

NOTICE

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NO. 5-09-0325

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 06-CF-1235
)	
KARESON G. CHAPMAN,)	Honorable
)	Milton S. Wharton,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Donovan and Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: The defendant forfeited his claim that the trial court improperly responded to notes the jury sent out during its deliberations, and forfeiture aside, the claim was without merit.

A St. Clair County jury found the defendant, Kareson G. Chapman, guilty of second-degree murder (720 ILCS 5/9-2(a) (West 2006)), armed violence predicated on aggravated battery (720 ILCS 5/12-4(a), 33A-2(b) (West 2006)), and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)). On appeal, the defendant argues that because the trial court improperly responded to a series of questions that the jury posed during its deliberations, we should reverse his murder conviction and remand his cause for a new trial. For the reasons that follow, we affirm.

BACKGROUND

On July 23, 2006, after spending the evening watching a baseball game at Lincoln Park in East St. Louis, the defendant, Carlos Hopson, and a third man known as "Jay-Roll" went to the Norman Owens housing project, colloquially known as "the hole." In a parking

lot at the hole, the defendant had words with Kovoshi Darden and Kovoshi's brother, Tanario Darden. The defendant, Hopson, and Jay-Roll then left in the defendant's Chevrolet Tahoe. The trio later went to a nearby liquor store, where the defendant again encountered the Darden brothers. The defendant and Kovoshi argued further, and the defendant ultimately shot and killed Kovoshi and shot and injured Tanario. Kovoshi was shot once in the right side of his chest, once in the right upper arm, and twice in the left forearm. The bullet that entered his chest penetrated his heart and aorta and caused him to bleed to death. Kovoshi had a blood-alcohol concentration of .111 when he died, and he also had crack cocaine on his person. Tanario was shot once in the back/buttocks and was treated at a local hospital. Five 9-millimeter shell casings were among the pieces of physical evidence recovered at the crime scene, but no guns were ever found.

On the afternoon following the shooting, the defendant "turned himself in" and agreed to speak with case investigators about what had occurred. When questioned, the defendant advised that the events leading up to the shooting at the liquor store had begun earlier at the hole. The defendant stated that at the hole, he and Tanario had been civilly discussing a monetary debt that Tanario owed him when Kovoshi walked up with some friends, and "the whole situation changed." The defendant stated that Kovoshi was drunk and had vulgarly threatened him. The defendant further stated that Kovoshi and Tanario both had handguns. The defendant indicated that Tanario's gun was a black revolver and that Kovoshi's was a small black semiautomatic. Indicating that he was not looking for trouble, the defendant explained that he and Hopson had left the hole in the defendant's Tahoe but had later run into Kovoshi and Tanario at the liquor store across the street. The defendant advised that at the liquor store, he had attempted to peacefully resolve the situation with Kovoshi but that Kovoshi was belligerent and had flashed a gun at him. The defendant claimed that he thought Kovoshi and Tanario were going to kill him and that when it appeared to him that

they were going for their guns, he pulled a silver 9-millimeter pistol from his back pocket and started firing. The defendant advised that he had shot Kovoshi first and had then fired at Tanario as Tanario was running away. He then shot Kovoshi again to ensure that he was incapacitated. The defendant stated that his 9-millimeter pistol had been loaded with only five rounds and that he had fired all five. While fleeing the scene, he dropped the gun by a fence across the street. When asked, the defendant admitted that he might have overreacted.

At the defendant's trial, accounts of what occurred on the night in question varied by witness. Hopson testified that after watching the baseball game and drinking gin for approximately two hours, he and the defendant had headed to the hole. When they arrived, the defendant exited the Tahoe, while Hopson stayed back with "the music up." Several minutes later, a girl approached and told Hopson that the defendant was "down there arguing" with someone. Hopson immediately proceeded to the defendant's location and saw him arguing with Kovoshi and Tanario. Hopson testified that the defendant had not acted aggressively and that Kovoshi had done most of the arguing. Hopson further testified that Kovoshi was known to carry a gun and had a reputation as a "street fighter" and a "bully." When the argument got "heated" and Kovoshi and the defendant started "calling each other names," Hopson and Tanario intervened and pulled Kovoshi and the defendant away from each other. Hopson, the defendant, and Jay-Roll then left in the defendant's Tahoe, Kovoshi left in his van, and "Tanario walked off." Hopson testified that other than himself, Kovoshi, Tanario, and the defendant, no one else was in the immediate vicinity during the altercation. He testified that he never saw a gun during the argument, but he admitted that he did not know what had taken place while he was sitting in the Tahoe. Hopson also testified that the defendant was crying and upset after the incident.

