

2015 IL App (1st) 131374-U

No. 1-13-1374

Filed November 25, 2015

FIFTH DIVISION

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 7 CR 12137
	)	
DONELL PARKER,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Justices Lampkin and Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment on the jury verdict finding the defendant guilty of first degree murder was affirmed where the trial court did not err in refusing to instruct the jury on the definition of "knowledge" and not answering the jury's question during deliberations.

¶ 2 A jury convicted defendant Donell Parker of the first degree murder of four-year

old Cameron Smith. The trial court sentenced him to 25 years in prison. Defendant appeals, arguing that the trial court erred in (1) refusing to instruct the jury on the definition of "knowledge" and (2) failing to explain to the jury a point of law the jury raised during deliberations. We affirm.

¶ 3

### BACKGROUND

¶ 4

Defendant was tried twice by jury for the first degree murder of Cameron. The first trial in 2010 resulted in a hung jury. The second trial in 2012 resulted in the guilty verdict at issue on appeal.

¶ 5

Cameron was killed in May 2007. He had lived with his mother, Lavada Smith, his two older siblings and defendant, his mother's boyfriend. When Smith was deployed to Iraq with the National Guard, defendant left his job and became the children's caretaker. Two weeks after Smith's departure, defendant called 911 when he found Cameron unresponsive in bed. The medical examiner determined Cameron's cause of death was a homicide resulting from "multiple injuries due to blunt trauma due to child abuse." Defendant made statements to police admitting that he had lost his temper and "disciplined" Cameron by whipping him with a belt and punching him several times in the chest. He also admitted that, on the day after the "discipline," he had pushed Cameron, causing the child to fall and hit his head on the side of the bathtub. Defendant was arrested.

¶ 6

The State charged defendant with two counts of first degree murder, alleging he, without lawful justification, (1) intentionally or knowingly beat and killed Cameron with his fists and a belt (720 ILCS 5/9-1(a)(1) (West 2006)) (intentional murder) and (2) beat and killed Cameron with his fists and a belt, "knowing that such beating with his fists

and belt created a strong probability of death or great bodily harm to Cameron" (720 ILCS 5/9-1(a)(2) (West 2006)) (murder strong probability). The State subsequently *nolle prossed* the intentional murder count.

¶ 7 The case went to the first jury in 2010 on the murder strong probability charge. The trial court denied defendant's request for a jury instruction on involuntary manslaughter. Following hours of deliberation, the jury notified the court that it was deadlocked. After additional court-ordered deliberation, the jury sent out a note asking why the State had not charged defendant with a lesser offense. The court denied defendant's renewed request for an instruction on involuntary manslaughter but declared a hung jury.

¶ 8 The case went to the second jury in 2012 on the murder strong probability charge. Medical examiner Dr. Nancy Jones testified regarding Cameron's injuries and the cause of his death. She stated 57 of the child's 59 injuries had occurred within 24 hours of his death. She detailed the numerous abrasions and bruises all over his face and body. At the front of Cameron's chest, there were too many bruises for Dr. Jones to count. She stated it would be impossible for a single blow to have caused the damage. Dr. Jones testified that all the bruising and abrasions were the result of blunt trauma injuries caused by Cameron's body striking something or being struck by something, such as a punch.

¶ 9 Dr. Jones' internal examination showed five areas of hemorrhaging in Cameron's skull, that his brain was very swollen and there was bleeding on both sides of his brain, which could occur from blunt head trauma or impact to the head. Cameron's abdomen was distended with a liter of blood in his abdominal cavity and injuries to the left, right

and center of his abdomen. Dr. Jones found bruising on his lungs, lacerations and bruises to his liver, his spleen was bleeding, his kidneys were lacerated and bleeding internally, all of which was caused by blunt trauma.

¶ 10 Dr. Jones explained she commonly saw lung contusions such as Cameron's in traffic accidents, such as where someone slams into a steering column, where there is a violent compression of the chest wall into the lungs. If Cameron were punched violently enough, a single blow could be forceful enough to cause the damage. Dr. Jones testified that the two lobes of Cameron's liver were being pulled apart from one another. Explaining the liver injuries, she analyzed the liver to an orange, stating it was as if someone had smashed an orange, causing it to tear and the "pulp" to come out, tearing on the inside and the outside.

