2018 IL App (1st) 152039-U

No. 1-15-2039

Order filed September 18, 2018.

Second Division

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 9682 (02)
	)	
LELAND DUDLEY,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for first degree felony murder is affirmed over defendant's contention that his co-offender's death was not a foreseeable consequence of his burglary offense. Defendant's conviction for aggravated battery is also affirmed over his contention that the State failed to prove beyond a reasonable doubt that he knowingly caused bodily harm to Officer Papin. Furthermore, the trial court did not abuse its discretion in excluding evidence of the Chicago Police Department's general order regarding the use of force against a vehicle. Finally, defendant's forfeited claims are not subject to plain error relief because the evidence in this case was not closely balanced.

¶ 2 Following a jury trial, defendant, Leland Dudley, was found guilty of first degree felony murder (720 ILCS 5/9-1(a)(3) (West 2012)), aggravated battery to a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2012)), burglary (720 ILCS 5/19-1(a) (West 2012)), and possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)). Defendant was sentenced to consecutive prison terms, which included 25 years for his first degree felony murder conviction, 6 years for his aggravated battery conviction and 6 years for his possession of a stolen motor vehicle conviction.

¶ 3 In this direct appeal, defendant argues he was not proved guilty beyond a reasonable doubt of felony murder because the death of his co-offender was an unforeseeable consequence of his burglary offense. In addition, defendant argues he was not proved guilty beyond a reasonable doubt of aggravated battery because the evidence was insufficient to establish that he knowingly caused bodily harm to Officer Papin. Third, defendant argues that the trial court abused its discretion in excluding evidence of the Chicago Police Department's (CPD) general order regarding the use of force against a vehicle. Last, defendant posits several forfeited claims on appeal, which he argues may be reviewed under the plain error doctrine. Namely, defendant argues that (1) the trial court violated Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)), during *voir dire*; (2) the trial court erred in giving Illinois Pattern Jury Instruction, Criminal, No. 7.15 (2012); and (3) the State made improper statements and misstated the law during closing argument. We affirm.

¶ 4 BACKGROUND

¶ 5 Defendant's convictions arose out of the commission of a burglary, after one of defendant's co-offenders, David Strong, was killed during their attempt to escape from the police. Co-defendant John Givens participated in the same burglary commission and was also

convicted of first degree felony murder, aggravated battery to a peace officer, burglary and possession of a stolen motor vehicle. Defendant and co-defendant were tried jointly by a jury.

¶ 6 Briefly stated, the evidence at trial generally showed that around midnight on April 29, 2012, defendant, co-defendant and Strong burglarized an electronics store. Mike's Electronics, the store, owned by Miguel Gutierrez, sold car stereo equipment and was located at 2459 South Western Avenue. At the time of the burglary, the store consisted of a small showroom on the first floor, an attached garage where merchandise could be installed into vehicles, and an apartment on the second floor, which was occupied by Sergio Hernandez.

¶ 7 At trial, Hernandez testified that around midnight on the night of the incident, he was asleep in his apartment when he was awoken by some "thumping" noises and voices coming from the store below. Hernandez called the police, who arrived at the scene "less than a minute" later. Hernandez further testified that when he went downstairs to open the door for the police, he noticed that one of the store's windows was broken. After looking through the window, Hernandez saw three men getting into Gutierrez's minivan inside the store's attached garage.

¶ 8 Hernandez testified that the police officers continuously announced their presence, while trying to open the store's interior door to the garage that had been barricaded shut. Hernandez then saw the three men reverse Gutierrez's van and break through the closed garage door. Hernandez testified that several police officers, who were outside the garage door, began shooting at the van after it hit a police officer. After crashing into Hernandez's truck parked outside, the van came to a stop.

¶ 9 Officer Mendez testified that when he approached the van after it stopped, he saw that the gearshift was still in drive. Officer Curry testified that, after observing that all three men had been shot, he called two ambulances to the scene. Defendant, who was in the driver's seat, had

been shot in the head, shoulders and back. Co-defendant, who was sitting in the rear passenger's seat, had been shot in the arm, legs, chest and neck. Strong, who was sitting in the front passenger's seat, had been shot in the head, chest, arms and legs, and was pronounced dead at the scene.

