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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 16-DV-977
	)	
MUKESH KUMAR SINHA,	)	Honorable
	)	Jeffrey S. MacKay,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE HUDSON delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's acquiescence in proceeding with trial barred him from challenging adequacy of notice he received for motion to admit other-crimes evidence; other-crimes evidence did not become focal point of trial; evidence was sufficient to sustain defendant's conviction of domestic battery; and various evidentiary rulings, to the extent defendant did not forfeit his ability to challenge them, were not abuses of discretion.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Mukesh Kumar Sinha, appeals his conviction of one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)). Defendant contends he was not given adequate notice of a motion to admit other-crimes evidence heard on the morning of the trial, alleges

certain evidentiary errors, and attacks the sufficiency of the evidence to convict him as well. For the reasons that follow, we affirm.

¶ 4

## II. BACKGROUND

¶ 5 We will summarize the proceedings before the trial court to facilitate an understanding of this appeal. Defendant was charged with two counts of domestic battery—the first based on his alleged striking of the victim and the second based on his purportedly putting his hand around the victim’s neck. A bench trial commenced on November 28, 2016, which was the Monday following Thanksgiving weekend. On the Wednesday before the holiday weekend, the State faxed a copy of a motion to introduce other-crimes and bad-acts evidence to defendant’s counsel (the motion had been filed the day before with the clerk). The motion concerned an incident between defendant and the victim (Jyoti Sinha) that occurred in April 2013. The trial court addressed the State’s motion prior to the commencement of the trial. The parties argued the underlying merits of the motion, but defendant did not raise the timeliness of the notice he received. The trial court found the 2013 incident admissible. The matter then proceeded to a bench trial.

¶ 6 The State first called Jyoti. She testified that on August 7, 2016, she was cleaning the kitchen, and her son was sleeping in her room. Subsequently, she heard her son crying and went to check on him. She found that her son was in defendant’s room (Jyoti and defendant were going through a divorce and remained in the same house, but kept separate rooms). She attempted to enter, but defendant “slammed the door at [her].” She nevertheless was able to enter the room, and defendant then struck the right side of her face with his hand. Defendant was holding his son in one hand when he struck Jyoti with the other hand. Defendant’s hand was clenched in a fist. Defendant also tried to grab her neck. Jyoti retreated to her room and called

the police. As her son was still in the room with defendant, Jyoti returned to check on him. The police photographed bruises on Jyoti's face, which she identified at trial.

¶ 7 Jyoti then described the April 2013 incident. She explained that she and defendant had been arguing over him smoking marijuana. Defendant twisted her arm, struck her head, and pushed her onto a couch.

¶ 8 On cross-examination, Jyoti acknowledged that in her 2013 statement to the police, she never mention defendant smoking marijuana. Defendant then attempted to impeach Jyoti with statements from the police report concerning the 2013 incident. The State objected, and the trial court sustained the objection. The trial court ruled that if Jyoti denied making a statement purportedly memorialized in the report, defendant would be required to perfect the impeachment. However, as he did not have the officer who prepared the report under subpoena, he could not do so. Defendant then protested that he could not secure the presence of the officer because the State did not give him notice of the motion until the day before the Thanksgiving weekend. The trial court nevertheless sustained the objection. Defendant did not ask for a continuance or any other such remedy. Jyoti acknowledged that her written statement regarding the 2013 incident indicates that she threw a phone and it was defendant who called the police that day. She explained that defendant was hitting her with a glass container and she threw the phone out toward the garage in retaliation.

¶ 9 Regarding the 2016 incident, Jyoti explained that she and defendant were going through a divorce. The trial court sustained an objection (relevance) when defense counsel attempted to inquire as to whether defendant had to file motions in order to secure visitation with his son. The court specifically stated it would consider the pending divorce. However, it then permitted defendant to elicit that on July 16, 2016, an order was entered setting a hearing date concerning

parenting time and that defendant filed a petition concerning parenting time “a couple days before the incident.” Defense counsel then revisited the details of the 2016 incident with Jyoti.

¶ 10 Jyoti was then asked about a cell-phone video taken by defendant shortly after the 2016 incident. She agreed that her son was not crying in the video. She also was not crying. On redirect-examination, Jyoti explained that her son was sucking his thumb in the video, which is something he does when he is scared. Jyoti further explained that she and defendant shared a house while the divorce was pending because she lacked the financial resources to do otherwise. On recross-examination, defense counsel asked Jyoti about \$540,000 she purportedly sent to her family in India shortly before the commencement of the divorce. Defense counsel argued that it impeached her testimony that she lacked financial resources. The trial court sustained an objection to the question, finding it a collateral matter.

