden denied drugging defendant's food.

Defendant did not appear to be under the influence of drugs or alcohol.

Detective Bor testified that defendant was fully advised of his *Miranda* rights and did not request an attorney. Detective Bor said defendant did not appear to be under the influence of drugs or alcohol and his statement was not rehearsed.

ASA Morley testified in conformance with Detective Bor's rebuttal testimony, adding that he was never called out of the police interview room by Detective Bor.

The jury found defendant guilty of second degree murder and not guilty of armed robbery. Defendant's motion for a new trial was denied. The trial court sentenced defendant to a 20-year prison term. Defendant's motion to reconsider that sentence was denied.

DECISION

I. Rule 431(b) Error

Defendant contends the trial court failed to comply with Rule 431(b) and he was denied a fair trial as a result. Defendant acknowledges that he did not object at trial or raise the alleged error in a posttrial motion *(People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988)) (a defendant forfeits appellate review where he fails to object to the alleged error at trial and fails to include it in a posttrial motion)); however,

he argues that the rules of forfeiture should be relaxed. In the event the rules of forfeiture are not relaxed, defendant contends the trial court committed plain error by failing to comply with Rule 431(b). The State responds that no error occurred and, in the alternative, any error was not reversible.

We first must determine whether any error occurred. *People v. Hudson*, 228 Ill. 2d 181, 191, 886 N.E.2d 964 (2008). Construction of a supreme court rule is reviewed *de novo*. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332, 775 N.E.2d 987 (2002).

Supreme Court Rule 431(b) codified our supreme court's holding in *People v. Zehr*, 103 Ill. 2d 472, 477, 469 N.E.2d 1062 (1984). The rule was amended effective May 1, 2007, placing a *sua sponte* duty on trial courts to ensure compliance with the mandates of Rule 431(b). *People v. Thompson*, 238 Ill. 2d 598, 607, 939 N.E.2d 403(2010). The amended rule provides:

> "The court *shall ask* each potential juror, individually or in a group, whether that juror *understands and accepts* the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that

> the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.
>
> The court's method of inquiry *shall provide* each juror an *opportunity to respond* to specific questions concerning the principles set out in this section." (Emphasis added.) Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

Prior to conducting *voir dire*, defense counsel informed the trial court that defendant intended to testify and, as result, the court need not provide the fourth *Zehr* principle to the jurors. See Ill. S. Ct. R. 431(b) (eff. May 1, 2007). During opening remarks to the jury venire, the trial court said:

> "Under the law [defendant] is presumed innocent of the charges against him, and that presumption remains with him throughout every stage of the trial and during your deliberations on a verdict and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that Mr. Jimmy Booker is guilty.

The State *** has the burden of proving guilt beyond a reasonable doubt, and that burden stays on the State throughout the entire case.

Defendant is not required to prove his innocence. The defendant is not required to call witnesses on his own behalf. He can rely on the presumption of innocence."

Later, the trial court said:

"There are certain principles that you as jurors are required to accept and to follow during the course of a trial. One of those principles you are required to accept and follow is that Mr. Jimmy Booker, who sits there now, is innocent of the charges against him.

That presumption remains with him throughout every stage of the trial and is not overcome unless by your verdicts in this case you come to the conclusion that the State has proven guilt beyond a reasonable doubt.

Anybody out there not willing to accept that principle? That being the presumption of innocence and proof beyond a reasonable doubt. No hands. No response.

Anybody out there not willing to follow that principle of presumption of innocence and proof beyond a reasonable doubt? Again, no hands. No response.

In addition to that principle, that presumption of innocence and requirement of proof beyond a reasonable doubt by the State, there is the additional principle that pretty much goes hand in hand with it, is that the State *** has the burden of proving guilt beyond a reasonable doubt. That burden stays on the State throughout the entire trial. The defendant is not required to prove to you he is innocent of the charges against him.

Anybody out there not willing to accept that principle I just told you about, proof beyond a reasonable doubt, burden on the State, defendant not to prove anything to you? Again, no hands. No response.

Anybody out there not willing to accept and follow that principle of proof beyond a reasonable doubt by the State, nothing the defendant required to prove at all? Again, no hands. No response."