¶ 10 Gutierrez testified that on the date of the incident, 11 security cameras, located throughout the store and the garage, including the exterior, were currently installed and active. The surveillance footage shown to the jury generally reflected the above-stated events. Specifically, it showed that defendant, co-defendant and Strong took merchandise from the showroom and put it inside Gutierrez's minivan in the garage. The video footage also showed that while the men were taking the merchandise, lights flashed inside the showroom from outside the store, apparently by the police. Subsequently, one of the men hid behind the store's equipment, while the two other men ran from the showroom to the garage. Ultimately, defendant, co-defendant and Strong were inside the garage, attempting to open the garage door. The video footage showed that a police officer approached the garage door outside, and further showed that lights flashed inside the garage. Immediately thereafter, one of the men hid. Officer Lopez testified that, after unsuccessfully trying to open the interior door to the garage, he and Officer Gonzalez kicked a small hole through that door, while continuously yelling, "Chicago police officers, come out, you're surrounded, just come out." Eventually, defendant, co-defendant and Strong got into the van and reversed it through the garage door, where they were met by the police waiting outside.

¶ 11 Officer Papin testified that he was standing directly in front of the garage door when the van crashed through it, but that he had no time to move out of the way. The rear driver's side of the van struck Officer Papin's left hip. Additionally, Officers Lopez, Pratscher, Curry and

Mendez all testified that the van's driver made an "up and down" motion with his right arm, "motioning up by where the gearshift area was," and that the van lurched forward towards the other officers. Officer Lopez added that the van was moving at a high rate of speed. Officer Lopez, believing, albeit incorrectly, that he saw an officer "roll underneath the wheels of [the van]," shot at the van's driver six times to prevent the van from moving forward. Officer Pratscher similarly testified that he was standing to the right of the garage when the van crashed through the door and hit Officer Papin. Believing that Officer Papin was trapped under the van, Officer Pratscher shot at the van's driver 11 times to stop the van from moving. Officer Curry testified that he also saw the van strike Officer Papin and shot at it to stop it from moving. According to Officer Mendez, he attempted to fire his weapon to stop the van, but his weapon malfunctioned.

¶ 12 Strong's autopsy revealed he had been shot nine times, and the cause of death was multiple gunshot wounds, in the manner of homicide. The trial court denied defendant's motion for a directed finding and the defense rested without presenting any evidence. The jury found defendant guilty of first degree felony murder predicated on his burglary offense, aggravated battery to a peace officer, burglary and possession of a stolen motor vehicle. The trial court merged defendant's burglary conviction into his felony murder conviction. Subsequently, the trial court denied defendant's motion for a new trial and sentenced defendant to 25 years imprisonment for felony murder, 6 years for aggravated battery and 6 years for possession of a stolen motor vehicle. The trial court also denied defendant's motion to reconsider his sentence. Defendant now appeals.

¶ 13 ANALYSIS

¶ 14 I. First Degree Felony Murder

¶ 15 In this direct appeal, defendant contests only his convictions for first degree felony murder and aggravated battery. First, he argues that his felony murder conviction should be reversed because he was not proven guilty beyond a reasonable doubt. Specifically, defendant argues that the evidence was insufficient to establish that Strong's death was a direct and foreseeable consequence of his burglary offense because it was directly attributable to the police shooting.

¶ 16 When reviewing a challenge to the sufficiency of the evidence on appeal, we ask whether, after viewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *People v. Mefford*, 2015 IL App (4th) 130471, ¶ 45. In doing so, we allow all reasonable inferences in favor of the State. *Id.* Furthermore, a conviction will not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Id.*; *People v. Martinez*, 342 Ill. App. 3d 849, 855-56 (2003).

¶ 17 First degree felony murder is defined under section 9-1(a)(3) of the Illinois Code of Criminal Procedure (Code) (720 ILCS 5/9-1(a)(3) (West 2012)), which provides that "[a] person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death *** he is attempting or committing a forcible felony other than second degree murder." Section 2-8 of the Code (720 ILCS 5/2-8 (West 2012)), defines burglary as a forcible felony for purposes of liability under the felony murder statute.