¶ 11 The State then called Officer Dollins of the Darien police department. On August 7, 2016, she responded to the domestic incident that forms the basis of this case. When she arrived, she saw defendant in the driveway. Defendant was upset. Defendant stated that he was in his room, changing, when Jyoti entered. He closed the door, as he did not want her in the room. She reentered. He was holding his son, and Jyoti tried to grab his son away from him. He pulled away, and she accused him of striking her. Defendant started recording with his cell phone. During his discussion with Dollins, defendant was “very uncooperative.” Another officer (Murphy) spoke with Jyoti. Defendant did not comply when Dollins instructed him to place his hands behind his back, and Dollins had to physically grab his wrists and place them behind his back. Dollins observed no injuries to defendant.

¶ 12 Dollins spoke with Jyoti. She noted red marks on the right side of Jyoti’s face along with some “minimal bruising on her upper cheek bone like by her ear area.” Jyoti was upset and her

eyes were red. The officer then identified and described the content of three photographs of Jyoti.

¶ 13 Defendant then testified on his own behalf. He first addressed the incident of April 18, 2013. Defendant stated he was trying to leave the house, and Jyoti would not let him. As he tried to back the car out of the garage, she kept closing the garage door. The two had been arguing over a car that had belonged to defendant's then-recently deceased father, which was parked in the garage. Jyoti threw a cordless phone at defendant. Defendant called the police. Jyoti picked up a glass jar and appeared to intend to throw it at defendant. Defendant grabbed her wrist, and she dropped the jar. Defendant denied entering the house and throwing Jyoti onto a couch.

¶ 14 Regarding the August 7, 2016, incident, defendant testified that he was changing and his son came into his room. A divorce was pending. He and Jyoti had separate rooms, but shared the house. They had been living in this manner for about eight months. In the past, Jyoti would not allow defendant to take his son from the house. The court, noting that he had already cross examined Jyoti on the issue, sustained an objection when defendant was asked about filing a petition concerning his son.

¶ 15 Defendant heard Jyoti attempting to enter his room, so he moved near the door. Jyoti was screaming. Defendant blocked the door by standing with his back to it. He was holding his son. Defendant pushed the door shut, but Jyoti kept pushing against it, so defendant stepped away from the door. Jyoti entered the room. She then went and got her phone and called the police. Defendant did not observe his son crying during the incident. He stated that he never struck Jyoti.

¶ 16 On cross-examination, defendant acknowledged that he was arrested following the April 2013 incident. Defendant stated he did not understand some of Officer Dollins' instructions and that he was not deliberately failing to comply. On redirect-examination, defendant stated he was not charged with resisting arrest.

¶ 17 The trial court found defendant guilty of one count of domestic battery. It first stated it would not consider the fact that defendant was arrested following the 2013 incident, though it would consider the testimony of defendant and Jyoti concerning the incident. The court then noted it was undisputed that defendant and the victim were family or household members. The trial court found defendant not guilty with respect to Count II, which was based on his putting his hands around Jyoti's neck. The trial court noted defendant's testimony that he did not strike Jyoti and that it was corroborated by his statement to Dollins when Dollins first arrived on the scene. However, Jyoti testified, to the contrary, that defendant struck her face. The court then considered three photographs submitted by the State. It noted that there were shadows in the photographs and they were "slightly blurry." Nevertheless, they showed finger marks or knuckle marks along Jyoti's cheek bone. The trial court expressly found Jyoti credible and defendant to lack credibility. The trial court also noted that on the cell-phone video, defendant is heard saying, "Yeah, I hit you." The court then found defendant guilty of Count I.

¶ 18

### III. ANALYSIS

¶ 19 On appeal, defendant first contends that the trial court erred in allowing the State to present evidence of the April 2013 incident where the State's notice of the motion was insufficient. He next argues he was not proven guilty beyond a reasonable doubt. Third, he attacks several additional evidentiary rulings made by the trial court.

¶ 20

#### A. NOTICE OF MOTION AND THE 2013 INCIDENT

¶ 21 Defendant contends that the trial court erred in allowing the State to introduce evidence concerning the 2013 incident for two reasons. He first argues that the State did not provide him with adequate notice of the motion. Second, he argues that the 2013 incident became the “focal point” of the trial. We find neither contention persuasive.

¶ 22 As for defendant’s first point, we find that he is barred from raising it by the invited-error doctrine. This doctrine holds that “a defendant may not request to proceed in one manner and later contend on appeal that the course of action was in error.” *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17. Moreover, “a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court’s actions constituted error.” *People v. Manning*, 2017 IL App (2d) 140930, ¶ 16. An error forfeited in this manner may not be reached by plain-error review. *Harding*, 2012 IL App (2d) 101011, ¶17.