¶ 11 Dr. Jones found hemorrhage of the mesentery and hematomas on the wall of the small intestine, She stated these injuries would have required a very rapid, forceful blow, quick and forceful enough to damage the intestines before the intestines would have moved out of the way to allow that damage. Cameron had rib fractures on the left and right sides of his back and deep bruising in his buttock, back and arms. It was Dr. Jones' opinion that Cameron died as a result of multiple injuries due to blunt trauma caused by child abuse and his death was a homicide.

¶ 12 The jury heard testimony that defendant was 5'7" and weighed 180 pounds and Cameron weighed 45 pounds. Police officers testified regarding the crime scene, the investigation and defendant's report of the incident, his cooperation with police, his waiver of his Miranda rights and the making of his incriminating statements. Detective Rapacz testified that he had questioned defendant and videotaped the interviews. The

jury watched the videotaped recordings of defendant's statements.<sup>1</sup>

¶ 13 In the videotaped statements, defendant told investigators that he called 911 when he could not wake Cameron and the boy's arm was "real stiff." Defendant admitted that two days earlier, he had disciplined Cameron by "whooping" him with a belt 10 to 15 times and punching him twice in the chest. Defendant had become "real heated", "ran out of patience" and disciplined Cameron when the boy squirted body wash around the bathroom during his shower as he had done many times before. Defendant stated he hit Cameron hard enough to send a message that the boy should stop doing the same thing over and over.

¶ 14 Defendant stated he had tried to hit Cameron with the belt on his buttocks but the boy was moving so much the blows "hit everywhere." He asserted he had intended to hit the boy with the belt but "my fist probably hit him then because I had the belt, you know when you tie it up to make it real small." When defendant punched Cameron "straight to the chest," the boy fell back against the wall. Defendant "felt bad" about his actions and realized he took the discipline "too far." He hugged Cameron "for a minute," and told him he was sorry. He asked Cameron if he was okay and the boy told him he was. Defendant stated Cameron had been disciplined "every other day pretty much" by his mother, including "whooping," but defendant had only started disciplining him the previous week. Defendant stated he had never "whooped" Cameron before, having only given him "little, little, little slaps" and, to discipline the boy previously, he had only used

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<sup>1</sup> The DVD with the recordings is not in the record and the statements have not been transcribed in the report of proceedings. The record does contain a transcript of those statements in People's exhibit No. 27B. Detective Rapacz testified the transcript accurately reflects the videotaped interviews. The parties and this court rely on that transcript.

his belt or his hand.

¶ 15 Defendant stated that Cameron did not wake up until 11 a.m. the next morning, which was unusual as the boy usually woke up early when his siblings went to school. Defendant was helping a friend move and took Cameron with him. Cameron was lethargic, sweating and sleeping "a lot" in the car. He seemed "out of there pretty much." Cameron ate some ice cream at the friend's house but defendant stated the boy was not himself all that day. At the time, defendant thought the heat and the unairconditioned car caused the boy's lethargy. Back at home, Cameron did not ask to watch television as he usually did and instead went to sleep in his room, ate dinner and then went back to his room. Defendant stated he did not take the boy to a doctor or hospital as it had not crossed his mind.

¶ 16 Defendant gave Cameron a shower around midnight. Cameron lost control of his bowels during his shower. Defendant became frustrated and "pushed" the boy, "slapping" him on the back of his head. Defendant stated Cameron slipped and fell in the cast iron bathtub. He thought the boy hit the side of his face when he fell. Cameron told defendant he was unsteady and unable to stand. As defendant was drying Cameron off, the boy's legs gave way and "he just hit the floor" "hard." Defendant gave him some water in a sippy cup. Cameron "fell asleep while he was drinking his water," letting the cup slip from his hand. Defendant put him to bed next to him. Defendant fell asleep playing video games.