¶ 18 In determining whether the felony murder statute applies, Illinois adheres to the proximate cause theory of liability. *People v. Hudson*, 222 Ill. 2d 392, 401 (2006); *People v. Lowery*, 178 Ill. 2d 462, 465 (1997). Under that theory, liability attaches for *any* death

proximately resulting from a defendant's unlawful activity. See *Martinez*, 342 Ill. App. 3d at 855 (stating that, due to the extremely violent nature of felony murder, we seek the broadest bounds for the attachment of criminal liability). Simply put, a defendant is liable for felony murder if the decedent's death is a direct and foreseeable consequence of the defendant's underlying felony. See *Lowery*, 178 Ill. 2d at 470 (citing *People v. Payne*, 359 Ill. 246, 255 (1935) (stating that "[a] felon is liable for those deaths which occur during a felony and which are the foreseeable consequences of his initial criminal acts")).

¶ 19 It is well-settled under Illinois law that when a defendant commits a forcible felony, he need not anticipate the precise sequence of events that lead to the homicide, in order to be liable for felony murder. See *Lowery*, 178 Ill. 2d at 467 (stating that when a defendant commits a forcible felony, he is liable for *any* death, which by direct and almost inevitable sequence, results from that felony). It is immaterial as to whether the killing was intentional or accidental, or was committed by someone other than the defendant. See *Martinez*, 342 Ill. App. 3d at 854-55 (citing *People v. Dekens*, 182 Ill. 2d 247, 252 (1998) (stating that application of the felony murder doctrine does not depend on the guilt or innocence of the person killed during the felony or on the identity of the person whose act caused the death)). Additionally, a defendant will not be relieved of liability for the death of a co-felon that is directly attributable to a third-party who is resisting the felony. *Hudson*, 222 Ill. 2d at 402. Illinois courts have emphasized that encountering resistance during the commission of a forcible felony, including the use of deadly force to prevent a defendant's escape, is a direct and foreseeable consequence of that forcible felony. See *People v. Hickman*, 59 Ill. 2d 89, 94 (1974) (stating that those who commit forcible felonies know they may encounter resistance, as to both their affirmative actions and any

subsequent escape). Furthermore, it is well-settled that the period of time and activities involved in a defendant's escape to a place of safety are part of the crime itself. *Id.*

¶ 20 Here, the evidence satisfied the felony murder statute. It is undisputed that defendant committed burglary, which is a forcible felony under Illinois law. 720 ILCS 5/2-8 (West 2012). In addition, Strong's death occurred during defendant's burglary commission because he was shot during their attempt to escape from the police. Furthermore, Strong would not have been killed had he, defendant and co-defendant, not carried out that burglary. Accordingly, defendant is subject to liability under the statute.

¶ 21 To the extent that defendant argues he is not liable because Strong's death is directly attributable to the police shooting, his argument improperly rests on an agency theory of liability for felony murder that our supreme court has not adopted. See *Lowery*, 178 Ill. 2d at 465, 471 (stating that the purpose of the felony murder statute would be defeated if resistance, even in the form of deadly force, could be considered a sufficient intervening circumstance to terminate a defendant's liability for felony murder). Our supreme court has unequivocally held that Illinois adheres to the proximate cause theory of liability. *Id.* at 465; *Hudson*, 222 Ill. 2d at 401. We therefore decline to abandon the proximate cause theory of liability for felony murder, as defendant has suggested. See *Lowery*, 178 Ill. 2d at 467-68.

¶ 22 We also reject defendant's claim that Strong's death was not a foreseeable consequence of his burglary offense because he was unaware that the police were outside the store, and given that defendant and his co-offenders were unarmed, it was not reasonably foreseeable that the police would use deadly force in shooting at the van. First, Hernandez testified that the police continuously announced their presence after they arrived. More notably, the video footage showed that lights flashed inside the showroom and the garage, and in both instances, at least one

of the offenders hid. Finally, before defendant drove the van through the garage door, Officers Lopez and Gonzalez broke a hole through the interior door to the garage, and continuously yelled "Chicago police officers, come out, you're surrounded, just come out." Thus, defendant had reason to know that once he drove the van through the garage door, a police officer would be in the vehicle's path. Moreover, defendant disregards that the van, itself, was a deadly weapon, inviting the police to resist its force with their own deadly weapons. See *People v. Schmidt*, 392 Ill. App. 3d 689, 704 (2009) (citing *People v. Belk*, 203 Ill. 2d 187, 196 (2003)).