Our review of the record demonstrates that the trial court did not comply with Rule 431(b). In *Thompson*, the supreme court advised:

"Rule 431(b), therefore, mandates a specific question and response process. The trial court must ask each potential juror whether he or she *understands*

> *and accepts each* of the principles in the rule. The questioning may be performed either individually or in a group, but the rule *requires an opportunity for a response from each prospective juror on their understanding and acceptance* of those principles." (Emphasis added.) *Thompson*, 238 Ill. 2d at 607.

It is clear from the record that the trial court failed to ascertain whether the potential jurors understood the *Zehr* principles provided. Asking the potential jurors whether they accepted and would follow the *Zehr* principles does not ensure that they understood the principles in addition to accepting them. Unlike in *Ingram* where the trial court asked whether the potential jurors had any "difficulty or quarrel" with the principles, the record here does not establish by use of a synonym or other language that the venire members were asked whether they understood the *Zehr* principles. See *Ingram*, No. 1-07-2229, slip op. at 22-23. The trial court, therefore, violated Rule 431(b). The trial court's lack of compliance with Rule 431(b) constitutes error.

In light of our finding of error, we must determine whether the rules of forfeiture should be relaxed. As was the case in *Thompson*, we find that the rules of forfeiture should not be relaxed in this case. Pursuant to the *Sprinkle* doctrine, the

rules of forfeiture may be relaxed only in extraordinary circumstances where a trial judge oversteps his authority in front of the jury or when counsel's objection would fall on deaf ears. See *Thompson*, 238 Ill. 2d at 612. Defendant fails to demonstrate, and our review of the record does not reveal, that either circumstance existed here. We, therefore, do not find it appropriate to relax the forfeiture rule.

This court may review forfeited errors under the doctrine of plain error in two narrow instances:

> "First, where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citation.] Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467 (2005).

The burden is on the defendant to establish plain error. *Thompson*, 238 Ill. 2d at 613.

Defendant challenges the trial court's error under both prongs of plain error. We take each one in turn.

To establish first-prong plain error, a defendant must demonstrate "'prejudicial error.' That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him." *Herron*, 215 Ill. 2d at 187. A defendant is guilty of second degree murder when he or she commits first degree murder, but, at the time of the killing, either acted under a sudden and intense passion resulting from serious provocation, but negligently or recklessly caused the death, or had an unreasonable belief that circumstances existed that justified his killing the victim. 720 ILCS 5/9-2(a)(1), (a)(2) (West 2004).

Defendant cannot establish the evidence was so closely balanced that the Rule 431(b) error alone severely threatened to tip the scales of justice against him. In both his videotaped statement and his trial testimony, defendant admitted that he wrestled with the victim to obtain control over the baseball bat and then struck the victim with it. In the videotaped statement, defendant said he struck the victim seven times, while, at trial, he admitted striking the victim twice. Although defendant testified at trial that his videotaped statement was false and

coached by the detectives, on the video defendant declared that he freely and voluntarily provided the statement absent any threats or promises. At the close of the videotaped statement, defendant assured ASA Morley that the statement was "the truth and nothing but the truth." At trial, defendant did not know how his signature appeared on the video consent form, but he did not deny that the signature belonged to him. Defendant admitted that his signature appeared on the video consent form during the videotaped statement.

Moreover, Latasha's trial testimony confirmed that defendant repeatedly struck the victim with the bat and maybe with a shovel. Testimony from the medical examiner revealed that the victim died as a result of blunt and sharp force trauma. The medical examiner testified that the victim's injuries were consistent with being hit by a baseball bat and a shovel, along with a stick and being stabbed with a serrated knife. The baseball bat was recovered at the scene and was stained with blood.

It was the jury's duty to make credibility determinations, weigh the witness testimony, and draw reasonable inferences from the evidence. *People v. Evans*, 209 Ill. 2d 194, 211, 808 N.E.2d 939 (2004). The jury exercised its judgment and determined the facts supported a finding of second degree murder. After

reviewing the record, we conclude the evidence was not closely balanced. Consequently, defendant's claim of error pursuant to Rule 431(b) is not reviewable under the first-prong of plain error.

