2013 IL App (1st) 120417-U

SECOND DIVISION
December 3, 2013

No. 1-12-0417

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois
	)	
v.	)	No. 11 C4 40567
	)	
MARTIN CORRAL,	)	The Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Pierce concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court did not err when it refused to instruct the jury on the defense of necessity because the affirmative defense of necessity was not available to defendant where he was convicted of an absolute liability offense. Additionally, we refuse to review defendant's contention on its merits regarding whether the circuit court improperly omitted a section of IPI Criminal 4th No. 3.11 when it instructed the jury because defendant did not preserve the issue for review and the evidence in this case is not closely balanced. Therefore, defendant did not satisfy the first prong of the plain error doctrine.

¶ 2 A jury convicted defendant, Martin Corral, of driving while his license was revoked. He had ten prior offenses for driving while his license was revoked and was sentenced to three years in prison. Defendant raises two issues, both concerning jury instructions, for our review: (1) whether the circuit court erred when it refused to instruct the jury on the defense of necessity; and (2) whether this court should review, under the first prong of the plain error doctrine, whether the circuit court erred when it omitted a paragraph of Illinois Pattern Jury Instructions, Criminal, No. 3.11 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.11), when it instructed the jury. We hold: (1) that the circuit court did not err when it refused to instruct the jury on the defense of necessity because the affirmative defense of necessity was not available to defendant where he was convicted of an absolute liability offense; and (2) we refuse to review defendant's contention on its merits regarding IPI Criminal 4th No. 3.11 as it was not objected to and the evidence in this case was not closely balanced. Therefore, defendant did not satisfy the first prong of the plain error doctrine.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on January 4, 2012. Defendant timely filed his notice of appeal on February 2, 2012. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 Defendant was charged with felony driving while his driver's license, permit or privilege

to operate a motor vehicle is suspended or revoked. At trial, Cicero police officer Allan Pineda testified on behalf of the State. Officer Pineda testified that on May 14, 2011, at around six in the evening, he was on patrol in the vicinity of 5057 West 30th Place in Cicero, Illinois. He was dressed in his uniform and driving a squad car alone in a residential area. He was driving westbound on West 30th place when he had to stop because a "[t]here was a black SUV blocking the street." West 30th place is a one-way street and he was unable to drive around the car. He testified that the black SUV "was running, and it had music coming out of" it. He could hear the music from where his vehicle was stopped, which he testified was "a car length or a car length and a half behind" the black SUV. Officer Pineda testified that he next "parked [his] squad car, and *** tapped the air horn a couple times." The black SUV did not move. Officer Pineda testified that he then "waited probably another second - - a few seconds or a minute" before activating his emergency lights and again tapped the air horn. The black SUV did not move, so Officer Pineda began to exit his vehicle when the black SUV began to move. The following exchange occurred between Officer Pineda and the Assistant State's Attorney (ASA):

> "Q. Now, in between the time that you started - - you activated your air horn, you activated your lights and you began to get out of your car, how much time was that?
>
> A. A couple of minutes. I mean, you know, I'm not sure exactly. It was - - there was some time that passed."

Officer Pineda returned to his vehicle when the black SUV began moving. He estimated that it moved "[p]robably three, four, five houses down towards the corner of the block." The black

SUV did not immediately pull over once Officer Pineda returned to his car, but he was able to "curb" it.

¶ 7 Officer Pineda approached the black SUV. He identified defendant in open court as the driver of the vehicle. There was nobody else in the car except for defendant. Officer Pineda asked defendant for his driver's license and insurance card. Defendant provided an insurance card but told Officer Pineda he did not have a driver's license. Officer Pineda was able to confirm that defendant did not have a driver's license by obtaining defendant's name and date of birth before notifying "dispatch." Dispatch confirmed that defendant's driver's license had been revoked. He placed defendant in handcuffs and put him in the back of the squad car. The black SUV was then given to defendant's wife. Officer Pineda testified that he never observed the doors of defendant's car open and he never saw defendant outside the vehicle prior to placing him in handcuffs. Officer Pineda stated that defendant was in the driver's side seat during the entire incident. He never saw any children inside the vehicle.