¶ 23 When the motion was presented on the morning of the trial, defendant contested the merits of the motion. He argued that since the prior bad act occurred 3½ years before the instant offense and because there were factual differences, its potential for unfair prejudice substantially outweighed its probative value. However, defendant did not mention the timeliness of the notice of the motion that he received. After the trial had commenced, during cross-examination of the State’s first witness, the issue arose again. Defendant attempted to impeach Jyoti with certain statements contained in the police report concerning the 2013 incident. The trial court sustained the State’s objection, noting that if Jyoti denied the statement, defendant would not be able to perfect impeachment, as the officer that authored the report was not available to testify. Defendant asserted that he did not have an opportunity to subpoena the officer given the State’s late notice of the motion to admit the 2013 incident. However, defendant did not seek a continuance to allow him to secure the officer’s testimony or ask to bifurcate the trial.

¶ 24 Thus, defendant acquiesced in the trial proceeding without the officer's testimony. While it is apparent that defendant would have liked any reference to the 2013 incident excluded due to the State's allegedly tardy notice, the trial court did not grant that remedy. We perceive nothing in the record to indicate that the trial court would not have been amenable to a continuance if the defendant had sought one. However, instead of seeking one, defendant went along with trying the case to a conclusion and now, having lost, attempts to secure a new trial essentially because the trial court did not grant a remedy that defendant did not request. This is invited error, which, as noted above, is not amenable to plain-error review. As such, we will not consider defendant's first argument.

¶ 25 Defendant also contends that the evidence concerning the 2013 incident became the focal point of the trial. At no point did defendant object to the amount of time being spent on this incident, which forfeits the issue. This issue would be subject to plain-error review (see *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)); however, for there to be plain error, there must first be error (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)). As such, we will consider the merits of the underlying argument.

¶ 26 It is certainly true that "other-crimes evidence must not become a 'focal point' of the trial, nor should the trial become a 'mini-trial' of the uncharged offense." *People v. Heller*, 2017 IL App (4th) 140658, ¶ 54. Whether to admit such evidence is a matter within the sound discretion of the trial court. *Id.*, ¶ 45. Thus, we will reverse only if the trial court abused that discretion, that is, only if no reasonable person could agree with its decision. *Id.*

¶ 27 However, defendant's argument on this point is wholly conclusory. Defendant simply asserts that too much time was spent on the 2013 incident. He cites no case law where error was found under similar circumstances. Having reviewed the report of proceedings, we initially note



that defense counsel spent considerable time addressing the issue. Thus, a portion of the amount of time spent on the 2013 incident was the result of the defense's actions. More importantly, the amount of time spent on this incident does not strike us as so significant that we could find an abuse of discretion on behalf of the trial court (particularly in the absence of compelling authority). Accordingly, we find no error here, much less plain error.

¶ 28 B. SUFFICIENCY OF THE EVIDENCE

¶ 29 Defendant next contends that the evidence was not sufficient to sustain his conviction of domestic violence. When reviewing a challenge to the sufficiency of the evidence, we must determine, taking all evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *People v. Wheeler*, 226 Ill 2d 92, 114 (2007). The trier of fact's findings regarding the credibility of witnesses are entitled to great weight. *Id.* at 114-15.

¶ 30 Defendant begins this argument with a lengthy attack on Jyoti's credibility. It is true that her testimony is not consistent at all times. However, the trial court was aware of such discrepancies and found her credible nevertheless. This is a finding to which we owe great deference. *Id.* Moreover, defendant's conviction did not rest on Jyoti's testimony alone. Officer Dollins testified to Jyoti's injuries. Further, the injuries were documented in photographs. Though, as the trial court noted, these photographs are not perfectly clear, we have observed them and agree with the trial court that they show marks along Jyoti's cheek bone.

¶ 31 Defendant also contends that the trial court should have found him credible. He states his testimony was consistent with the cell-phone video; however, that video did not cover the portion of the incident when the battery was found to have occurred. Defendant claims that the trial court found that Dollins' testimony corroborated him. Actually, the trial court found that

Dollins corroborated that defendant denied striking Jyoti from the outset. Defendant reads too much into this finding. Defendant points to motives Jyoti may have had to fabricate. The trial court nevertheless found her credible. Defendant points to a number of minor points that are consistent with his testimony (for example, in the cell-phone video he is wearing only boxer shorts, which, he asserts, corroborates that he did not want Jyoti in his room because he was changing). However, none are so compelling as to require the trier of fact to accept his testimony.