In regard to second-prong plain error, defendant has failed to provide any evidence demonstrating that the jury was biased. In *Thompson*, the supreme court clarified that a Rule 431(b) violation does not amount to second-prong plain error unless it can be shown that the error is structural. *Thompson*, 238 Ill. 2d at 613-14. Therefore, a defendant must demonstrate that the jury was biased in order to establish that his right to a fair trial and the integrity of the judicial process were affected. *Id.* at 614. Defendant has not done so here and the record reveals no evidence of bias. As a result, defendant has failed to establish second-prong plain error.

II. Judicial Interference With Jury Selection

Defendant contends the trial judge interfered with the selection of an unbiased jury by informing two jury members that if they changed answers from their jury cards they would lose half of their jury pay. The State responds that defendant failed to preserve his contention for appellate review. In the alternative, the State contends the trial judge did not abuse his discretion where the remarks at issue were made in jest.

Defendant concedes that he did not preserve his contention because he did not object at trial or include the error in his posttrial motion. See *Enoch*, 122 Ill. 2d at 186. As previously stated, we may review a forfeited error under the doctrine of plain error when (1) the evidence was close, regardless of the seriousness of the error; or (2) the error was so serious as to deny a substantial right, and thus a fair trial, that the closeness of the evidence does not matter. *Herron*, 215 Ill. 2d at 178-79. Defendant again requested that we relax the rules of forfeiture. We first must review whether any error occurred. *Hudson*, 228 Ill. 2d at 191.

It is within the trial judge's discretion to determine the manner and scope of *voir dire*. *People v. Williams*, 164 Ill. 2d 1, 16, 645 N.E.2d 844 (1994). "The purpose of *voir dire* is to assure the selection of an impartial panel of jurors free from either bias or prejudice." *Id.* at 16. An abuse of discretion will be found only where the judge's conduct "thwarted the selection of an impartial jury." *Id.*

During his opening remarks, while discussing questions on the jury cards, the trial judge encouraged the venire members to change their answers to the question whether they had ever been accused of a crime in the event the jurors were confused and erroneously answered. The court added:

> "The questions that we ask you are not designed to pry into your private life or to embarrass you. They are designed to give the lawyers some information about you so they can make an informed decision during the jury selection process. We ask you to be frank and complete and open in all your answers. That's the way to ensure fairness to both sides.
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> * * *
>
> If there is something you want to tell me about while in the jury box I didn't ask you about that you think might be important or relevant to some issue or your ability to be on the jury in any fashion whatsoever, do not be bashful or shy *** because once I walk off the bench, you can't walk up and say, Judge, oh, my goodness, I forgot to tell you about this but. Once I walk off, that's it."

Later, the trial judge informed the venire members that, although they were there for the serious matter of providing defendant a fair and impartial jury trial, he might say something funny or humorous to make the jury's "load a little bit lighter." The trial judge then proceeded to individually question the venire members.

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Defendant takes issue with the *voir dire* exchanges of two particular venire members. Both venire members were empaneled as jurors. The first exchange occurred when Latonya Brooks indicated that she wished to change one of the answers on her jury card. In response, the trial judge said:

> "Did they tell you when you change an answer what happens? They should have told you this. When you change an answer on these juror cards, you lose half your check. So you are down to [$]8.60 now. The next answer you change will go down to [$]4.30, [$]2.15. Don't change anything else. Okay?"

When Jason Sareny informed the court that he wished to change the answer to one of the jury card questions, the court said, "We will change that from yes to no. You understand the consequences?" The juror responded, "Yes, I only get paid half." The judge replied, "That's right."

Taking the challenged exchanges in context and in light of the *voir dire* record, we conclude that the trial judge did not abuse his discretion where his attempt at humor did not thwart the selection of an impartial jury. On the contrary, the record reveals that the jurors questioned after the two at issue continued to change incorrect answers from their jury cards. The jurors, therefore, demonstrated no evidence of intimidation.

Moreover, the trial judge expressly asked many jurors whether there were any responses that needed to be changed. The trial judge, both in opening remarks and during *voir dire*, stated in multiple ways the importance of frank, complete disclosure. Accordingly, the trial judge's opening remarks informing the potential jurors that he would be injecting some humor into the proceedings, while also expressly encouraging the potential jurors to change incorrect answers, combined to help ascertain the jurors' ability to be fair and impartial if empaneled.