¶ 8 On cross-examination, Officer Pineda clarified that defendant's vehicle was "next to a parked vehicle on the street." He further testified that he blew his air horn "[a] couple of times," and that his sirens were activated before defendant moved the car. Officer Jose Velazquez arrived on the scene later and transported defendant to the station to do paperwork.

¶ 9 Officer Jose Velazquez of the Cicero police department testified on behalf of the State. Officer Velazquez identified defendant in open court and testified that he spoke with defendant after the incident. Officer Velazquez was on the scene to transport defendant to the police station. He was able to determine defendant's identify, birth date, and that his driving privileges

were revoked. Officer Velazquez issued defendant an improper parking on the roadway ticket. On cross-examination, Officer Velazquez testified that defendant's vehicle was double parked on the street. It was not on the curb at all.

¶ 10 After successfully introducing an exhibit showing that defendant's license was revoked at the time of the incident, the State rested. Defendant moved for a directed verdict, which the circuit court denied.

¶ 11 Casilda Corral, defendant's wife, testified on his behalf. Corral testified that at the time of the incident, she was in her house. Her plans that day were to go to her cousin's baby shower with her three daughters, who were eight, six, and one years old at that time. The one year old child and the six year old child required car seats. When she left to go to the party, her car was located in the garage. She put her daughters in their car seats before leaving for the party. She returned to the house because she forgot her phone. She parked her car in front of her house and turned the car off. She "blew the horn" so that her husband could "come out and look after the girls" while she went to look for her phone. She then went upstairs to get her phone. Corral looked for her phone for approximately five minutes. After finding her phone, Corral then went outside the house and found that her husband "was out there with the police, and he was already handcuffed." On cross-examination, Corral testified that she knew her husband's license was revoked at the time of the incident and that he was not allowed to drive.

¶ 12 Defendant testified on his own behalf. On the day in question, he was in his house watching television when his wife started "beeping in front." Defendant looked out the front window and saw his wife and children in their car. Two of the children were in car seats. He

"immediately started walking out" to see what she needed. Defendant stated that his wife first asked him to get her phone, whereupon he asked her where she left it. His wife directed him to "watch the girls," while she retrieved the phone. His wife proceeded to go inside to look for her phone. His wife had left the driver's side door open, and defendant at this point was talking to his daughters, "seeing that they were buckled right." The car was not running. He clarified that both the driver's side door was open, as his wife left it open, and the back passenger door, on the driver's side, was open because he had opened it to talk to his daughters. Defendant testified that he was "trying to play with" his one year old daughter as she was "a little fussy." He testified that he then heard beeping. The following exchange then occurred between defendant and his counsel:

"Q. And then what happened?

A. Then I looked, and I s[aw] it was a patrol car. But I was wondering because it's a big enough street where a car can pass.

Q. Now, was the car parked in such a way where cars cannot pass down the street?

A. Absolutely not, no.

Q. Was the car double parked?

A. It was - - it was doubled parked, and kind - - it was kind of in the parking space, but - - it was sticking out into the street. Yes. It was - - it was double parked.

Q. And which half of the car was sticking out in the street?

A. More - - it's kind of like she just kind of came into the parking space. Left the whole back and side of the car out into the street."

Defendant described the street as a "a big one-way street."

¶ 13 Defendant testified that "[n]othing" happened after the police officer blew his air horn and defendant stated that he "wasn't sure what he wanted" and that he "didn't know if he was beeping for maybe somebody else to come out." Defendant testified that the officer "then turned on his lights," which caused defendant to become "more concerned." He closed the passenger side door as he was still not sure if the officer was trying to pass by or not. Defendant testified as to what occurred next, as stated in the following exchange with his counsel:

"A. Then [Officer Pineda] *** turned on his lights, and so I then was more concerned. I closed the passenger side door. But I was - - I was still waiting to see if he was going to pass or what he's doing.