¶ 23 With that in mind, we categorically reject defendant's vacuous contention that no reasonable person could have foreseen that, in reversing a van through a locked garage door during a burglary commission, he would be met with police resistance using deadly force. See *Martinez*, 342 Ill. App. 3d at 856 (in affirming the defendant's first degree felony murder conviction of his co-offender, who was shot and killed during their residential burglary commission by a victim resisting the crime, the court found that such resistance was an entirely foreseeable consequence of the burglary); *Hickman*, 59 Ill. 2d at 89, 94-95 (in affirming the defendant's conviction for first degree felony murder of a police officer, who was shot and killed during the defendant's burglary commission by another officer resisting the escape of the fleeing burglars, the court found that such resistance was a direct and foreseeable consequence of the burglary).

¶ 24 Based on the plain language of the statute and our determination that it applies in this case, defendant's claim that his felony murder conviction is not rationally related to the purpose of the statute also fails. See *Belk*, 203 Ill. 2d at 192 (stating that the purpose behind the felony murder statute is to limit the violence that accompanies forcible felonies, by automatically subjecting felons to a murder prosecution charge when someone is killed during the commission

of a forcible felony). It is equally consistent with reason and sound public policy to hold that when a felon commits a forcible felony that sets into motion a chain of events, which were or *should* have been within his contemplation when the motion was initiated, he should be held responsible for those deaths that occur as a result of the underlying felony. *Hudson*, 222 Ill. 2d at 402 (citing *Lowery*, 178 Ill. 2d at 467). Defendant's felony murder conviction furthers the purpose of the statute because defendant committed a forcible felony and Strong was killed as a result of the violence accompanying that felony.

¶ 25 We also conclude that the trial court did not abuse its discretion in excluding evidence of the CPD general order during cross-examination of the police officers. *People v. Hill*, 2014 IL App (2d) 120506, ¶¶ 45, 47; see *People v. Hiller*, 92 Ill. App. 3d 322, 326 (1980) (stating that evidentiary rulings and the scope of cross-examination rest within the sound discretion of the trial judge whose determinations will not be reversed on appeal absent a clear abuse of discretion). That order generally provides that, when confronted by an oncoming vehicle, officers are authorized to fire at it to prevent death or great bodily harm to themselves or others, but if it is known that the vehicle is the only force being used, officers should move out of the vehicle's path.

¶ 26 According to defendant, a police officer following that order would not have fired at the van, making the order relevant because it showed that it was unforeseeable to defendant that the police would shoot in this instance and that someone would be killed. *Cf. People v. Sago*, 2016 IL App (2d) 131345, ¶ 12 (where the defendant claimed that the trial court's jury instructions, which allowed the jury to consider an officer's right to use deadly force, were misleading because they impermissibly shifted the jury's focus from determining whether the *defendant's* robbery offense proximately caused the decedent's death, to instead, determining whether the

officer's actions in responding to the burglary were reasonable). Defendant further argues that the order was relevant because it showed a bias and/or motive for the officers to testify falsely, that is, to avoid any consequences for violating the order. We disagree.

¶ 27 The issue here is whether Strong's *death* was a foreseeable consequence of defendant's burglary offense, not whether the police *shooting* was reasonably foreseeable to defendant. More importantly, defendant does not contend that he was even aware of the CPD order at the time that he committed the burglary, or that it could have impacted what was foreseeable to him. See *Hill*, 2014 IL App (2d) 120506, ¶ 50 (stating that it is well-settled that proffered evidence is admissible if it tends to prove or disprove the offense charged and that evidence is only relevant if it tends to make the question of guilt more or less probable). The order is also not relevant to show a bias or motive for the officers to testify falsely simply because it "*might* subject [them] to civil and criminal liability for Strong's death." Proffered evidence purporting to reveal bias or motive, which is based on pure speculation, is inadmissible. See *People v. Cameron*, 189 Ill. App. 3d 998, 1002-03 (1989); see also *Hiller*, 92 Ill. App. 3d at 327.