¶ 17 When defendant woke at 4:00 a.m., he noticed Cameron was still lying in the same position in which defendant had put him. Cameron was a "wild" sleeper and his immobility was unusual. Cameron's eyes were slightly open and he "had little breaths

coming[ ] out." Defendant became concerned when he was unable to wake Cameron and the boy's arm was stiff. He then called 911. At the operator's instructions, he moved Cameron to the floor and performed cardio pulmonary resuscitation.

¶ 18 Defendant's former girlfriend testified she had seen Cameron in the back of defendant's car on the day before he died. Cameron had waved at her and appeared "jolly as a regular four-year old." Defendant's father testified regarding the discipline, including whipping and "probably" punching, he had used on defendant as a child. Defendant's former employer testified she did not think defendant was prepared to take care of three children and that she had sent her daughter to intervene when defendant failed to prevent the two older Smith children from "picking [Cameron] up, throwing him down, just beating him."

¶ 19 At the close of defendant's case, the trial court held a jury instruction conference. It granted defendant's request for an instruction on involuntary manslaughter and one on the definition of "reckless" from the Illinois Pattern Jury Instructions, Criminal (4th ed. 2000) (hereinafter IPI Criminal 4th). It denied defendant's request for a jury instruction on the definition of "knowledge" found in IPI Criminal 4th No. 5.01B[2], stating "[i]f there is some request for it, then it can be given."

¶ 20 During the jury's deliberations, it sent the court a note. The note is not in the record but the trial court read it to the parties variously as "[c]an you give us a clear definition of reckless?" and as "[c]an you give us a clarification on reckless?" The court asked the State and defense counsel how they wanted to proceed. The State requested that the jury be told it already had the definition of recklessness and to continue deliberating. Defense counsel requested time to return to her office to obtain case law

that she thought might be useful since she agreed with the jury that the definition it had received was not clear. The court passed the case.

¶ 21 When the case was recalled, the court noted that an hour had passed "since the jury went out." Defense counsel suggested a number of alternative definitions of "reckless." The State reiterated its position that the jury already had the correct IPI definition, stating any other definition would be cumulative. During this discussion, without objection, the court granted the jury's request "to go out for a few minutes to get some fresh air." The discussion continued, with the court suggesting another definition of reckless.

¶ 22 Defense counsel then proposed that the court "send back a note asking what specifically they don't understand, what words they don't understand in the recklessness definition." The State responded that its "position still stands." The court agreed with defense counsel's suggestion and gave a note to the deputy sheriff at 4:55 p.m., asking the jury what words or phrases in the instruction needed clarification. The court stated that it had been 1 hour and 45 minutes since it received the jury's note but that "we have been working on it." Half an hour later, at 5:25 p.m., the jury announced that it had reached a verdict.

¶ 23 The jury convicted defendant of first degree murder. After polling the jury, the trial court entered judgment on the jury verdict. It denied defendant's motion for a new trial and subsequent motion to reconsider. The court sentenced defendant to 27 years in prison. On June 22, 2012, on defendant's motion to reconsider sentence, it reduced defendant's sentence to 25 years in prison. Defendant filed his timely notice of appeal the same day.

¶ 24

## ANALYSIS

¶ 25

## 1. Jury Instruction on "Knowledge"

¶ 26

Defendant first argues that his conviction should be reversed and remanded for a new trial as the trial court refused to instruct the jury on the definition of "knowledge" provided in paragraph [2] of IPI Criminal 4th No. 5.01B. He contends the court should have given the jury the following instruction: "A person acts knowingly with regard to the result of his conduct when he is consciously aware that such result is practically certain to be caused by his conduct." IPI Criminal 4th, No. 5.01B[2].

¶ 27

Jury instructions are intended "to provide the jury with correct legal rules that can be applied to the evidence to guide the jury toward a proper verdict." *People v. Lovejoy*, 235 Ill. 2d 97, 150 (2009). There must be some evidence in the record to justify giving an instruction. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). Instructions unsupported by the law or evidence should not be given. *Id.* The trial court has the discretion to determine whether the evidence raises a particular issue and whether an instruction should be given. *Id.*

¶ 28

We review the trial court's decision to give or refuse an instruction for an abuse of discretion. *People v. Dorn*, 378 Ill. App. 3d 693, 698 (2008). We must "determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *Mohr*, 228 Ill. 2d at 65. A trial court abuses its discretion when its instructions "are not clear enough to avoid misleading the jury." (Internal quotation marks omitted.) *Id.* at 66. The trial court did not abuse its discretion by refusing to tender defendant's proposed knowledge instruction.