Q. And then what happened?

A. Then he turned on his siren, and I figured he wanted me to move. So I parked - - I jumped in the driver's side, turned on the car, and I tried to get more in to get out of his way so he can have absolutely no problem to pass by. I just tried to get out of his way.

Q. And then what happened?

A. And then he came out of his car. He was upset. He said

did I not hear him beeping and why didn't I move.

***

Q. And then what happened?

A. I told *** him that the reason I didn't move is because I can't drive. I don't have a license, that my license is revoked."

¶ 14 Defendant admitted that his license had been revoked and that he had two 2009 charges of driving on a revoked license. Defendant testified that he spent 18 months in incarceration as a result of those charges, which were felonies.

¶ 15 On cross-examination, defendant denied that when he first heard the police car beep its air horn, he was sitting in the driver's seat. He testified that he did not notice the police car until it pulled up behind him. Defendant testified that the car was off and denied that music was playing. Defendant answered, "I don't know," when asked "[w]hy was the car off if [his] wife just had to go into the house to get her phone?" When he heard the police officer beep his horn, he did not immediately move the car because he was not sure if the beeping was directed at him or not. Defendant testified that when he did move the car, he moved it "[a]bout 3 feet out of - - kind of into the parking space more to get more out of the way." He later testified that the distance he moved the car was "[a]pproximately 3 or 4 feet." Defendant also answered "I don't know" when asked "[w]hy didn't you just get out of the car and walk up to the police officer and ask him what he wanted? " When asked whether he remembered telling Officer Pineda that he was "just going to a party," defendant answered, "No." When asked whether there was an "impending emergency," defendant answered, " I thought he had an emergency and wanted to get

by." He added that "when he turns on his sirens, that's what usually that implies, that there's an emergency," and that "I was under the impression that he believed he couldn't get by." When asked whether it was "possible" that he "could have just walked over to the car and asked" the police officer; defendant answered, " I could have walked over to the car and asked the officer what he needed? Yes, I could have done that."

¶ 16 In rebuttal, the State called Officer Pineda. Officer Pineda testified that defendant "said -- he said something to the effect of, you know, we're going - - we're getting ready to go to a party." He further testified that defendant was the only one present in the car at the time of the incident, there were no children in the car. He was not sure if he told Officer Velazquez that defendant told him that they were going to a party. Officer Velazquez did not include this in the police report. On cross-examination, Office Pineda was asked whether defendant "could have said [his] wife is going to a party?" to which he answered, "[c]ould have been."

¶ 17 During the jury instruction conference, the State argued that IPI Criminal 4th No. 3.11 should be given to the jury "because the defendant may or may not have told the officer he was going to a party." The circuit court agreed and admitted the instruction. After argument on whether the jury should be instructed on the defense of necessity, the circuit court made the following findings:

> "there is no necessity defense. Even based upon his own testimony that the police car could have driven around him. He considered that *** is an emergency vehicle. I mean by his own testimony that the police car could have gone around him."

¶ 18 After the parties made closing arguments, the circuit court instructed the jury as to the law. Relevant to this appeal, the circuit court instructed the jury that:

> "The believability of a witness may be challenged by evidence that on some prior - - former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given to the testimony that you heard from the witness in this courtroom."

¶ 19 After deliberation, the jury found defendant guilty of driving while his driver's license was suspended or revoked. On December 9, 2011, defendant filed a motion for a new trial, arguing, in relevant part, that the circuit court erred when it denied his request to instruct the jury as to his defense of necessity. The circuit court denied the motion and sentenced defendant to three years in prison. Defendant timely appealed.

¶ 20 ANALYSIS

¶ 21 Defendant raises two issues, both concerning jury instructions, for our review: (1) whether the circuit court erred when it refused to instruct the jury on the defense of necessity; and (2) whether this court should review, under the first prong of the plain error doctrine, whether the circuit court erred when it omitted a paragraph of IPI Criminal 4th No. 3.11 when it instructed the jury.