¶ 28 We conclude, therefore, that the trial court did not abuse its discretion in excluding the evidence on grounds of irrelevancy. It is entirely within the discretion of the trial court to reject evidence if it has little probative value due to its remoteness or uncertainty. See *Hill*, 2014 IL App (2d) 120506, ¶ 50.

¶ 29 II. Aggravated Battery

¶ 30 Next, defendant argues that his aggravated battery conviction should be reversed because the evidence was insufficient to establish that he knowingly caused bodily harm to Officer Papin. We disagree.

¶ 31 When reviewing a challenge to the sufficiency of the evidence, once the jury has determined that proof has been made, we will not overturn that decision and set aside a conviction unless, after examining the evidence in its light most favorable to the State, we conclude that no reasonable trier of fact could have found that proof had been made. *Cameron*, 189 Ill. App. 3d at 1007.

¶ 32 A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he knows the individual battered to be a peace officer. 720 ILCS 5/12-3.05(d)(4) (West 2012). A person acts knowingly or with knowledge of (1) the "nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist" or (2) the "result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2012). "Knowledge of a material fact includes awareness of the substantial probability that the fact exists." 720 ILCS 5/4-5(a) (West 2012). While proving a defendant's state of mind is difficult, an inference arises that a person intends the natural and probable consequences of his actions. *Cameron*, 189 Ill. App. 3d at 1007.

¶ 33 In his brief, defendant states that "[a]lthough the [surveillance] video indicates that one of the men saw someone outside the storefront, there is no indication that the men knew the *extent* of the police presence outside the garage." (Emphasis added.) Thus, defendant apparently concedes that he and/or his co-offenders were aware of some police presence outside the store and the garage. Notwithstanding, the surveillance videos also showed that defendant, co-defendant or Strong hid after lights flashed inside the *garage*. This also supports the jury's apparent finding that defendant was aware that the police were outside the garage. Furthermore,

as stated, Officers Lopez and Gonzalez broke a hole through the interior door to the garage, while continuously announcing that defendant and his co-offenders were surrounded by the police. This, alone, supports the jury's apparent finding that defendant was aware that the police were outside the garage before he drove the van through it. Given the foregoing, the evidence supported the jury's determination that defendant was aware that, in driving through the garage door, it was practically certain that a police officer would be hit.

¶ 34 We reject defendant's reliance on *Schmidt*, where the court reversed four of the defendant's aggravated battery convictions, finding that his conduct was reckless, rather than knowing. 392 Ill. App. 3d at 707. Specifically, the court found that the defendant's conduct with respect to those convictions was reckless because he was intoxicated, was driving too fast, and attempted to slow down in an effort to avoid hitting the family in the crosswalk. *Id.* at 706-07. Defendant's specious argument ignores, however, that *Schmidt* also affirmed the defendant's aggravated battery conviction for hitting a police officer with the side mirror on the stolen SUV he was driving. *Id.* at 705. The evidence established that the defendant was aware of the officer's location next to the vehicle and his status as a police officer, and it was practically certain that the officer would be hit. *Id.* Accordingly, we affirm defendant's aggravated battery conviction.

¶ 35 III. Forfeited Contentions

¶ 36 Next, defendant argues that his convictions should be reversed, and the cause remanded for a new trial, because the trial court violated Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)), in questioning the venire. Our review of these questions is *de novo*. *People v. Belknap*, 2014 IL 117094, ¶ 41.