¶ 29

It is undisputed that the trial court correctly instructed the jury on first degree

murder strong probability and involuntary manslaughter as follows:

"To sustain the charge of murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Cameron Smith; and

Second Proposition: That when the defendant did so, he knew that his acts created a strong probability of death or great bodily harm to Cameron Smith."

"To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Cameron Smith; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm."

¶ 30 The difference between first degree murder and involuntary manslaughter is the mental state accompanying the conduct that resulted in the victim's death. *People v. Pollard*, IL App (3d) 130467, ¶ 27. Here, knowledge is the mental state for murder while recklessness is the mental state for involuntary manslaughter. *Id.* As defendant points out, there is no dispute that Cameron died as a result of defendant's conduct. Therefore, the only question for the jury was whether defendant's conduct amounted to "knowledge," as required for first degree murder, or "recklessness" as required for

involuntary manslaughter. *Id.* ¶ 28. The trial court gave the jury the following IPI Criminal 4th instruction on the definition of "reckless":

"A person is reckless when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and that such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation."

It refused to instruct the jury on the definition of "knowledge" stated in IPI Criminal 4th No. 5.01B[2].

¶ 31 Defendant argues the knowledge instruction was necessary to the jury's analysis of his theory of the case, which was that, in disciplining Cameron, defendant acted recklessly without knowledge. He claims he was deprived of a fair trial by the court's refusal to give the instruction as his mental state was the critical issue in the trial, the State's arguments misled the jury regarding the "knowledge" requirement and, given the jury's note requesting clarification on the mental state for the lesser included offense, the jury was confused regarding the mental states at issue.

¶ 32 IPI Criminal 4th No. 5.01B provides, in relevant part:

"[1] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

[2] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the result of his conduct when he is consciously aware that such result is

practically certain to be caused by his conduct." IPI Criminal 4th No. 5.01B.

¶ 33 The committee note to this instruction advises:

"In cases where the instruction is given, use paragraph [1] if the offense is defined in terms of prohibited conduct. Use paragraph [2] if the offense is defined in terms of a prohibited result. If both conduct and result are at issue, use *both* paragraphs [1] and [2]." (Emphasis in original.) IPI Criminal 4th, No. 5.01B, Committee Note.

Here, the conduct underlying defendant's offenses was the same: the acts that caused Cameron's death. The offenses were therefore defined in terms of a prohibited result. Accordingly, if a knowledge instruction was appropriate, it would be the paragraph 2 instruction requested by defendant. However, neither the instruction nor the committee note mandate that the knowledge instruction is automatically required.

¶ 34 IPI Criminal 4th No. 5.01B was added to the IPI in response to *People v. Brouder*, 168 Ill. App. 3d 938 (1988), in which "the court found reversible error in the trial court's refusal to define the word 'knowingly' when the jury had twice specifically requested a definition and reported its confusion regarding that term." IPI Criminal 4th, No. 5.01B, Committee Note. The committee did not suggest that the knowledge instruction be mechanically given. In fact, it specifically stated:

"The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. See *People v. Powell*, 159 Ill. App. 3d 1005, 512 N.E.2d 1364, 111 Ill. Dec. 727 (1st Dist.1987), for the general proposition that the words 'intentionally' and 'knowingly' have a plain meaning within the jury's common understanding. If given, it should only be given

when the result or conduct at issue is the result or conduct described by the statute defining the offense." IPI Criminal 4th No. 5.01B, Committee Note.

