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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 of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 DV 74244
	)	
JOSEPH BLANSKI,	)	Honorable
	)	Yolande M. Bourgeois,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Pucinski and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for domestic battery is affirmed over his contentions that the trial court based its decision on a factually incorrect recitation of the evidence and that his trial counsel provided ineffective assistance when he elicited inculpatory evidence and failed to present a defense.

¶ 2 After a bench trial, defendant Joseph Blanski was found guilty of domestic battery and sentenced to one day in the Cook County Department of Corrections. Blanski contends that his conviction must be vacated because the court based its decision on an incorrect recitation of the evidence, and that his trial counsel having elicited inculpatory evidence and failing to present a defense, provided ineffective assistance. We affirm. As to the trial court's review of the evidence, the record establishes the trial court was careful and accurate in its consideration of the evidence. Regarding the claim of ineffective assistance of counsel, Blanski has not overcome the strong

presumption of trial strategy and his counsel could not have argued self-defense without prejudicing Blanski at trial.

¶ 3 Background

¶ 4 At trial, after both parties waived opening statements, David Cohen, a 25-year-old sound engineer, testified that on May 19, 2013, he was living at 2153 West 18th Street, Chicago, with three other people, including Blanski. At about 2 a.m., Cohen could not sleep due to loud music being played elsewhere in the house. At 4 a.m., Cohen went to the front of the house where he saw Blanski, who was intoxicated, standing in the hallway drinking beer and playing records. Cohen never asked Blanski to turn down the music. When Cohen observed a large tree branch that had been dragged into the middle of the front room, he attempted to clear it out of the way. At that point, Blanski started arguing with him, which resulted in Blanski shoving Cohen with both arms, grabbing the collar of his shirt, and pulling his hair. Cohen, who is 5' 2", tried to defend himself by attempting to move Blanski's arms away and strike him, because Blanski, at 5'10", is significantly taller.

¶ 5 After the fight, Cohen agreed to vacate the house and started packing his belongings. About 30 minutes later, a second confrontation occurred between Cohen and Blanski. As Cohen tried to move the branch to the other side of the house so he would have room to move his belongings, Blanski took the branch from Cohen and proceeded to shove and beat him with it. Cohen suffered abrasions on his chest and arms. Cohen indicated that he never placed his hands on Blanski during the second incident. Cohen then left the house, waited for someone to pick him up, and then called the police.

¶ 6 On cross-examination, Cohen testified that it was possible that he pushed Blanski, but he did not remember. He further testified that he punched Blanski once during the initial fight.

¶ 7 The trial evidence included three photographs Cohen took of himself on the same day showing the injuries he received from the attack with the branch. According to Cohen's testimony, the photographs showed bruises on his left shoulder, right bicep, and chest. And, the photographs showed bruises and abrasions on Cohen's right forearm, and a clump of hair that was pulled out of Cohen's head during the incident.

¶ 8 Blanski testified that at about 2 a.m. that day he and some friends went to his house and started playing music. Cohen woke up, drank a beer, and then returned to his room. Blanski's friends left, and only Blanski, Blanski's girlfriend, who was asleep in bed, and Cohen remained in the house. At about 4 a.m., Cohen, who appeared irritated, came out of his room to tell Blanski to turn down the music. When Blanski refused, Cohen lectured him and poked him in the chest twice with his fingers. Blanski still refused to turn down the music, noting that the roommates had a policy that allowed them to play loud music. Blanski then pushed Cohen. Cohen responded by punching Blanski in the left ear, bruising the ear and causing him to "black out" momentarily. Cohen continued to pursue Blanski, and Blanski grabbed Cohen's head in an attempt to restrain him. Cohen started swinging at Blanski and hit him twice in the mouth, causing Blanski to sustain a split lip. Blanski pulled on Cohen's hair and was able to move Cohen out of the way. When the fight stopped, Blanski told Cohen that he had to move out of the house, and both men returned to their respective bedrooms.

¶ 9 A short time later, Blanski awoke to a scratching noise and saw that Cohen was moving a large tree branch that his roommate had brought into the house. Cohen was damaging things while moving the branch. Blanski asked Cohen to put the branch down, but Cohen refused. Then, Blanski attempted to pull the branch out of Cohen's hands, causing the two men to struggle with the branch, but neither sustained injuries. On cross-examination, Blanski testified that when

he pushed the branch into Cohen it hit Cohen. After this second incident, Cohen left the apartment. Blanski never called the police or sought medical attention for his injuries.

¶ 10 Both parties waived closing arguments.

¶ 11 The trial court declared Blanski guilty of domestic battery. The trial court found Cohen's testimony credible and corroborated by photographs of his injuries. In contrast, the court found Blanski's testimony incredible where there was no corroborating evidence of the alleged injuries he sustained as a result of the fight.