¶ 32 The trial court also relied on a statement defendant is heard making in the cell-phone video. While Jyoti is relating to the police dispatcher that defendant had struck her, the trial court noted defendant stated, “[Y]eah, I hit you, confirming or corroborating what she said.” Defendant now contends that this is “clearly sarcastic.” However, at this stage of the proceedings, defendant is not entitled to characterize the record in his favor. Instead, we must take all evidence in the light most favorable to the State. *Wheeler*, 226 Ill 2d at 114.

¶ 33 Given the photographs, Dollins’ testimony, and the role of the trial court in assessing Jyoti’s and defendant’s credibility, we are unable to conclude that no rational trier of fact could have found the elements of the crime of domestic battery beyond a reasonable doubt.

¶ 34 C. OTHER EVIDENTIARY ISSUES

¶ 35 Defendant raises four additional evidentiary issues. None are properly preserved, so for defendant to prevail on them, they would have to amount to plain error. However, before an issue can be deemed *plain error*, we must first consider whether there was *any error* in the proceeding below. *People v. Ramsey*, 236 Ill. 2d 342, 412 (2010). Thus, we must first consider whether any of the trial court’s evidentiary rulings were erroneous. Of course, evidentiary rulings constitute error only if the trial court abused its discretion. *People v. Caffey*, 205 Ill. 2d

52, 89 (2001). As such, in assessing whether any error occurred, we must consider whether the trial court made a decision with which no reasonable person could agree. *Heller*, 2017 IL App (4th) 140658, ¶ 54. Only if we find error in any of the following rulings need we go on to address plain error.

¶ 36 Defendant first argues that the trial court should not have precluded his attempt to question Jyoti about statements she made to the police in 2013 because he would not be able to perfect impeachment if she denied making the statements. Defendant asserts that Jyoti may have admitted making the statements, so it was premature to preclude him from asking about them. Defendant cites nothing to support this proposition. In his reply brief, defendant asserts, again without citation to authority, that these rules only apply in jury trials and not in bench trials, as was the instant case. Argument must be supported by citation to pertinent legal authority; the failure to do so forfeits the argument. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Accordingly, we will consider this argument no further. As defendant has failed to establish that this ruling was error, we need not consider whether it was plain error. *People v. Koen*, 2014 IL App (1st) 113082, ¶ 37.

¶ 37 Second, defendant asserts that he should have been allowed to question Jyoti about her withholding parenting time from defendant and the fact that this was an issue in their pending divorce. This argument is also unsupported by legal authority and forfeited. *Kic*, 2011 IL App (1<sup>st</sup>) 100622, ¶ 23. Moreover, we note that the trial court did permit defendant to question Jyoti about a petition for temporary and permanent parenting time that was filed a few days before the 2016 incident. Thus, it appears that the trial court was aware of the existence of the dispute between defendant and Jyoti on this subject. Defendant claims he should have been able to further question Jyoti on this subject to show she had an “ulterior motive” in pursuing a criminal

action. Given the trial court was aware of this issue, we fail to see how it would not have been aware of the potential for such a motive, and defendant does not explain why the information the trial court did have was insufficient or what function additional evidence would have served.

¶ 38 Third, defendant asserts he should have been allowed to explore Jyoti's financial situation, including that she purportedly sent \$540,000 to her family in India before filing for divorce. Defendant contends that this contradicts Jyoti's testimony that she continued to share a house with defendant during the divorce due to financial considerations. Again, this argument is forfeited as it is unsupported by legal authority. *Kic*, 2011 IL App (1st) 100622, ¶ 23. Even if this issue had been properly preserved, it does not appear to us that defendant could prevail on it. The trial court found this a collateral matter. Generally, a witness may not be impeached on a collateral matter. *People v. Hayes*, 353 Ill. App. 3d 578, 584 (2004). A collateral matter is one for which no purpose exists other than to establish the contradiction. *Id.* Defendant attempts to establish a purpose beyond mere contradiction. He suggests that refuting Jyoti's testimony that she remained in the house due to a lack of financial resources made it more likely that she remained for some nefarious purpose, such as to manufacture a domestic violence incident that she could use against defendant in the pending divorce. A reasonable person could conclude that such a relationship to the facts at issue is so tangential and speculative as to not pass the threshold of relevance. In other words, we could not find that the trial court abused its discretion here, even if defendant had not forfeited this argument.

¶ 39 Fourth and finally, defendant complains that the trial court sustained hearsay objections when he tried to testify to two statements Jyoti purportedly made during the 2016 incident. First, defendant attempted to testify that she screamed, "Give me my son." Second, defendant tried to testify that immediately after screaming this, Jyoti stated she was going to call the police.