¶ 35 Based on this committee note, courts have generally held that, unless a jury requests clarification because the original instructions are insufficient or because the jurors are manifestly confused, the trial court need not tender to the jury the IPI Criminal 4th No. 5.01B instruction since the term "knowledge" has a plain meaning within the jury's common knowledge. See *People v. Perry*, 2011 IL App (1st) 081228, ¶¶ 58-61; *People v. Sanders*, 368 Ill. App. 3d 533, 536-38 (2006); *People v. Sandy*, 188 Ill. App. 3d 833, 841-42 (1989).

¶ 36 Unlike in *Brouder*, the jury here did not request a definition or explanation of the terms "knowledge" or "knowingly." Therefore, given that (1) the jury did not make a specific request indicating confusion regarding the "knowledge" mental state, (2) "knowledge" and "knowingly" have plain meaning within the jury's common knowledge, (3) the IPI Criminal 4th No. 5.01B "knowledge" instruction is not to be routinely given and (4) the trial court gave the jury the appropriate instructions correctly stating the law for the two offenses, the court did not err in refusing to give the instruction. *Perry*, 2011 IL App (1st) 081228, ¶¶ 58-61.

¶ 37 Defendant suggests that the instruction should have been given even though the jury did not request such clarification, asserting that the jury's note requesting a definition of "reckless" showed the jury was confused as to both mental states at issue in the case. We disagree. First, this argument is forfeited as, when the court asked defense counsel how she would respond to the jury's note, defense counsel did not suggest that the jury be given a knowledge instruction. The entirety of the discussion

between the court, the State and defense counsel regarding the jury's note concerns the need to clarify the reckless instruction. Defense counsel never suggested that the note showed the jury was confused regarding the "knowledge" mental state, let alone that a knowledge instruction should then be given. Defendant's failure to raise the argument to the trial court results in forfeiture of the argument on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 38 Second, even if we consider the argument, we find the jury's note does not show that it was confused about the "knowledge" mental state. The jury requested only a definition of reckless, indicating that it was confused regarding this mental state, not any other. It did not request a definition of knowledge or an explanation of the difference between a knowing act and a reckless act. The jury's request for the definition of reckless and its request for a breath of fresh air demonstrate that the jury was willing to ask the court for assistance during its deliberations. Accordingly, if it was confused regarding the definition of "knowledge" or the difference between the two mental states, we presume it would have asked the court for the necessary clarification. It did not do so and we cannot read into its note requesting clarification regarding "reckless" any confusion regarding "knowledge," especially given that "knowledge" has a plain meaning within the jury's common understanding. As the trial court correctly told defendant when it initially denied his request for the knowledge instruction, "[i]f there is some request for it, then it can be given." The jury did not ask for a definition of knowledge and manifested no confusion regarding that definition. Accordingly, the court did not err in failing to give the instruction.

¶ 39 Defendant also argues the knowledge instruction should have been given as the

State committed reversible error by misleading the jury during its closing and rebuttal arguments by mischaracterizing "knowledge." The appropriate standard of review for closing arguments is currently unclear. *People v. Thompson*, 2013 IL App (1st) 113105, ¶¶ 75-77 (noting it is unsettled whether a *de novo* or abuse of discretion standard applies). However, as we find no error under either standard, we need not resolve the question of the appropriate standard of review. *Id.* ¶ 78.

¶ 40 Prosecutors have wide latitude in closing argument and rebuttal argument and may "comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). They may not, however, misstate the law. *People v. Armstrong*, 183 Ill. 2d 130, 157 (1998). When reviewing claims of prosecutorial misconduct during closing argument, we consider the entire closing argument of both parties to place the challenged comments in context. *Glasper*, 234 Ill. 2d at 204. We must ask whether the comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Prosecutorial misconduct in closing arguments warrants reversal if the improper remarks constituted a material factor in the defendant's conviction. *Id.* In other words, if the jury could have reached a contrary verdict had the improper remarks not been made, or we cannot say the improper remarks did not contribute to the conviction, we should grant a new trial. *Id.*

¶ 41 Defendant argues the State's arguments mischaracterized the required mental state for murder strong probability by arguing that, by defendant's knowing *conduct*, he knowingly caused the *result*. He cites to *People v. Nash*, 282 Ill. App. 3d 982 (1996), for the following proposition:

"The term 'knew or should have known' is commonly used in civil cases; however, it should not be equated with the requisite mental state of 'knowledge' in criminal prosecutions. 'Knowledge' is not the same as 'should have known.' 'Knowledge' involves conscious awareness (720 ILCS 5/4-5 (West 1992)), while 'should have known' implicates 'the standard of care which a reasonable person would exercise' and therefore pertains to the lesser mental states of 'recklessness' and 'negligence' (720 ILCS 5/4-6, 4-7 (West 1992) \*\*\*." *Nash*, 282 Ill.App.3d at 986.