¶ 12 Contention Trial Court Incorrectly Assessed the Evidence

¶ 13 Blanski maintains that the trial court explicitly based its decision on a factually incorrect recitation of the evidence. In particular, Blanski argues that the trial court erred when it found "no corroboration" that he was injured during the altercation where Cohen testified that he punched Blanski "at least once," and stated that "it was a fight, so it's possible that I pushed him."

¶ 14 Blanski concedes that he forfeited this issue by neither objecting to the trial court's summarization of the evidence nor raising it in a motion for a new trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Nevertheless, Blanski requests that we review it under the plain error rule. The plain error doctrine provides that courts may consider forfeited errors if either the evidence was so closely balanced that the error may have affected the outcome, or the error was so serious that it denied defendant one of his or her substantial rights. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Blanski only maintains in his appellate brief that the evidence was closely balanced. Because the plain error exception applies only if an actual error occurred (*People v. Chapman*, 194 Ill. 2d 186, 225-26 (2000)), we must first determine if there was a clear or obvious error (*People v. McLaurin*, 235 Ill. 2d 478, 489 (2009)). "Absent reversible error, there

can be no plain error." *People v. Naylor*, 229 Ill. 2d 584, 602 (2008). Blanski carries the burden to establish plain error. *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 21.

¶ 15 This case turned on witness credibility. Cohen testified that at about 4 a.m., as he attempted to move a branch that was inside of the house, he and Blanski began arguing. Blanski shoved Cohen. He grabbed the collar of Cohen's shirt. And, he pulled Cohen's hair. Cohen tried to defend himself. Cohen tried to move Blanski away, and punched Blanski one time and may have pushed him. About 30 minutes later, a second confrontation occurred between Cohen and Blanski. This time Blanski shoved and beat Cohen with the branch, resulting in abrasions on Cohen's chest and arms. Three photographs depicting Cohen's injuries were entered into evidence.

¶ 16 In contrast to Cohen's testimony, Blanski testified that Cohen came out of his room, told Blanski to turn down the music, and, when Blanski refused, Cohen poked him in the chest twice with his fingers. Blanski then pushed Cohen, and Cohen responded by punching Blanski in the left ear, causing him to "black out." Blanski testified that his ear was bruised from the punch. Cohen and Blanski continued struggling. Cohen punched Blanski twice in the mouth, causing him to sustain a split lip. As to the second confrontation, according to Blanski, neither man sustained any injuries, although Blanski admitted that he pushed the branch into Cohen and the branch hit Cohen. Blanski never called the police or sought medical attention for his injuries.

¶ 17 In making its ruling, the court stated:

"I listened to the testimony of both parties and I find that the complaining witness' testimony was clear, it was credible. The State admitted corroborating evidence in the form of photographs which show injuries to the complaining witness. The defendant testified that he was also injured, however, there is no corroboration for

that, nor was the girlfriend of the defendant produced who allegedly saw the injuries. This matter boils down to one of credibility. I find the State sustained its burden \*\*\*."

¶ 18 Despite Blanski's contentions to the contrary, the record does not reflect that the trial court mischaracterized the evidence in reaching the verdict. Although Cohen testified that he punched Blanski once and may have pushed him, Cohen provides no detail of any alleged injuries to Blanski. In fact, the trial record shows no evidence, other than Blanski's testimony, that Blanski sustained an injury at all. In contrast, the State introduced photographs documenting Cohen's injuries. The court had every right not to believe Blanski's testimony that he was injured during the fight. See *People v. Campbell*, 146 Ill. 2d 363, 375 (1992) (credibility determinations are within province of trier of fact). To the extent, if any, the contested comments by the trial court were inappropriate or inexact, they certainly did not rise to the level of plain error.

¶ 19 With regard to the closely balanced prong of the plain error doctrine, the only prong that Blanski maintains applies to him, the defendant must prove "prejudicial error," in that he or she "must show both that there was plain error and that the evidence was so closely balanced that the error alone threatened to tip the scales of justice against him [or her]." *Herron*, 215 Ill. 2d at 187. The trial court carefully reviewed the evidence, saw the contradictions, and found in favor of the State. Reversal is not warranted.

¶ 20 In reaching this conclusion, we find *People v. Naylor*, 229 Ill. 2d 584 (2008) and *People v. Miller*, 2013 IL App (1st) 110879, relied on by Blanski, distinguishable. In *Naylor*, the supreme court affirmed a reversal and remand for a new trial following a bench trial in which the trial court admitted the defendant's prior convictions in violation of *People v. Montgomery*, 47 Ill. 2d 510 (1971). In so finding, the supreme court reached the *Montgomery* issue as plain error



"virtually unchallengeable." *People v. McGee*, 373 Ill. App. 3d 824, 835 (2007), quoting *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). The benchmark for determining a claim of ineffectiveness is whether counsel's conduct so undermined the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland*, 466 U.S. at 686.