¶ 22 Defense of Necessity

¶ 23 Defendant first argues that the circuit court erred when it refused to instruct the jury on

the defense of necessity because there was at least slight evidence that he was without blame in parking the car and that he had a reasonable belief that his moving of the car was the lesser of two evils. Specifically, defendant contends that his wife illegally parked the vehicle while his choice of moving the car on a revoked license as opposed to not moving the car was a reasonable choice of the lesser of two evils when he believed there was a pending emergency that the police were responding to. He characterizes his choice as objectively reasonable because no injury was likely to result from him moving the car while if he had not moved the car, he may have blocked access to an emergency situation.

¶ 24 In response, the State argues that the affirmative defense of necessity was not available to defendant as the offense in question involves absolute liability. Alternatively, the State argues that evidence does not satisfy the defense of necessity because defendant was not without blame and alternatives existed other than illegally driving the vehicle.

¶ 25 Jury instructions aid the jury in reaching a verdict by providing it the proper legal principles to apply to the evidence. *People v. Pierce*, 226 Ill. 2d 470, 475 (2007). The circuit court must properly instruct the jury as to the elements of the offense, the burden of proof, and the presumption of innocence in order to insure that a criminal matter is fundamentally fair. *Id*. An instruction not supported by either the law or the evidence should not be given. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). A defendant is entitled to have the jury instructed as to his theory of the case if he provides some evidentiary foundation for such an instruction, even if such evidence is "slight." *People v. Jones*, 175 Ill. 2d 126, 131-32 (1997) ("Very slight evidence upon a given theory of a case will justify the giving of an instruction."). This is even true where the

defendant's own testimony is inconsistent with the evidence. *People v. Everette*, 141 Ill. 2d 147, 156 (1991); *People v. Janik*, 127 Ill. 2d 390, 398 (1989). We review how the circuit court instructed the jury for an abuse of discretion. *Mohr*, 228 Ill. 2d at 66. The circuit court abuses its discretion where it refuses to instruct the jury on defendant's theory of the case if the defendant provided some foundation for the instruction. *Jones*, 175 Ill. 2d at 131-32.

¶ 26 The Criminal Code of 1961 (Code) defines the affirmative defense of necessity as such:

> "Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct." 720 ILCS 5/7-13 (West 2010).

"This defense is viewed as involving the choice between two admitted evils where other optional course of action are unavailable [citation], and the conduct chosen must promote some higher value than the value of literal compliance with the law." *Janik*, 127 Ill. 2d at 399. A balancing of two evils is necessary under the defense of necessity. *Id.* at 400.

¶ 27 Section 6-303 of the Code defines, in relevant part, the offense of driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked as: "any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a diver's license or permit is revoked." 625 ILCS 5/6-303(a) (West 2010); see also *People v.*

Jackson, 2013 IL 113986, ¶23 (quoting *People v. Close*, 238 Ill. 2d 497, 509 (2010), quoting *People v. Turner*, 64 Ill. 2d 183, 185 (1976)) ("It is well settled that the only elements necessary to prove the offense of driving while license suspended or revoked are ' " ' (1) the act of driving a motor vehicle on the highways of this State, and (2) the fact of the revocation of the driver's license or privilege.' " '). The offense of driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked is an absolute liability offense. *People v. Johnson*, 170 Ill. App. 3d 828, 832-33 (1988); *People v. Stevens*, 125 Ill. App. 3d 854, 855 (1984); *People v. Espenscheid*, 109 Ill. App. 2d 107, 111 (1969); *People v. Manikas*, 106 Ill. App. 2d 315, 329 (1969); *People v. Ciechanowski*, 379 Ill. App. 3d 506, 511 (2008) ("Driving on a suspended or revoked license is also a strict liability offense."). A "defendant's intent, knowledge, moral turpitude, or motive is immaterial on the question of guilt. The only intention necessary to render a person liable *** is the doing of the act prohibited." *People v. Strode*, 13 Ill. App. 3d 697, 698 (1973). Our supreme court recently noted, when addressing an unrelated issue under section 6-303 of the Code, that the defense of necessity is not available as an affirmative defense where the defendant does not contest that his license was suspended or revoked. *Jackson*, 2013 IL 113986, ¶23. Specifically, our supreme court stated:

> "It is important to note, however, in light of the fact that both parties agree that section 6-303 has been construed to set forth an absolute liability offense, that there is no affirmative defense, such as insanity or necessity, to violations of that section where the defendant *does not* contest that his license was suspended or

revoked." (Emphasis in original.) *Id.*

¶ 28 In this case, defendant contends in his reply brief that the statement in *Jackson* that section 6-303 of the Code is an absolute liability offense where the affirmative defense of necessity is not available is *obiter dictum*. Therefore, defendant contends that it is not precedential. Defendant further contends in his reply brief that even if the statement was precedential, it cannot be applied retroactively to him.

¶ 29 Our supreme court has addressed the distinctions between *judicial dictum* and *obiter dictum*, stating, in relevant part, that:

> ' " ' The term '*dictum'* is generally used as an abbreviation of *obiter dictum*, which means a remark or opinion uttered by the way. Such an expression or opinion as a general rule is not binding as authority or precedent within the *stare decisis* rule. [Citation.] On the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, if *dictum*, is a judicial *dictum*. [Citations.] And further, a judicial *dictum* is entitled to much weight, and should be followed unless found to be erroneous. [Citation.] Even *obiter dictum* of a court of last resort can be tantamount to a decision and therefore binding in the absence of a contrary decision of that court. [Citation.] ' " ' *People v. Grever*, 222 Ill. 2d 321, 336 (2006) (quoting *Nudell v. Forest*

Preserve District, 207 Ill. 2d 409, 416 (2003), quoting *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993)).

¶ 30 In this case, defendant contends that the statement in *Jackson* that section 6-303 of the Code is an absolute liability offense where the affirmative defense of necessity is not available is *obiter dictum*, but he fails to provide any decision of our supreme court that offers a contrasting view. Accordingly, even if we take defendant's position[1] that the statement is *obiter dictum*, we still should follow it in the absence of authority to the contrary. *Id.* The only authority defendant relies upon in making his argument, *People v. Kucavik*, 367 Ill. App. 3d 176 (2006), is not applicable here because it addresses a defendant asserting the defense of necessity in the context of an arrest for driving under the influence of alcohol, not an arrest under section 6-303 of the Code, which is at issue here. The State, however, in addition to *Jackson,* provided several Illinois Appellate Court decisions that held that driving while a licenses is suspended or revoked is an absolute liability offense. *Johnson*, 170 Ill. App. 3d at 832-33; *Stevens*, 125 Ill. App. 3d at 855; *Espenscheid*, 109 Ill. App. 2d at 111; *Manikas*, 106 Ill. App. 2d at 329. In light of the fact that defendant has failed to provide any contrary decision of our supreme court, or any court for that matter, we will follow the statement of our supreme court that "section 6-303 has been construed to set forth an absolute liability offense, that there is no affirmative defense, such as insanity or necessity, to violations of that section where the defendant *does not* contest that his license was suspended or revoked." *Jackson*, 2013 IL 113986, ¶23.

[1] We stress, however, that we make no opinion in this decision regarding whether our supreme court's statement in *Jackson* is *dictum* or not.

¶ 31 We also disagree with defendant's contention that our supreme court's statement in *Jackson* cannot be applied retroactively to him as the *Jackson* decision was issued after his arrest. Defendant's argument is without merit considering that prior to his arrest, there had been numerous decisions issued by several panels and divisions of this court that have held that the offense of driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked is an absolute liability offense. *Johnson*, 170 Ill. App. 3d at 832-33; *Stevens*, 125 Ill. App. 3d at 855; *Espenscheid*, 109 Ill. App. 2d at 111; *Manikas*, 106 Ill. App. 2d at 329; *Ciechanowski*, 379 Ill. App. 3d at 511. It has also been held by a panel of this court prior to defendant's arrest in this case that a "defendant's intent, knowledge, moral turpitude, or motive is immaterial on the question of guilt" when determining whether a person committed the crime of driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked. *Strode*, 13 Ill. App. 3d at 698. As such, defendant's argument regarding retroactive application is without merit when case law contrary his position predates his arrest.