Defendant argues the State misled the jury by "plainly equat[ing] [defendant's] conduct with knowing, or that he should have known the results of his conduct \*\*\* thus reducing the State's burden of proof for this murder to a lesser mental state than 'knowledge'."

¶ 42 Defendant complains of a litany of the State's closing and rebuttal arguments, such as "[defendant] knew what the consequences were as he delivered blow, after blow, after blow" and "any human being knows just by being a human being that if you pummel someone like that, that you are going to create great bodily harm" and "He snapped. He lost it. Absolutely, but he knew what he was doing. \*\*\* He knew when he was punching what he was doing" and "He, with every single punch, with every single blow to that child \*\*\* earned the first degree murder conviction."

¶ 43 Having read the entirety of the closing arguments and rebuttal, we do not find the State's arguments, in context, were misleading regarding the required mental state for first degree murder strong probability. Throughout its argument, in response to defendant's theory of the case, the State stressed that defendant could not possibly have been only "reckless" as he knew when he punched and hit the small boy with his

full adult force that there was a strong probability that the child would sustain great bodily harm as a result. The State's entire argument was intended to demonstrate that defendant had the requisite conscious awareness that there was a strong probability that his hitting and punching Cameron would cause the child great bodily harm or death. It used the facts, defendant's admitted whipping and punching of a little boy and the injuries resulting from that conduct, to establish that defendant acted knowing the strong probability of great bodily harm that would result. The State's comments, taken as a whole in context with the entirety of the arguments, were not improper and did not misstate the law.

¶ 44 Defendant also argues that the State misled the jury by repeatedly telling it that it should be guided by the law but neglecting to tell it that it was deprived of the law describing the mental state for murder strong probability since the court had refused the "knowing" instruction. The State is not required to inform the jury regarding an instruction the court did not give. Further, as held above, the court did not err in refusing the "knowledge" instruction as the jury did not request the instruction and did not manifest any confusion regarding this mental state. Therefore, the jury was not deprived of the law necessary to its decision.

¶ 45 Lastly, even if the State's arguments were error, the evidence was not so closely balanced that the outcome in the case would have been any different absent the State's comments. As defendant states in his brief on appeal, his theory of the case was that, while he was consciously aware of his actions as he thought he was disciplining Cameron, he did not know or intend that the result of those actions would be great bodily harm or death. However, Dr. Jones's testimony established that defendant could

not possibly have been unaware that there was a strong probability that his conduct would cause great bodily harm or death to Cameron.

¶ 46 Dr. Jones' s testimony showed that the discipline the 180-pound adult defendant inflicted on 45-pound four-year old Cameron was so severe and savage that the boy's organs ruptured. The child had 57 injuries, not including the bruises on his chest that were too numerous and closely grouped for Dr. Jones to count. He had abrasions and bruises to his face, chest, arms, back and legs, brain hemorrhages, damage to his liver, spleen, pancreas and intestines, broken ribs and blood in his abdomen and chest cavities.

¶ 47 The disparity in size and strength between defendant and Cameron, the brutality and repeated nature of the beatings, the child's helplessness and the severity and number of the child's injuries show more than recklessness, more than a conscious disregard of a substantial and unjustifiable risk that circumstances exist or that a result will follow. This evidence establishes that defendant knew, as he whipped and punched and pushed the defenseless boy until he could no longer stand, that his conduct created a strong probability that Cameron would suffer great bodily harm or even death. The evidence of defendant's knowledge that his conduct created a strong probability that Cameron would suffer great bodily harm or die is overwhelming.

¶ 48 The court did not err in denying the request for the knowledge instruction.