In *Ingram*, we recently held that nearly identical comments made by the same trial judge in the codefendant's trial did not constitute error. *Ingram*, slip op. at 34-35. While the venire members at issue in *Ingram* ultimately were not empaneled, we concluded that the substance of the challenged comments by the trial judge were not an abuse of discretion. *Id.* *Ingram* supports our finding here.

As we similarly found in *Ingram*, we find *People v. Brown*, 388 Ill. App. 3d 1, 903 N.E.2d 863 (2009), the case relied upon by defendant, is factually distinguishable. In *Brown*, this court concluded that no plain error resulted where the trial court admonished, in front of the remaining venire, a potential juror who had been excused after he expressed his inability to be fair to the defendant. *Brown*, 388 Ill. App. 3d at 9. The trial judge

instructed the dismissed juror to return to the court the next day to receive "an education as to how the system works." *Brown*, 388 Ill. App. 3d at 3. Nevertheless, this court held that there was no evidence the trial judge thwarted the selection of an impartial jury. *Brown*, 388 Ill. App. 3d at 9-11.

In the case before us, there was absolutely no evidence demonstrating any of the jurors were biased, and defendant's argument that the trial judge's admittedly humorous comments may have "chilled" the jurors from responding honestly is pure speculation. Accordingly, we conclude no error occurred and, therefore, there is no need to determine whether the error was forfeited.

III. Excessive Sentence

Defendant contends the trial court imposed an excessive sentence in light of mitigating factors.

A trial court's sentence may not be disturbed absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 154, 368 N.E.2d 882 (1977). A sentence must be balanced between the seriousness of the offense at issue and the potential for the defendant's rehabilitation. See Ill. Const. 1970, art. I, §11. A trial court's sentence is entitled to great deference and weight because the trial court is in a superior position to make such a determination. *Perruquet*, 68 Ill. 2d at 154. The trial

court weighs the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626 (2000). A reviewing court may not substitute its judgment for that of the trial court simply because it would have weighed those factors differently. *Id.* Moreover, a sentence within the statutory range will not be considered excessive unless it greatly varies with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 210.

A second degree murder conviction carries a sentence of not less than 4 years and not more than 20 years. 730 ILCS 5/5-8-1(a)(1.5) (West 2004). Defendant's 20-year sentence, therefore, falls within the permissive statutory range.

Defendant specifically argues that the trial court failed to take into account his lack of criminal record in that he had only one felony conviction in 1985, his untreated medical ailments, and his car repair training. Given defendant's mitigating factors and potential for rehabilitation, defendant argues that "it is difficult to believe that the court's 20-year sentence was not influenced by the offense for which [he] was acquitted."

The record directly contradicts defendant's latter argument. During the sentencing hearing, the trial court said: "I have no quarrel with the jury's verdict, he asked them for their opinion,

they gave him their opinion; their opinion was murder in the second degree. If I agree or not or disagree or not is neither here nor there, that's the jury's verdict, that's what the sentence will be based on." The record also contradicts defendant's former argument where, after considering evidence in mitigation and aggravation, the trial court concluded that, based on defendant's prior record, which, in addition to the 1985 attempted robbery conviction, included a 1987 conviction for unlawful use of a credit card, a 1999 conviction for aggravated assault/domestic battery, a violation of probation in 2000, a violation of an order of protection in 2000, and a 2003 conviction for battery, and defendant's participation in the offense, a 20-year prison term was appropriate.

"The trial court has no obligation to recite and assign value to each factor presented at a sentencing hearing." *People v. Hill*, 402 Ill. App. 3d 920, 928, 932 N.E. 2d 173 (2010). Rather, "it is presumed that the trial court properly considered all mitigating factors and rehabilitative potential before it; and the burden is on the defendant to affirmatively show the contrary." *People v. Garcia*, 296 Ill. App. 3d 769, 781, 695 N.E.2d 1292 (1998).

Defendant has failed to demonstrate the trial court abused its discretion here. We, therefore, conclude that defendant's

sentence was proper.

CONCLUSION

We affirm defendant's conviction and sentence. In so doing, we conclude that, although the trial court failed to comply with Rule 431(b), the error did not constitute plain error; that the trial judge did not interfere with the selection of a fair and impartial jury; and that the trial court did not abuse its discretion in fashioning defendant's sentence.

Affirmed.