

**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).

2012 IL App (3d) 100482-U

Order filed August 17, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
|                                      | ) | of the 12th Judicial Circuit, |
| Plaintiff-Appellee,                  | ) | Will County, Illinois,        |
|                                      | ) |                               |
| v.                                   | ) | Appeal No. 3-10-0482          |
|                                      | ) | Circuit No. 09-CF-2221        |
|                                      | ) |                               |
| BRIAN K. PAGE,                       | ) | Honorable                     |
|                                      | ) | Edward A. Burmila, Jr.,       |
| Defendant-Appellant.                 | ) | Judge, Presiding.             |

---

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justice Carter concurred in the judgment.  
Justice Holdridge specially concurred.

**ORDER**

¶ 1 *Held:* The trial court did not err in giving a nonpattern jury instruction. Alternatively, if the court erred, the error was not plain error. Therefore, any error was forfeited.

¶ 2 Defendant, Brian K. Page, was found guilty of aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)) and domestic battery (720 ILCS 5/12-3.2 (West 2008)). He appeals his conviction, arguing that the trial court erred when it gave the jury a nonpattern jury instruction.

We affirm.

¶ 3

## FACTS

¶ 4 On September 25, 2009, the State charged defendant with aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)) and domestic battery (720 ILCS 5/12-3.2 (West 2008)). The cause proceeded to a jury trial, where evidence established that defendant physically abused D.M. while she was living with him.

¶ 5 D.M. testified that she suffered a series of strokes from January 2009 through May 2009. Due to her health problems, D.M. hired defendant in March 2009 to assist her with cleaning, cooking, and laundry. After her final stroke, D.M. began living with defendant at his house. She had her own bedroom, and defendant became her caretaker. As a result of the strokes, D.M. had trouble controlling her bladder. Her lack of control led to arguments with defendant, who would often force D.M. to kneel in the corner due to this issue. Once while she was kneeling, defendant grabbed her by the hair and pulled her onto a chair. Defendant also hit D.M., resulting in black eyes and bruises on her forehead. D.M. received other injuries as well, including a bump on her head caused by defendant hitting her with a screwdriver and bruises on her chest. The injuries resulted in D.M. being hospitalized for four days.

¶ 6 Two of defendant's friends also testified that they witnessed defendant abusing D.M. One stated that he saw defendant become angry with D.M. for urinating in his truck and in her bed. Defendant verbally abused D.M. for her lack of control and then put his hand on her head and pushed her. Thereafter, the witness was sitting with D.M. on the floor and defendant again became infuriated. He forced D.M. to get on her knees and crawl to him. When she got close enough, defendant grabbed her by the hair and pulled her up toward him. Defendant then hit D.M., causing her head to hit the corner of the wall. At the conclusion of the incident, defendant

forced D.M. to clean up the urine in her bed. Another friend of defendant's testified that he also witnessed defendant get upset with D.M. when she lost control of her bladder. Defendant would call D.M. names and sometimes hit her. He also saw defendant force D.M. to kneel after urinating.

¶ 7 Detective Gary Reichenberger testified that he observed D.M. with two black eyes and a large bump on her forehead. D.M. stated that the injuries were caused by defendant. Reichenberger took D.M. back to his office for an interview and to be photographed. Photographs from the interview were presented at trial and showed the injuries D.M. had suffered.

¶ 8 The parties stipulated to the testimony of Dr. James Hurley. According to the stipulation, Dr. Hurley would testify that he examined D.M. and that he diagnosed her with subgaleal hematoma, possibly caused by her hair being pulled, and postconcussional syndrome. Dr. Hurley would also testify that D.M. told him that her injuries were caused by defendant, who had hit her in the head.

¶ 9 After the close of the evidence, the court held a jury instruction conference. The State presented a modified instruction for aggravated domestic battery because there was no pattern instruction for the offense. The instruction included the following proposition: "That the defendant knowingly caused great bodily harm to [D.M.], in that said defendant struck [D.M.] about the head[.]" The trial court gave the instruction without objection.

¶ 10 Defendant was found guilty of both aggravated domestic battery and domestic battery, and sentenced to seven and three years' imprisonment, respectively, with the sentences to be served concurrently. Defendant appeals.