¶ 40 “Hearsay” is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Ill. R. Evid. 801 (eff. October 15, 2015). The first statement is clearly not hearsay, as no factual matter is asserted. It is simply a direction to defendant. See *People v. Sorrels*, 389 Ill. App. 3d 547, 553 (2009) (“[N]o ‘truth of the matter asserted’ is present in a police officer’s command to ‘Stop.’ ”). The second would seem to fit within the mental-state exception to the hearsay rule (Ill. R. Evid. 803(3) (eff. April 26, 2012)), as it is evidence of Jyoti’s intent. See *People v. Wilson*, 302 Ill. App. 3d 499, 509 (1998) (“The defendant’s statement that he was about to burn Screwball out was a statement of present state of mind. Declarations of intent are admissible under this hearsay exception.”). Thus, the trial court’s rulings on these statements were error.

¶ 41 Therefore, unlike the defendant’s first three arguments addressed in this section, we must ascertain whether the trial court’s error rose to the level of plain error (defendant’s plain-error argument is largely undeveloped; however, in the interests of justice, we will consider this issue regardless). In *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005), our supreme court articulated the plain-error doctrine thusly:

“The plain-error doctrine, as it has developed in Illinois, allows a reviewing court to reach a forfeited error affecting substantial rights in two circumstances. First, 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, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citations.] Second, where the error is so serious that the defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process. [Citations.] This so-called

disjunctive test does not offer two divergent interpretations of plain error, but instead two different ways to ensure the same thing—namely, a fair trial.”).

Thus, we must consider both prongs of the plain-error analysis and determine whether defendant is entitled to prevail based upon these unpreserved errors. The burden is on defendant to make either showing. *Herron*, 215 Ill. 2d at 187.

¶ 42 We first consider whether the evidence was closely balanced. We conclude that it was not. It is true Jyoti’s testimony was not entirely consistent, as we discuss in the previous section concerning the sufficiency of the evidence. However, it was also meaningfully corroborated, particularly with respect to the existence of Jyoti’s injuries. These were corroborated by both Dollins’ testimony and the photographs. Though defendant testified contrary to Jyoti, the trial court expressly found Jyoti credible and defendant to lack credibility. See *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 88 (considering the defendant’s lack of credibility in finding evidence was not closely balanced). Further, to the extent defendant’s testimony was corroborated by Dollins and the cell-phone video, it was only corroborated with regard to events occurring after the battery (also, the trial court found that the video also contained an admission by defendant that he struck Jyoti). Jyoti’s testimony was corroborated with respect to the battery itself. Moreover, even defendant acknowledges that the 2013 incident could “tip the scales” against him. As such, we hold the evidence in this case was not closely balanced.

¶ 43 Turning to the second prong of the plain-error analysis, we must consider whether these two erroneous rulings regarding the purported hearsay nature of the two statements at issue were “so serious that the defendant was denied a substantial right.” *Herron*, 215 Ill. 2d at 79. Our supreme court has explained, “In *Glasper*, this court equated the second prong of plain-error review with structural error, asserting that ‘automatic reversal is only required where an error is

deemed “structural,” *i.e.*, a systemic error which serves to “erode the integrity of the judicial process and undermine the fairness of the defendant’s trial.” ’ ’ *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010) (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009) (quoting, *Herron*, 215 Ill. 2d at 186)). We fail to see how the erroneously admitted evidence was so significant as to deprive defendant of a fair trial.

¶ 44 In *People v. Davidson*, 160 Ill. App. 3d 99, 119 (1987), the court rejected a claim of plain error where the evidence that was admitted in error was cumulative of other evidence in the record. It stated, “Furthermore, we cannot conclude any error here rises to the level of plain error because this evidence was cumulative of other evidence properly admitted.” *Id.* In this case, the evidence defendant complains of was largely cumulative as well. Jyoti’s direction to defendant to turn over her son to her adds little; Jyoti testified, from the outset, that the reason she went to defendant’s room was concern for her son who was crying. Similarly, it is difficult to see what purpose the statement about calling the police would serve. We know Jyoti did actually call the police, so a statement showing her intent to do so adds nothing of consequence. Such errors simply do not rise to the level of the sort of error that we could call plain. See *Thompson*, 238 Ill. 2d 598, 613-14.

¶ 45 Accordingly, as defendant failed to establish error in his first three arguments in this section, he cannot prevail on them. Though defendant the fourth argument established an evidentiary error on behalf of the trial court, it is not so significant as to have deprived defendant of a fair trial and constitute plain error.

¶ 46

#### IV. CONCLUSION

¶ 47 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 48 Affirmed.