Hopson testified that he, Jay-Roll, and the defendant later went to the liquor store across the street from the hole and that the defendant parked the Tahoe on the side of the

store. Meanwhile, Kovoshi had driven to the same liquor store and had parked his van in front. Hopson stated that while the defendant waited outside the store by the front door, he had gone inside and purchased another bottle of gin, the cost of which he and the defendant had split. As the defendant and Hopson were subsequently walking back to the Tahoe, Kovoshi appeared, and he and the defendant started arguing again. Insults were exchanged, a crowd gathered, and Tanario eventually showed up at the scene. Hopson testified that Kovoshi had lifted up his shirt to flash a handgun while arguing with the defendant and that while the defendant was trying to peacefully resolve the situation, "Kovoshi wouldn't leave it alone." When Kovoshi subsequently lifted up his shirt as if he were "going for a gun," the defendant pulled a gun and started shooting. At that point, Hopson "took off" and drove away in the Tahoe. Hopson acknowledged that people often flashed weapons during arguments such as those that took place at the hole and the liquor store.

Tanario testified that he was hanging out in the hole on the night in question when the defendant approached him and starting arguing with him. Kovoshi then walked over, and the defendant began arguing with him. Tanario testified that the defendant was "drunk" and "talked in a very violent way." Tanario suspected that the defendant was carrying a gun and, for whatever reason, wanted to harm Kovoshi. Tanario indicated that he and Kovoshi were alone. Tanario further indicated that as he and Kovoshi were trying to distance themselves from the defendant, Hopson appeared, also exhibiting an aggressive attitude. At that point, Tanario told Kovoshi to "get in [his] van and go on and leave." Kovoshi did so, and Tanario believed that "everything was over with" at that point. Tanario later learned that the defendant and Kovoshi had recommenced their argument at the liquor store, however, so he walked over to see what was happening. While talking to a friend who was among the crowd that had gathered, Tanario heard a gunshot and saw Kovoshi "holding his chest." Tanario testified that the defendant then pointed the gun at him, so he ran. As he was fleeing, the

defendant shot him in the back. When Tanario turned around, he saw the defendant shoot Kovoshi "two more times." Tanario then ran to a local hospital where he received treatment for his gunshot wound. Tanario indicated that neither he nor Kovoshi had a gun at the hole or the liquor store and that Kovoshi did not normally carry a gun. Tanario acknowledged that he had recently been arrested on a charge of unlawful possession of cannabis. Tanario denied the suggestion that he would testify falsely to avenge his brother's death.

The defendant testified that he had known Kovoshi and Tanario for several years and that, regarding the incident at the hole, he and Tanario were discussing a \$20 debt that Tanario owed him when Kovoshi showed up with "two more guys" and the conversation turned from "calm" to "aggressive." The defendant explained that he had thought that he and Kovoshi were "cool" but that Kovoshi had berated and threatened him. While the defendant and Kovoshi argued, "Tanario kept reaching for his back pocket," and the defendant saw the butt of a black revolver sticking out of the pocket. Kovoshi then pulled out a gun, pointed it at the defendant, and told the defendant that he was going to kill him. The defendant testified that a lady who was present subsequently grabbed Kovoshi and pulled him away from the situation and that then Hopson appeared and did the same to him. Crying and upset, the defendant told Hopson what had happened.

Stating that he knew that Kovoshi carried a gun and that he had personally seen Kovoshi shoot at people on previous occasions, the defendant testified that Kovoshi was more of a "gun slinger" than a "street fighter." Indicating that Kovoshi was a gangster who claimed to have gotten away with murder in the past, the defendant further stated that Kovoshi's threats had to be taken seriously. The defendant denied being violent, drunk, or on drugs on the night in question. He acknowledged, however, that he had sipped some gin at the baseball game.