¶ 37 At the time of defendant's trial, Rule 431(b) provided that during the *voir dire* examination, the trial court must ask each potential juror, individually or as a group, whether that juror understands and accepts each of 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." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 38 Defendant now contends, and the State does not dispute, that the trial court failed to ask the potential jurors whether they both understood and accepted the principles set forth in Rule 431(b). See *Belknap*, 2014 IL 117094, ¶ 46 (stating that the language of Rule 431(b) is clear and unambiguous and the court's failure to ask whether the potential jurors both understand and accept the principles constitutes error). As defendant acknowledges, however, he did not preserve this challenge by objecting at trial or raising the issue in a posttrial motion, thereby forfeiting the issue on appeal. See *id.* ¶ 47. Nonetheless, defendant argues that we may review his claim under the plain error doctrine. *Id.*

¶ 39 Under the plain error doctrine, we may review forfeited claims of error, if (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error was so fundamental and of such magnitude that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of evidence. *Id.* ¶ 48. First, however, we must

determine whether a clear and obvious error occurred at trial. *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 40 Here, error clearly occurred because the trial court did not ask whether the potential jurors both understood and accepted the Rule 431(b) principles, but instead, asked only whether they had a "disagreement" or "problem" with each of the principles, and noted that "[n]o hands [were] raised." See *People v. Wilmington*, 2013 IL 112938, ¶ 32 (stating that, while the trial court's asking for disagreement, and getting none, is equivalent to juror acceptance of the principles, the court's failure to ask jurors if they understood the Rule 431(b) principles, was error in and of itself). Having determined that error occurred, we now consider defendant's argument that this amounted to first-prong plain error.

¶ 41 Under the first-prong, prejudice is not presumed, that is, the burden is on the defendant to show that the error was prejudicial. *Sebby*, 2017 IL 119445, ¶ 51. Simply put, the evidence must be so closely balanced, that the jury's guilty verdict may have resulted from the error and not the evidence. *People v. Herron*, 215 Ill. 2d 167, 178 (2005). We evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case. See *Sebby*, 2017 IL 119445, ¶ 53 (stating that reviewing courts assess the evidence on the elements of the charged offenses, along with any evidence regarding the witnesses' credibility).

¶ 42 Notwithstanding clear error, the evidence in this case was not closely balanced because it is undisputed that defendant committed burglary, stole the van and subsequently drove it through the closed garage door in an attempt to escape, which was corroborated by the store's surveillance videos. The jury was entitled to determine that such actions would lead the police to shoot, and no evidence otherwise suggested that the police would not shoot under those circumstances. *Cf. Sebby*, 2017 IL 119445, ¶¶ 62-63 (holding that the evidence was closely

balanced because the guilty verdict necessarily involved a contest of credibility where both parties presented opposing versions of the events, without providing any extrinsic evidence corroborating or contradicting either version). We reiterate that, even if the excluded general order indicated that the police would not shoot under these circumstances, defendant does not claim to have been aware of that order, and under no circumstances would it have impacted what was foreseeable to him.

¶ 43 Because the evidence in this case was not closely balanced, defendant failed to show that the jury's guilty verdict may have resulted from the Rule 431(b) error and not the evidence. Accordingly, we find no plain error.

¶ 44 Based on the foregoing, defendant's claim that the trial court erred because it improperly instructed the jury on causation is also forfeited and not sufficient to qualify as first-prong plain error. See *Mefford*, 2015 IL App (4th) 130471, ¶¶ 58-59; see also *Belknap*, 2014 IL 117094, ¶ 48 (stating that first-prong plain error relief is only available upon a finding of closely balanced evidence).

¶ 45 Forfeiture aside, the trial court properly submitted Illinois Pattern Jury Instructions, Criminal, Nos. 7.15 and 7.15A (2012) (hereafter, IPI Criminal Nos. 7.15 and 7.15A), because defendant was charged with felony murder, and causation was an issue. See IPI Criminal No. 7.15, Committee Comments (stating that "when felony murder (720 ILCS 9-1(a)(3)) is charged and causation is an issue, Instruction 7.15A should also be given"); IPI Criminal No. 7.15A, Committee Comments (stating that "[w]hen causation is an issue under section 720 ILCS 5/9-1(a)(1) (intentional murder), 720 ILCS 5/9-1(a)(2) (knowing murder) or 720 ILCS 5/9-3(a) (reckless homicide) as well as felony murder[,] then Instruction 7.15 *should also be given*"

(emphasis added)); *People v. Walker*, 2012 IL App (2d) 110288, ¶ 22 (stating that IPI Criminal No. 7.15 is the proper instruction to be given for the offense of felony murder).