¶ 24 The affirmative defense of self-defense under section 7-1 of the Criminal Code of 2012 (720 ILCS 5/7-1(a) (West 2012)), states in part:

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

An affirmative defense has the legal effect of admitting that the acts occurred but denying responsibility. *People v. Brant*, 394 Ill. App. 3d 663, 671 (2009).

¶ 25 Blanski's counsel's decision to forego a theory of self-defense was a matter of trial strategy that did not fall below an objective standard of reasonableness. Rather than admitting the acts constituting the offense of domestic battery, counsel chose to challenge the sufficiency of the State's evidence by cross-examining Cohen and presenting testimony from defendant suggesting that Cohen's account was false and that it was Cohen who provoked the confrontation. In particular, defense counsel elicited from Cohen on cross-examination that he punched Blanski once during the initial confrontation and may have pushed Blanski.

Furthermore, defense counsel elicited testimony from Blanski that Cohen poked him in the chest and punched him in the ear and mouth. Counsel's strategy was reasonable as the evidence consisted of the conflicting testimony of Cohen and Blanski.

¶ 26 Simultaneously arguing self-defense would have prejudiced Blanski at trial. As the State points out in its brief, Blanski could not have presented a successful claim of self-defense.

According to Blanski's own testimony, Cohen merely poked him in the chest twice, an act which could not justify grabbing Cohen, ripping his hair, and attacking him with a branch. Therefore, admitting the acts of the offense might have backfired, as the State could have responded that Blanski initiated the conflict, or argued that Blanski's actions were not reasonable acts of self-defense. In finding that Blanski did not have a viable claim of self-defense, we further reject his contention that counsel compounded his ineffectiveness by waiving all opportunities to argue self-defense, including during closing argument. Defense counsel's decision to forego making a closing argument also constitutes trial strategy, particularly where the State did not make one. See *People v. Conley*, 118 Ill. App. 3d 122, 127-28 (1983) (stating that waiving closing argument, particularly in bench trial, has been recognized as matter of trial strategy). Therefore, counsel's performance neither fell below an objective standard of reasonableness nor prejudiced Blanski.

¶ 27 Moreover, this case is distinguishable from *People v. Wright*, 111 Ill. 2d 18, 27 (1986), relied on by Blanski. In *Wright*, the defendant received ineffective assistance where counsel's failure to raise the defense of involuntary intoxication was attributable to counsel's "misapprehension of the law and not to trial tactics or strategy."

¶ 28 We also note that, despite Blanski's contentions to the contrary, defense counsel did not elicit any new evidence or establish any element of the charged offense that the State had not already established. Blanski specifically maintains that, on Cohen's cross-examination, defense counsel elicited testimony supporting the "bodily harm" element of domestic battery, and, on direct examination of Blanski, defense counsel elicited testimony supporting Blanski's status as a household member. But, Blanski fails to point to any concrete examples of how defense counsel elicited testimony supporting the element of bodily harm. In fact, defense counsel's cross-

examination of Cohen shows that counsel merely asked Cohen questions regarding testimony he had already given concerning what Blanski did with the branch. Furthermore, Cohen had already established the residence element of domestic battery in his direct examination in the State's case-in-chief. The fact that Cohen and Blanski resided together was never in dispute. Thus, this case is unlike *People v. Jackson*, 318 Ill. App. 3d 321 (2000), and *People v. Hattery*, 109 Ill. 2d 449 (1985), relied on by Blanski in his appeal. In *Jackson*, 318 Ill. App. 3d at 329-30, this court held that defense counsel was ineffective for eliciting evidence of the charged offense, *i.e.*, possession of a controlled substance with intent to deliver, that the State had not proven. In particular, the defense counsel elicited testimony that shortly after an unknown person gave the defendant money, a man standing near the defendant reached into a bag and handed something to the unknown person. *Id.* at 328. In *Hattery*, 109 Ill. 2d at 458, the defendant pled not guilty to murder charges, but in the defense's opening statement, his attorneys conceded that the defendant committed the murders. The defense counsel advanced no theory of defense, but instead argued that the defendant was not deserving of the death penalty. *Id.* at 459, 464. The defendant was convicted of murder and sentenced to death, but the supreme court reversed the conviction where defense counsel failed to subject the State's case to the meaningful adversarial testing required by the sixth amendment. *Id.* at 464. In contrast to *Jackson* and *Hattery*, Blanski's defense counsel challenged the sufficiency of the State's case, and, at most, elicited testimony from Cohen that he had already provided on direct examination.

¶ 29 We affirm the judgment of the circuit court.

¶ 30 Affirmed.