The defendant testified that after leaving the hole, he, Hopson, and Jay-Roll drove to

the liquor store across the street and that he parked his Tahoe in the front of the store near the entrance. The defendant testified that a 9-millimeter pistol he owned for "protectational purposes" was "right there": [S]o I grabbed it and put it in my pocket." When the defendant got out of his vehicle, he noticed Kovoshi's van parked nearby. He then saw Kovoshi outside the store, and fearing that Kovoshi might try to ambush him, he decided to wait outside while Hopson went in to make a purchase. The defendant explained that he did not immediately leave upon seeing Kovoshi because he had wanted to peacefully resolve the situation and Hopson wanted to buy some alcohol. The defendant testified that if he did not "squash the whole event," then he would "have to look over [his] shoulder," and he feared for his children and their mother.

The defendant testified that when Hopson exited the store, they started walking back to the Tahoe when a guy known as "Mookie" called out the defendant's name. Mookie then approached and, having apparently heard about the recent altercation at the hole, asked if the defendant was okay. Ricky Thomas also approached and joined the conversation. When Thomas agreed to help the defendant attempt to resolve "the situation in a peaceful manner," they walked toward Kovoshi's van to talk to him. The defendant then approached Kovoshi and tried to impress upon him that they were "cool." Kovoshi was belligerent, however, and although the defendant was "pleading with him," Kovoshi threatened to kill him and lifted up his shirt to show that he had a gun. The defendant testified that at that point he started crying and that Kovoshi mocked him for doing so. The defendant testified that he was afraid to walk away out of fear of being shot in the back. The defendant then saw Tanario, and Tanario and Kovoshi both acted like they were about to pull their guns. In response, the defendant pulled his pistol and fired twice at Kovoshi and once at Tanario, who "started running." The defendant testified that he subsequently saw Hopson drive off in the Tahoe and that he decided to flee on foot: "That's when I noticed Kovoshi laying on the ground

with the gun in his left hand, like he was trying to lift it up towards me, at which [time] I fired twice at [Kovoshi's left] arm." The defendant testified that if he had wanted to kill Kovoshi, he would have shot him in the head instead of the arm. After shooting Kovoshi in the left arm, the defendant ran back to the hole, ditching the 9-millimeter pistol by a fence across the street from the liquor store along the way. At the hole, the defendant got a ride to another housing project, and from there, his mother picked him up and brought him to her home in St. Louis. Later that day, the defendant turned himself in to the Illinois State Police after hearing that Kovoshi had died.

The defendant testified that when he was subsequently interviewed by investigators, he was only able to give them a "brief overview" of what had happened, because he had stayed up all night and "wasn't thinking straight." The defendant acknowledged that he "was maybe off on a couple of events," but he explained that he had not tried to deceive the investigators about what had happened. The defendant testified that although he had stated that he might have overreacted at the liquor store, he did not believe that he had overreacted "when the incident happened" but, rather, "felt it was an overreaction on everyone's part, because it did not have to go there." The defendant also explained that although he had indicated that he had shot Kovoshi as he was fleeing the scene to ensure that Kovoshi was incapacitated, he meant incapacitated "that night, not in general." The defendant testified that he never intended to kill Kovoshi and had not wanted to harm him or Tanario. The defendant stated that he felt that the shooting was justified, however, because if he had failed to react as he had, "it would have been [him] laying there on that pavement."

A resident of the hole testified that after the shooting at the liquor store, she saw a man slowly walk across the street with a silver gun in his left hand and a black gun in his right. The witness could not describe anything else about the man, however, and she acknowledged that she had impaired vision due to glaucoma. When testifying, the defendant

indicated that he was not the man whom she had seen.

A security camera captured much of what happened in the parking lot at the liquor store, but the images on the video, which the jury saw several times, are less-than-clear. As one of the case investigators acknowledged at the trial, the video is "not that clear," "[t]here's a lot of things it doesn't show," and one "can't really tell shots were fired" by watching it. The video nevertheless shows Kovoshi once lifting up his shirt while arguing with the defendant. The video also shows someone walk over to where Kovoshi was lying shot on the ground and then hand something to someone in a car that flees the scene.