¶ 49 2. Jury Note

¶ 50 Defendant argues the trial court committed reversible error when it failed to explain the point of law raised by the jury during deliberations and accepted the verdict knowing that it was rendered by a "still confused jury." He asserts he was denied a fair

trial as the record shows the court failed to answer the jury's note requesting clarification of the term "reckless" in a timely manner, the jury's question established that the jury was confused regarding the key issue of defendant's mental state and the jury returned a guilty verdict before its question was answered, *i.e.*, in its confused condition.

¶ 51 Generally, the trial court has a duty to provide instructions to the jury when the jury poses an explicit question or requests clarification on a point of law arising from facts causing doubt or confusion. *People v. Averett*, 237 Ill. 2d 1, 24 (2010). A jury is entitled to have its inquiries answered. *People v. Childs*, 159 Ill. 2d 217, 228 (1994). Thus, the trial court generally has a duty to provide instructions to the jury when the jury poses an explicit question or requests clarification on a point of law arising from facts causing doubt or confusion. *People v. Averett*, 237 Ill. 2d 1, 24 (2010); *Childs*, 159 Ill. 2d at 228-29. "When a jury makes explicit its difficulties, the court should resolve them with specificity and accuracy." *Childs*, 159 Ill. 2d at 229. The court may exercise its discretion to decline answering a question if the jury instructions are readily understandable and explain the relevant law. *Averett*, 237 Ill. 2d at 25. The failure to answer or the giving of a response which provides no answer to the particular question of law posed has been held to be prejudicial error. *Childs*, 159 Ill. 2d at 229.

¶ 52 The court here did not decline to answer the jury's question. Instead, it worked closely with defense counsel to prepare a response, allowing defense counsel time to return to her office to gather case law and discussing with counsel alternate definitions of reckless that might be given to the jury. Ultimately, at defense counsel's suggestion, the court responded to the jury's note by asking the jury what words or phrases in the instruction needed clarification.

¶ 53 When a defendant acquiesces in the trial court's answer to a jury question, the defendant cannot later complain that the court's answer was an abuse of discretion. *Averett*, 237 Ill. 2d at 23-24. Under the doctrine of invited error, a defendant may not request or agree to the trial court's course of action and then subsequently contend on appeal that the course of action was in error. *People v. Carter*, 208 Ill. 2d 309, 319 (2003); *People v. Curry*, 2013 IL App (4th) 120724, ¶ 88; *People v. Pryor*, 372 Ill. App. 3d 422, 432 (2007). "The purpose of the invited error rule is to prohibit a defendant from unfairly obtaining a second trial on the basis of error that he injected into the proceedings." *Pryor*, 372 Ill. App. 3d at 432.

¶ 54 "To allow a defendant to object, on appeal, to the trial court's response to the jury's question that he agreed to at trial would offend all notions of fair play." *Id.* Here, not only did defense counsel affirmatively acquiesce in the court's response to the jury question, the response was made at her suggestion and she actively participated in its drafting. Accordingly, defendant may not complain about the trial court's response in this appeal. *Id.*

¶ 55 Defendant is similarly estopped from raising any argument regarding the trial court's delay in responding to the jury's question. One hour and 45 minutes elapsed between the time the court received the jury's note and the court's response to that note. One hour of that delay was due to defense counsel's request that she be allowed to return to her office to obtain relevant case law. The remaining 45-minute delay was due to the extensive discussion between the court and defense counsel regarding which definition of "reckless" the jury should be provided.

¶ 56 At no point during the discussion of the jury's note did defense counsel object

that the court was taking too long to address the jury's question. Indeed, she arguably could not make such an objection as she had initiated much of that delay herself in working to craft a clearer instruction. Defense counsel affirmatively participated in the discussions that resulted in the delay in responding to the jury's note and did not object to the timing of the response. Thus, under the doctrine of invited error, defendant cannot now contend on appeal that the court's delay in answering the jury's question was in error.

