NOTICE
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2011 IL App (4th) 100474-U

Filed 12/19/11

NO. 4-10-0474

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ANTHONY MINES,	)	No. 09CF113
Defendant-Appellant.	)	
	)	Honorable
	)	John E. Childress,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the defendant's 21-year sentence for aggravated battery of a child, concluding that (1) the defendant had forfeited his argument regarding the trial court's response to a question the jury asked during its deliberations and (2) application of the plain-error doctrine was not appropriate because no error occurred.

¶ 2 Following a March 2010 trial, a jury convicted defendant, Anthony Mines, of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2008)). In May 2010, the trial court sentenced defendant to 21 years in prison.

¶ 3 Defendant appeals, arguing that he was denied a fair trial because the trial court responded improperly to an ambiguous question the jury asked during its deliberations. Because we conclude that (1) defendant has forfeited his argument and (2) application of the plain-error doctrine is not appropriate because no error occurred, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2009, the State charged defendant with aggravated battery of a child, alleging that he knowingly caused great bodily harm by inflicting brain trauma, bruising, and rib fractures upon A.B., who was 23 months old at the time the injuries were inflicted.

¶ 6 At a March 2010 jury trial, the State presented evidence from various medical professionals, a police officer, and A.B.'s biological mother, regarding the discovery, nature, severity, and timing of the injuries A.B. suffered. Defendant presented testimony of his nonviolent character, which was provided by A.B.'s biological mother and maternal grandmother. Thereafter, (1) the parties presented their respective closing arguments, (2) the trial court instructed the jury, and (3) the jury began its deliberations.

¶ 7 During the jury's deliberation, the trial court informed the parties that it had received a note from the jurors, which prompted the following discussion:

> "THE COURT: *** I have received a note that carries with it two questions. The first is:
>
> > 'Can [the trial court] define for the jury the difference between great bodily harm and bodily harm;' and, the second question reads: 'Does either definition refer to intent?' "

¶ 8 The parties and the trial court agreed that with regard to the jury's first question, the court would respond that it was up to the jury to distinguish between great bodily harm and bodily harm. The court then asked the parties whether they concurred with its intent to answer the jury's second question by stating that neither definition refers to intent. The following

exchange occurred:

> "[THE PROSECUTOR]: When [the jury asks] a question of law, the Court must try to be as accurate as possible and the answer is no.
>
> * * *
>
> [DEFENSE COUNSEL]: *** I don't think the Court should be placed in a position of advising the jury as to additional instructions, which is what [the Court is] doing by giving a definition.
>
> I'm not suggesting [the Court] give the wrong definition, but that I think it's improper for [the Court] to start advising at this stage after [the jury has been] instructed as to the law, and I would say *** whatever way the Court might phrase it, could say [the jury has] been instructed as to the law and [the Court] cannot give [the jury] any further definitions.
>
> That would be my suggestion and my objection is [that the Court] should not answer [the jury's second question] one way or another.
>
> THE COURT: *** [Defense Counsel], do you take the position that *** the terms[,] great bodily harm[,] or[,] bodily harm[,] do refer to intent in any way?
>
> [DEFENSE COUNSEL]: The jury has been instructed ***

that the Defendant has committed these acts knowingly *** and *** knowingly is not intentionally. *** Have I answered the Court's question?

THE COURT: No ***. [The Court thinks] the question asks whether there is a connection between great bodily harm and bodily harm and the [m]ens rea for the offense.

[The Court thinks] that's what the question asks, and [the Court does not] see a possible connection, so that's [the Court's] question to you ***.

Do you see a possible connection between the two?

[DEFENSE COUNSEL]: No, your honor.

* * *

[THE PROSECUTOR]: Judge, my concern is that the trend of the last few years, unlike many years ago where you just said you've got the law and keep continuing to deliberate, if [a jury asks] a question regarding a point of law, it's almost mandated *** to answer that question of law.

If [the jury asks the Court], ["D]id so and so say this[?]", or something like that, [the Court] can't [answer] it.

I would be concerned if [the Court does not] answer the question that we would have trouble. I think that's the correct answer. ***.

* * *

> THE COURT: [The Court] understands [defense counsel's] objection *** and it's noted for the record, and [the Court] will overrule it, but [the Court] will indicate to [the jurors] that neither phrase refers to intent, but [the Court] will refrain, and [the Court thinks] properly so, from defining *** in any way[,] great bodily harm[,] and[,] bodily harm[,] and push it right back for [the jurors'] consideration.]
>
> [DEFENSE COUNSEL]: My objection is shown as to the second question ***[.]
>
> THE COURT: It most certainly is[.]"

¶ 9 The trial court then provided the jury the following written response: "It is for the jury to determine the application of the terms 'great bodily harm' and 'bodily harm.' Neither term refers to intent." The jury later convicted defendant of aggravated battery of a child.

¶ 10 In April 2010, defendant filed a posttrial motion, alleging, in pertinent part, the following:

> "[T]he jury was improperly instructed as to the law in that the word knowingly as defined in the instruction also means intent. By this definition the Court ruled out any consideration that the injuries were accidental or the result of previous medical history and did not comply with criminal law that the defendant must have intent which can be called by many names such as 'knowingly.'

The Court's response made the conviction a certainty and denied to the Defendant his right to a fair trial and due process of law."

Following a May 2010 hearing, the court denied defendant's posttrial motion and sentenced him to 21 years in prison.

¶ 11 This appeal followed.