¶ 11

## ANALYSIS

¶ 12 Defendant appeals, arguing that the trial court erred in giving the jury a nonpattern jury instruction which, according to defendant, defined great bodily harm and directed a guilty verdict. Initially, we note that defendant failed to object to the instruction at trial and therefore the issue was forfeited and cannot be considered on appeal unless it was plain error. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). The plain-error doctrine bypasses forfeiture principles and allows a reviewing court to consider unpreserved error when: (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167 (2005). However, before we can determine whether an error fits under either of the above categories, we must first determine whether an error actually occurred. *People v. Cosby*, 231 Ill. 2d 262 (2008).

¶ 13 Here, the court's instruction to the jury included the proposition: "That the defendant knowingly caused great bodily harm to [D.M.], in that said defendant struck [D.M.] about the head[.]" Defendant claims that the instruction defines great bodily harm. We disagree. While the instruction could have been more artfully drafted, we believe that a reasonable juror would not construe it to be a definition of great bodily harm. The instruction did not purport to define great bodily harm, but only stated that, in the context of this case, great bodily harm had to be proven through evidence of the blows to the victim's head. Thus, since the instruction did not define great bodily harm, we do not find that the instruction directed a guilty verdict. Therefore, we do not find error.

¶ 14 We note that even if we had found that the instruction was error, it would not qualify as plain error under either prong of the plain-error doctrine. Defendant does not argue, and we do

not find, that the evidence was closely balanced. The only argument defendant makes with regard to the plain-error doctrine is that waiver should not apply in this case because the alleged error was a substantial defect. We are not convinced by defendant's brief argument and do not believe that the case he cites (*People v. Ogunsola*, 87 Ill. 2d 216 (1981)) is on point, as *Ogunsola* concerned an entirely different instruction on deceptive practices that lacked an intent element. Thus, We do not find that any alleged error was so serious as to meet the second prong of the plain-error doctrine. An incorrect instruction is not necessarily reversible error. *People v. Hopp*, 209 Ill. 2d 1, 10 (2004); *People v. Sargent*, 239 Ill. 2d 166, 191 (2010). An error instructing the jury "rises to the level of plain error only when the omission [error] creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law. *People v. Sargent*, 239 Ill. 2d at 191.

¶ 15

#### CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.

*People v. Brian Page*, 2012 IL App (3d) 100482-U

¶ 18 JUSTICE HOLDRIDGE, specially concurring:

¶ 19 I agree that the trial court's order dismissing the defendant's postconviction petition should be affirmed. I write separately to clarify the analysis that reviewing courts should apply to forfeited claims of error under the plain error doctrine. The first step in the analysis is to determine whether a "plain error" occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). The word "plain" here "is synonymous with 'clear' and is the equivalent of 'obvious.' "

*Piatkowski*, 225 Ill. 2d at 565 n2 (2007).

¶ 20 If the reviewing court determines that the trial court committed a clear or obvious (or “plain”) error, it proceeds to the second step in the analysis, which is to determine whether the error is reversible. Our supreme court has made it clear that plain errors are reversible only when: (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error;” or (2) the error is “so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *Piatkowski*, 225 Ill. 2d at 565; *People v. Herron*, 215 Ill. 2d 167, 179 (2005).

¶ 21 Although the majority applies this analysis correctly, at the end of its opinion it appears to conflate “plain error” with reversible error. See *Supra*, ¶ 14. Specifically, even though it determined that no “clear and obvious” error occurred in this case, the majority concludes its analysis by stating that “even if we had found that the instruction was error, it would not qualify as plain error under either prong of the plain-error doctrine.” I assume that the majority means to say, rather, that even if the instruction was error, it was not *reversible* error because the error did not fall within either of the two categories of reversible error discussed above.

¶ 22 Our court of appeals has repeatedly made the same mistake that the majority makes here. See, e.g., *People v. Haynes*, 399 Ill. App. 3d 903, 914 (2010). Even our supreme court has made this mistake. See, e.g., *People v. Bean*, 137 Ill. 2d 65, 80 (1990). These instances muddle what I believe to be the proper analysis under the plain error doctrine. Again, I write separately to urge our courts of review to exercise greater analytical clarity in our future plain error decisions.