¶ 57 Defendant argues he was denied a fair trial when the court accepted the jury verdict despite knowing that it had not answered the jury's question and the jury was still confused regarding defendant's mental state, the critical issue in the case. He asserts the court's failure to respond to the jury's question was reversible error as it resulted in a guilty verdict "clearly based upon the jury's faulty understanding of the law."

¶ 58 Defendant cites to cases in which the courts found the trial court committed reversible error by failing to specifically answer the juries' requests for further instruction on critical issues in the cases. For example, in *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994), the court found the jury had "posed an explicit question which manifested juror confusion on a substantive legal issue" and the trial court's response telling the jury to continue deliberating was reversible error as the trial court's response "was tantamount to no answer." *Id.* at 229, 234. It was not apparent to the court "that the manner in which the [trial] court dealt with the jury's inquiry was not a factor in the rendering of th[e] verdict." *Id.* at 234.

¶ 59 In *People v. Landwer*, 279 Ill. App. 3d 306 (1996), the court found the jury's multiple requests for the legal definition of "originated" as used in the defendant's

entrapment defense showed the jury was "confused." *Landwer*, 279 Ill. App. 3d at 315. The court held that the trial court should have answered the jury by defining the word rather than telling the jury the term had a commonly understood meaning and needed no further definition. *Id.* at 316. Finding the jury's understanding of "originated" was critical to the defendant's case, the court held the trial court's error was not harmless and reversed. *Id.* at 317. In *People v. Brouder*, 168 Ill. App. 3d 938 (1988), the court found that the jury "demonstrated confusion as to a question of law (the meaning of 'knowing resistance')" and the trial court committed reversible error when it refused to provide the jury with defense counsel's tendered instruction defining "knowingly" as a mental state and, instead, ordered the jury to continue its deliberations. *Brouder*, 168 Ill. App. 3d at 948.

¶ 60 As in *Childs*, *Landwer* and *Brouder*, the trial court here had not specifically answered the jury's question when the jury returned its verdict. However, unlike in those cases, the court did not refuse to answer the jury's question and order the jury to continue deliberating with the instructions it already had. Instead, at defense counsel's suggestion, it sent the jury an interim response asking it what words or phrases in the original "reckless" instruction needed clarification. The report of proceedings establishes that the court's response was intended by the court and defense counsel to glean more information from the jury regarding its confusion in order that the court and counsel could draft a full response to the jury's question. "If the question asked by the jury is unclear, it is the court's duty to seek clarification of it." *Childs*, 159 Ill. 2d at 229. The court met that duty here.

¶ 61 Unlike in the cases cited by defendant, there was no serious danger that the jury

would enter its verdict on insufficient facts as the court did not intend the note to be its final response to the jury. That final response fully addressing the jury's question would come after the jury gave the court the requested clarification regarding the question. We note again that defense counsel had not only acquiesced to the interim response but had suggested it.

¶ 62 Moreover, given the content of the court's note, there was no reason to suppose that the jury was still "confused" when it rendered its verdict when, instead of responding to the court's straightforward request for clarification of its question, the jury reached a verdict. The jury had proven itself amply capable of communicating with the court. Therefore, if, as defendant suggests, the jury was still confused regarding the "reckless" instruction, it would have responded to the court's question with specifics regarding that confusion. It would not have reached a verdict.

¶ 63 Lastly, defense counsel did not object when the court accepted the verdict despite the fact that the jury's question had not been specifically answered. By failing to raise this objection to the trial court, defendant's argument that the court erred in accepting the verdict without having answered the jury's question is forfeited. *Enoch*, 122 Ill. 2d at 186. Although we may generally consider a forfeited argument under the plain-error doctrine (*People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010)), defendant did not argue for plain-error review of his argument that the court committed reversible error in accepting the verdict. Defendant has the burden of persuasion under the plain-error doctrine. *Id.* Since he fails to argue for plain-error review, he cannot meet his burden of persuasion and has forfeited plain-error review of his argument. *Id.* The trial court did not err in its response to the jury's question or in accepting the jury's verdict.

¶ 64

CONCLUSION

¶ 65

For the reasons stated above, we affirm the trial court's judgment on the jury verdict finding defendant guilty of the first degree murder of Cameron Smith.

¶ 66

Affirmed.