At the jury-instructions conference, when the State tendered Illinois Pattern Jury Instructions, Criminal, Nos. 2.01B and 7.06B (4th ed. 2000) (hereinafter IPI Criminal 4th), defense counsel objected. Acknowledging that both were accurate and applicable pattern instructions, counsel argued that jurors should nevertheless be given the "option of finding a person not guilty of second[-]degree murder." Over the defendant's objections, the trial court ruled that both instructions would be given. See Ill. S. Ct. R. 451(a) (eff. July 1, 2006) (directing that IPI criminal instructions shall be used unless the trial court determines that the instructions do not accurately state the law); *People v. Parker*, 223 Ill. 2d 494, 501-08 (2006) (indicating that IPI Criminal 4th Nos. 2.01B and 7.06B accurately state the law). Collectively and in pertinent part, the two instructions read as follows:

"The defendant is charged with the offense of first[-]degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first[-]degree murder may be found (1) not guilty of first[-]degree murder; or (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder.

* * *

To sustain either the charge of first[-]degree murder or the charge of second[-]degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Kovoshi Darden; and

Second Proposition: That when the defendant did so,
He intended to kill or do great bodily harm to Kovoshi Darden;

or

He knew that such acts would cause death to Kovoshi Darden;

or

He knew that his acts created a strong probability of death or great bodily harm to Kovoshi Darden;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end, and you should return a verdict of not guilty of first[-] degree murder.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second[-]degree murder instead of first[-] degree murder.

You may not decide whether the defendant is guilty of the lesser offense of second[-]degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence

that a mitigating factor is present so that he is guilty of the lesser offense of second[-] degree murder instead of first[-]degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of Kovoshi Darden, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable, or acted under a sudden and intense passion resulting from serious provocation by the deceased.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second[-]degree murder, instead of first[-] degree murder, you should find the defendant guilty of second[-]degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second[-]degree murder instead of first[-] degree murder, you should find the defendant guilty of first[-]degree murder."

The jury also received an instruction on the use of force in defense of a person (IPI Criminal 4th No. 24-25.06), which read as follows:

"A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself."

A concluding instruction advising, *inter alia*, that the jury's "agreement on a verdict must be

unanimous" (IPI Criminal 4th No. 26.01B) was also given.

In his closing argument to the jury, defense counsel maintained that the defendant was not guilty of first-degree murder because he justifiably shot in self-defense. Counsel argued that whether the defendant had acted reasonably under the circumstances was a question that had to be answered by viewing the situation from the defendant's perspective. Referring to the instructions that it would receive on second-degree murder, counsel advised the jury that the instructions could be "confusing," because they would not be receiving a verdict form stating "not guilty of second[-]degree murder." Counsel explained that "by signing the verdict form [that] says not guilty of first[-]degree murder, [the jury would] basically also [be] saying not guilty of second[-]degree murder." Arguing that the defendant had testified truthfully, counsel asked the jury to find him not guilty on all the counts.

In response, the State maintained that the defendant's claim that he wanted to peacefully resolve his dispute with Kovoshi was disingenuous considering that the defendant admittedly "took a gun to [the] argument" at the liquor store. The State suggested that the defendant's version of events was tailored to make it seem as if he had no choice but to confront Kovoshi as he did. The State argued that even assuming Kovoshi and Tanario had been armed, the defendant had voluntarily "walked into a gun fight," which was "not reasonable." The State suggested that the defendant's act of emptying the 9-millimeter pistol into Kovoshi as he was lying on the ground further supported a finding that the defendant was guilty of first-degree murder.

During its deliberations, the jury sent the trial court seven notes. The first one read as follows: "Murder Charge Is the only three options period[:] 1st degree murder[,], 2nd degree murder[,], or 3rd choice [n]ot guilty of murder[?] [I]f everyone signs not guilty does this mean he is not guilty of any murder charges[?]" By agreement, the trial court responded to the jury's first note with a note advising as follows:

"Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first[-]degree murder. Under the law, a person charged with first[-]degree murder may be found (1) not guilty of first[-]degree murder; (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder.

For the offense of first[-]degree murder, you will be provided with three verdict forms: 'not guilty of first[-]degree murder,' 'guilty of first[-]degree murder,' and 'guilty of second[-]degree murder.'

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one verdict form."

Approximately an hour later, the jury sent out its second note, which read, "Is a verdict 2nd degree if we[/]they think he believes he reasonably believes that force was needed [to prevent] great bodily harm?" By agreement of the parties, the trial court responded to the jury's second note as follows: "The Court respectfully requests that you reread the instructions on the law and reformulate your question, if necessary."