¶ 46 Furthermore, defendant's claim that he is entitled to a new trial because the State made improper statements and misstated the law during closing argument is also forfeited and not subject to first-prong plain error relief. *Herron*, 215 Ill. 2d at 178-79. Finally, defendant's claim that trial counsel was ineffective in failing to pursue those issues below also fails. See *Mefford*, 2015 IL App (4th) 130471, ¶ 81 (stating that a defendant who alleges ineffective assistance of counsel must demonstrate that, but for his counsel's errors, the outcome would have been different). For the same reasons we determined that the evidence was not closely balanced, we find that none of the asserted errors would have changed the result here.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we affirm the trial court's judgment.

¶ 49 Affirmed.

SUPREME COURT OF ILLINOIS

THURSDAY, JANUARY 31, 2019

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

122096 - People State of Illinois, respondent, v. Gregory Rollins, petitioner. Leave to appeal, Appellate Court, First District. 1-15-0103
Petition for Leave to Appeal Denied.

122127 - People State of Illinois, respondent, v. Rowanne F. Marquez, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-15-0254
Petition for Leave to Appeal Denied.

122270 - People State of Illinois, respondent, v. Weldon Wiley, petitioner. Leave to appeal, Appellate Court, First District. 1-15-0902
Petition for Leave to Appeal Denied.

122311 - People State of Illinois, respondent, v. Sherman K. Bragg, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-14-0800
Petition for Leave to Appeal Denied.

122396 - People State of Illinois, respondent, v. Will Taylor, petitioner. Leave to appeal, Appellate Court, First District. 1-15-0849
Petition for Leave to Appeal Denied.

122416 - People State of Illinois, respondent, v. Leon Buchanan, petitioner. Leave to appeal, Appellate Court, First District. 1-15-0592
Petition for Leave to Appeal Denied.

122509 - People State of Illinois, respondent, v. Marlon Barksdale, petitioner. Leave to appeal, Appellate Court, First District. 1-15-0498
Petition for Leave to Appeal Denied.

122538 - People State of Illinois, respondent, v. Richard Townsel, petitioner. Leave to appeal, Appellate Court, First District. 1-15-1353
Petition for Leave to Appeal Denied.

124235 - People State of Illinois, respondent, v. Walter L. Cunningham, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-15-0395
Petition for Leave to Appeal Denied.

124236 - Green Tree Servicing, LLC, respondent, v. Janice A. Karella, petitioner. Leave to appeal, Appellate Court, Second District. 2-17-0423
Petition for Leave to Appeal Denied.

124237 - People State of Illinois, respondent, v. Leland Dudley, petitioner. Leave to appeal, Appellate Court, First District. 1-15-2039
Petition for Leave to Appeal Denied.

124239 - Kathryn Tsichlis, petitioner, v. Country Life Insurance Company, respondent. Leave to appeal, Appellate Court, First District. 1-17-0826
Petition for Leave to Appeal Denied.

124240 - People State of Illinois, respondent, v. Henry Mack, petitioner. Leave to appeal, Appellate Court, Second District. 2-15-1198
Petition for Leave to Appeal Denied.

124243 - Larry Dawson, petitioner, v. City of Geneseo, respondent. Leave to appeal, Appellate Court, Third District. 3-17-0625
Petition for Appeal as a Matter of Right Denied.

Kilbride, J. took no part.

124244 - Tarek Farag, petitioner, v. Southwest Airlines Company, respondent. Leave to appeal, Appellate Court, Second District. 2-18-0113
Petition for Leave to Appeal Denied.

124245 - People State of Illinois, respondent, v. Darren Denson, petitioner. Leave to appeal, Appellate Court, Second District. 2-15-1206
Petition for Leave to Appeal Denied.

124246 - People State of Illinois, respondent, v. Craig Mrazek, petitioner. Leave to appeal, Appellate Court, First District. 1-14-2975
Petition for Leave to Appeal Denied.

Owen

SUPREME COURT OF ILLINOIS

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January 31, 2019

In re: People State of Illinois, respondent, v. Leland Dudley, petitioner.
Leave to appeal, Appellate Court, First District.
124237

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/07/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

Additional material from this filing is available in the Clerk's Office.