¶ 32 With these principles in mind, we hold that the circuit court did not abuse its discretion in this matter when it refused to instruct the jury on the defense of necessity. Although it would appear that defendant provided the "slight" evidence necessary for an instruction on necessity based on his wife's testimony that she parked the car and his own testimony that he believed it to be an emergency, the affirmative defense of necessity was not available to defendant as he did not contest that his license was revoked. *Jones*, 175 Ill. 2d at 131-32 ("Very slight evidence upon a given theory of a case will justify the giving of an instruction."); *Jackson*, 2013 IL 113986, ¶23 (section 6-303 has been construed to set forth an absolute liability offense, that there is no

affirmative defense, such as insanity or necessity, to violations of that section where the defendant *does not* contest that his license was suspended or revoked.") In fact, defendant admitted that his license was revoked and that he drove the motor vehicle. An instruction not supported by the law or the evidence should not be given. *Mohr*, 228 Ill. 2d at 65. Accordingly, we hold that the circuit court did not abuse its discretion when it refused defendant's proffered instruction on the defense of necessity.

¶ 33 IPI Criminal 4th No. 3.11

¶ 34 Defendant's final contention is that the circuit court erred when it omitted a paragraph of IPI Criminal 4th No. 3.11 when it instructed the jury. Defendant argues that IPI Criminal 4th No. 3.11, a cautionary instruction regarding prior inconsistent statements, was central to his defense as his own credibility was at issue. Defendant admits that he did not properly preserve this issue for our review, but urges us to review the matter under the first prong of the plain error doctrine because he contends that the evidence in this case is closely balanced.

¶ 35 In response, the State argues that defendant forfeited the argument because he did not request a different instruction at trial. Furthermore, the State maintains that the evidence at trial was not closely balanced and plain error review is not applicable in this case.

¶ 36 We may review defendant's argument on its merits only if he sustains his burden of persuasion on either of the two prongs of the plain error doctrine. *People v. Herron,* 215 Ill. 2d 167, 187 (2005). Our supreme court has described the plain error doctrine as a "narrow and limited exception." *People v. Hillier,* 237 Ill. 2d 539, 545 (2010). The plain error doctrine allows this court to review a forfeited claim of error that affects a substantial right in two

instances: “where the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence” or “where the error is so serious that the defendant was denied a substantial right, and thus a fair trial.” *Herron,* 215 Ill. 2d at 178-79. As defendant has not provided any argument under the second prong of the plain error doctrine, we may only review his claim if "the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence." *Id.* at 178-79.

¶ 37 We hold that defendant has failed to do so here as the evidence at trial was not closely balanced. Section 6-303 of the Code defines, in relevant part, the offense of driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked as follows: "any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a diver's license or permit is revoked." 625 ILCS 5/6-303(a) (West 2010). Our supreme court has characterized the offense as having only two elements: (1) the act of driving a motor vehicle, and (2) the fact that a driver's license, privilege, or permit is revoked or suspended. *Jackson*, 2013 IL 113986, ¶16. Defendant admitted both elements of the offense at trial and he does not contest them before this court. As discussed *supra*, the defense of necessity was not available to defendant. Therefore, as defendant admitted that he committed the crime and the only defense that he contests here was not available to him, we cannot say that the evidence in this case was closely balanced. Accordingly, we refuse to review defendant's contention regarding IPI Criminal 4th No. 3.11 on its merits because defendant has failed to satisfy his burden under the first prong of the plain-error doctrine.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court is affirmed.

¶ 40 Affirmed.