Later that evening, the jury sent out its third note, which stated that the jurors could not decide on "murder 1 or murder 2[,] [b]ecause of #3 proposition." The note then asked, "Do you want decision on other[?]" After receiving the third note, the trial court excused the jurors for the day. The following morning, before the jury continued its deliberations, by agreement of the parties, the trial court responded to the third note by thanking the jurors for their dedication and by requesting that they "continue [their] deliberations and efforts to reach verdicts on all charges."

The jury's fourth note, which read, "Jury can not agree on case," was soon followed

by a fifth note, which read as follows:

"We are close (11 to 1) to a decision but feel there could be an error in the instructions. We agree on the 1st and 2nd proposition[s] but the 3rd cannot be agreed upon. Can we agree upon 2nd degree if we do not agree w/ the 3rd proposition[?] We have read the directions several times but need further clarification."

When the jury's fifth note was discussed, the parties agreed that it nullified the fourth note and that the trial court needed to clarify that the instructions the jury had received were not erroneous. The parties further agreed that the answer to the jury's question could be found in the instructions that it had already been given. Defense counsel also suggested that the court's response recognize that the instructions can be "confusing" but were nevertheless "the instructions that are authorized for courts throughout the whole State of Illinois." By agreement of the parties, the trial court ultimately responded to the jury's fifth note with the following:

"The court recognizes the complex nature of the instructions which you are sworn to follow and appreciates the efforts you are making to comply with your duties as jurors. The instructions provided to you are not in error. They are the approved instructions on the law utilized in cases of this nature throughout state courts in the State of Illinois. I realize that you have already read the instructions several times, but at this time I request that you reread the instructions in total and continue your deliberations."

The jury subsequently sent out its sixth note, which read: "We are done - no decision can be made. HUNG JURY[.]" When discussing the jury's sixth note, the State suggested that the jury be given a *Prim* instruction (*People v. Prim*, 53 Ill. 2d 62, 75-76 (1972)), while the defendant asked the court to declare a mistrial. As the discussions continued, the jury sent out its seventh and final note, which advised, "A decision has been made." Thereafter,

the jury returned its verdict finding the defendant guilty of second-degree murder, armed violence, and aggravated battery with a firearm. When thanking the jurors for their service, the trial court's farewell address included the following:

"I want to assure you that the instructions that you received, confusing though they may have been to you, are proper. I have before me three books right here and these books are compiled by a study committee that's appointed by our Supreme Court, and what this committee will consist of is imminent [*sic*] persons within the law, professors, judges, and lawyers, and they sit down and they formulate these instructions.

The effort is made, of course, for them to be understandable by the persons who are going to use them[;] however[,] I have to apologize they still are lawyers, judges, and experts in the field of law. And many times when you look at these instructions, to a lay person, they don't seem to make a whole lot of sense. And we, that is myself and the attorneys who are concerned in this case, were greatly sympathizing with your effort[,] because we could see what the issue was and how you were grappling with it and trying to get over it, but at the same time[,] we were prevented from coming forward and maybe explaining and helping you along, because when you do that, you are raising the possibility of in some way influencing the jury toward their decision. That's absolutely prohibited.

So with that caveat, I want to thank you again for the efforts that you made in arriving at your verdict. You are at this time excused."

ANALYSIS

On appeal, the defendant argues that the manner in which the trial court responded to the jury's notes denied him his right to a fairly deliberated verdict. The defendant specifically maintains that the trial court should have advised the jury "that a not guilty of

first-degree murder verdict would mean that [he] was not guilty of either first-degree or second-degree murder" and "that if it believed that [he had] acted reasonably in shooting Kovoshi Darden, it should sign the verdict form of not guilty of first-degree murder." Acknowledging that we might find the issue forfeited because defense counsel acquiesced in the trial court's responses, the defendant argues that we should review his contention under the plain error doctrine or as an ineffective-assistance-of-counsel claim. The State counters that forfeiture aside, the trial court properly responded to the jury's inquiries under the circumstances. We agree with the State.

"Generally, a trial court must provide instruction when the jury has posed an explicit question or asked for clarification on a point of law arising from facts showing doubt or confusion. [Citations.] A trial court may, nevertheless, exercise its discretion to decline answering a question from the jury under appropriate circumstances. [Citations.] Appropriate circumstances include when the jury instructions are readily understandable and sufficiently explain the relevant law, when additional instructions would serve no useful purpose or may potentially mislead the jury, when the jury's request involves a question of fact, or when giving an answer would cause the trial court to express an opinion likely directing a verdict one way or the other." *People v. Averett*, 237 Ill. 2d 1, 24 (2010).