¶ 12 II. DEFENDANT'S CLAIM HE WAS DENIED A FAIR TRIAL

¶ 13 Defendant appeals, arguing that he was denied a fair trial because the trial court responded improperly to an ambiguous question the jury asked during its deliberations. Specifically, defendant contends that the court's answer to the jury's second question was an incomplete statement of the law in that the second question, as it relates to the jury's first question, can be interpreted in several different ways. Thus, defendant asserts that although the court's response to the jury's second question was "technically correct," it "could have misled the jury depending upon what they were asking."

¶ 14 The State responds that defendant has forfeited the contention he now makes on appeal because he neither (1) objected under this theory at his trial nor (2) raised this specific issue in his posttrial motion. In particular, the State claims that defendant's only argument concerned his objection that the trial court should not specifically address the jury's second question because the jurors had already been adequately instructed. Consistent with that argument, defendant claimed in his posttrial motion that "the jury was improperly instructed as to the law in that the word knowingly as defined in the instruction also means intent." We agree with the State.

¶ 15 " 'To preserve an alleged error for review, a defendant must raise a timely

objection at trial and raise the error in a written posttrial motion.' " *People v. Kitch*, 239 Ill. 2d 452, 460, 942 N.E.2d 1235, 1240 (2011) (quoting *People v. Cosby*, 231 Ill. 2d 262, 271, 898 N.E.2d 603, 609 (2008)). Failure to object at trial to the alleged error and raise that same issue in a posttrial motion ordinarily results in forfeiture of the issue on appeal. *Kitch*, 239 Ill. 2d at 460-61, 942 N.E.2d at 1240.

¶ 16 In this case, the trial court engaged defendant in substantial conversation regarding his objection to the court's proposed answer to the jury's second question. During that colloquy, the court provided defendant ample opportunity to state his objection and the corresponding rationale for his position. In this regard, defendant's only objection was that the court should not specifically answer the jury's question regarding whether the definitions of "bodily harm" and "great bodily harm" refer to intent because the court had adequately instructed the jury.

¶ 17 Accordingly, defendant failed to object at trial to the issue he now contends on appeal and did not raise that identical contention or similar claim in his posttrial motion. See *People v. Mohr*, 228 Ill. 2d 53, 64-65, 885 N.E.2d 1019, 1025 (2008) (concluding that the defendant's objection at his trial to a jury instruction was "close enough" to the claim he raised in his posttrial motion and on appeal to survive forfeiture); see also *People v. Williams*, 384 Ill. App. 3d 327, 337, 892 N.E.2d 620, 629 (2008) (where this court concluded that the defendant forfeited his argument that the trial court's response to the jury's question was inconsistent with his indictment because the defendant's objections at his trial were not on similar grounds).

¶ 18 Despite his forfeiture, defendant contends that his procedural default may be excused by the plain-error doctrine of Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999).

Because we conclude that no error occurred, we disagree.

¶ 19 Illinois Supreme Court Rule 615(a), entitled "Insubstantial and Substantial Errors on Appeal," provides, as follows:

> "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."

¶ 20 In *People v. Bannister*, 232 Ill. 2d 52, 65, 902 N.E.2d 571, 580-81 (2008), the supreme court provided the following guidance regarding the applicability of the plain-error doctrine:

> "The doctrine serves as a narrow and limited exception to the general [rule of procedural default]. [Citations.] This court will review unpreserved error when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. [Citations.] When a defendant fails to establish plain error, the result is that the procedural default must be honored." (Internal quotations omitted.)

"The term 'plain' as used in the plain-error doctrine is synonymous with 'clear' and is the equivalent of 'obvious.' " *People v. Givens*, 237 Ill. 2d 311, 329, 934 N.E.2d 470, 481 (2010). "[T]he usual first step in plain-error analysis is to determine whether any error occurred." *People*

v. Bowens, 407 Ill. App. 3d 1094, 1108, 943 N.E.2d 1249, 1264 (2011). However, when the record clearly shows that plain error did not occur, we will reject it without further analysis. *Id.*

¶ 21 Although defendant asserts that the plain error-doctrine applies because the evidence presented at his trial was closely balanced, we decline to address defendant's assertion because we conclude that no "clear" or "obvious" error occurred. In this case, defendant does not claim that the trial court's answers to the jury's questions were incorrect but instead speculates that although the court's response was "technically correct," it "could have misled the jury" based on defendant's perceived interrelationship between the jury's two questions. Such speculation regarding the jury's underlying rationale for its questions, however, does not result in the clear or obvious error sufficient to prompt plain-error review.

¶ 22 Here, we give the words that the jury used to craft its questions their plain, unambiguous meaning and commend the court for appropriately responding to the jury's second inquiry. See *People v. Griffin*, 368 Ill. App. 3d 369, 373, 857 N.E.2d 889, 894 (2006) (a trial court has a duty to provide instructions when the jury has posed an explicit question or requested clarification on a point of law arising from facts about which there is confusion). Accordingly, because no error occurred, we reject defendant's assertion that his claim is subject to plain-error review.

¶ 23 In concluding, we note that given the limited issues that the State can appeal in criminal proceedings, we suggest that a better practice to employ when the trial court is faced with a question from the jury is to first address the defendant and inquire how the defendant would prefer to proceed in responding to the jury's inquiry. The court should solicit the defendant's preference before the court (1) states its preferred course of action or (2) inquires as

to how the State would prefer to proceed. In so doing, the court may discover that the defendant's preference is in accord with the court's, which would eliminate a defendant's objections at trial and the issue on appeal that may occur as a consequence.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 assessment against defendant as costs of this appeal.

¶ 26 Affirmed.