At the outset, we do indeed find that the defendant has forfeited the argument that he presents on appeal. "When a defendant acquiesces in the trial court's answer to a question from the jury, the defendant cannot later complain that the trial court's answer was an abuse of discretion." *Id.* at 23-24. This rule recognizes that "a party who fails to object cannot obtain the advantage of receiving a reversal by failing to act." *People v. Reid*, 136 Ill. 2d 27, 38 (1990). Here, not only did defense counsel agree to the trial court's answers to the jury's questions, but counsel helped formulate the trial court's response to the jury's fifth note. The

defendant has therefore forfeited his contention that the trial court's responses to the jury's inquiries were improper. *Averett*, 237 Ill. 2d at 24. We further find that the defendant is unable to establish that defense counsel was ineffective for acquiescing to the trial court's responses or that the responses should be reviewed as plain error.

"To establish an ineffective-assistance claim, [a defendant] must show his attorney's performance was deficient and prejudice resulted from the deficiency." *Id.* "An attorney's performance is deficient only if it is objectively unreasonable based on prevailing professional norms." *Id.* A failure to object to a trial court's responses to a jury's questions is not objectively unreasonable where the responses are proper. *Id.* at 25.

"The plain-error doctrine allows a reviewing court to remedy a 'clear or obvious error' in two circumstances, regardless of the defendant's forfeiture: (1) where the evidence in the case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009).

"The initial step in conducting plain-error analysis is to determine whether error occurred at all" (*People v. Walker*, 232 Ill. 2d 113, 124 (2009)), "because, in the absence of error, there can be no plain error" (*People v. Brant*, 394 Ill. App. 3d 663, 677 (2009)).

We first note that from our reading of the record, inasmuch as the jury's notes suggested confusion, the confusion reflected the jury's inability to unanimously reach a consensus on whether the defendant's use of force was justified under the circumstances. We further note that although defense counsel advised the jury that whether the defendant had acted reasonably was a question that had to be answered by viewing the situation from the defendant's perspective, to perfect a claim of self-defense, a defendant must establish that his subjective belief that his use of force was warranted was "objectively reasonable." *People*

v. Lee, 213 Ill. 2d 218, 225 (2004). Determining the objective reasonableness of a defendant's subjective belief necessarily involves "credibility determinations" that the jury must resolve (*id.*) and can thus be a source of juror disagreement. The record also indicates that there was a "holdout juror" (*People v. McCoy*, 405 Ill. App. 3d 269, 278 (2010)), and it is reasonable to assume that if there had been a disagreement on whether the defendant was justified in using deadly force, then there would have also been a disagreement on how to interpret and apply the instructions on the issue. In any event, the instructions that the jury received accurately set forth the relevant law with respect to self-defense and the offense of second-degree murder and were readily understandable if carefully read. Moreover, the answers to the jury's specific inquiries could be found in the instructions that the jury had already received, as can the responses that the defendant on appeal contends the trial court should have given. *Cf. People v. Falls*, 387 Ill. App. 3d 533, 537-38 (2008) (holding that the trial court erred in not clarifying the jury's confusion regarding "a critical point of law" not covered by the instructions the jury received). Guidance beyond that which the trial court gave would have therefore served no useful purpose and might have possibly confused the jury. Additionally, the trial court was rightfully reticent to directly answer the jury's substantive questions out of concern that doing so might inadvertently influence the jury's decisionmaking process. As previously indicated, recognizing that the jury was "grappling with" IPI Criminal 4th No. 7.06B's "3rd proposition," the trial court felt that directly answering the jury's questions on the issue raised "the possibility of in some way influencing the jury toward their decision." Under the circumstances, we cannot conclude that the trial court abused its discretion by reiterating and referring the jurors to the instructions that they had already received. See *Reid*, 136 Ill. 2d at 40-41. As a result, defense counsel cannot be deemed ineffective for acquiescing in the trial court's responses, and there is nothing to review as plain error.

CONCLUSION

For the foregoing reasons, the defendant's convictions are hereby affirmed.

Affirmed.