2018 IL App (1st) 160992-U

No. 1-16-0992

June 14, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 11967
	)	
HUGO OCON,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Mason and Justice Pucnsinki concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for first degree murder and aggravated battery are affirmed over his contentions that: (1) he was denied a fair trial when the trial court failed to *sua sponte* instruct the jury regarding lesser-included offenses of involuntary manslaughter and reckless homicide; (2) his trial counsel was ineffective for failing to request instructions regarding lesser-included offenses and that accomplice liability should be considered with caution; and (3) the trial court erred by failing to answer a question from the jury which demonstrated its confusion regarding a matter of law.

¶ 2 Following a 2015 jury trial, defendant Hugo Ocon was convicted of first degree murder (720 ILCS 5/9-1 (a)(1) (West 2008)) and three counts of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2008)). He was sentenced to 45 years' imprisonment for first degree murder and three terms of 10 years' imprisonment for aggravated battery with all sentences to be served concurrently. Defendant appeals, arguing that: (1) the trial court committed plain error when it failed to, *sua sponte*, give jury instructions regarding involuntary manslaughter and reckless homicide where there was ample evidence to support these lesser-included offenses; (2) trial counsel was ineffective because he failed to request jury instructions regarding lesser-included offenses and the Illinois Pattern Instructions (IPI) regarding accomplice testimony; and (3) the trial court abused its discretion when it failed to provide a clear and correct answer to a question from the jury which allegedly revealed the jury's confusion on a critical question of law. For the reasons set forth herein, we affirm.

¶ 3 Defendant was charged by indictment with multiple counts of first degree murder, attempt first degree murder, and aggravated battery following a traffic incident which resulted in the death of 16-year-old Andres Yanez. Prior to trial, the State nol-prosesed all counts except: one count of first degree murder alleging that defendant intentionally or knowingly struck and killed Yanez with a motor vehicle; one count of first degree murder which alleged that he struck Yanez with a motor vehicle, knowing that such an act created a strong probability of death or great bodily harm; three counts of felony murder of Yanez predicated on the aggravated batteries to Fred Agredano, Juan Reynaga, and Elio Sandoval; and three counts of aggravated battery alleging that he knowingly caused bodily harm when he drove a motor vehicle into a motor vehicle containing Agredano, Reynaga, and Sandoval, while using a dangerous weapon, "to wit:

a motor vehicle." Because defendant does not challenge the sufficiency of the evidence supporting his convictions, we recount the facts only to the extent necessary to resolve the issues raised on appeal.

¶ 4 Fred Agredano, Juan Reynaga, and Elio Sandoval testified that, on June 18, 2009, they, along with Ruben Rosales, were riding in an Oldsmobile Bravada sports utility vehicle (SUV) driven by Andres Yanez. The men were all members of the Latin Kings street gang, and were driving the SUV through the territory of the Two-Six street gang, a rival of the Latin Kings. As the group drove past a gas station located at the intersection of West Marquette Road and South Kilbourn Avenue, the men saw "some guys" standing by a black "G20" van with gold stripes and flashing gang signs at them. At least one occupant of the SUV responded by flashing a Latin Kings gang sign. As the group drove away from the gas station, the men at the gas station rushed into the G20 van while one of them shouted "They're Kings, get them." The van then started to chase the SUV. The passengers of the SUV could see the occupants of the van laughing and "throwing up" gang signs. Sandoval identified defendant as the driver of the van.

¶ 5 Agredano, Reynaga, and Sandoval testified that, while the SUV was stopped at a red light at the intersection of 63rd Street and South Cicero Avenue, the van ran into the rear of the SUV. The impact caused the SUV to enter the intersection, where it hit a white Honda Civic. Yanez then drove the SUV around the Civic and sped away from the intersection. Defendant continued to pursue the SUV, and, at the intersection of 61st Street and Cicero, the van struck the SUV in the right rear bumper area. The SUV then began to spin and flip through the intersection. A truck driver, who was in the area, testified that he observed the driver of the SUV eject through the

vehicle's windshield and get struck by a pickup truck which was swerving to avoid the out-of-control SUV. Yanez later died of the injuries he sustained during the accident.

¶ 6 Two men testified about being members the Two-Six gang and passengers of the G20 van which was driven by defendant. Jose Garcia, who was sitting behind the driver's seat of the van, testified that, at the gas station, defendant called for Daniel Martinez to get into the van so that they could chase the SUV. He described how, during the chase, defendant ran into the SUV at 63rd and Cicero, and continued to chase the vehicle when it sped away. Then, at the intersection of 61st and Cicero, defendant was traveling at 45 miles per hour (MPH) when he struck the "driver's side of the back quarter panel" of the SUV. Garcia described how the SUV turned "in front of the van, and it kept going, which made it start to flip." The SUV flipped three times while heading into oncoming traffic. Defendant then drove the van to an alleyway located near 56th Street and South Kostner Avenue and the group abandoned the vehicle.

¶ 7 Daniel Martinez testified that, on June 18, 2009, he was in the gas station located at Marquette and Kilbourn for a few minutes and returned to the G20 van after he bought a cigarette. He testified that defendant did not tell him to get inside the van. Martinez sat behind the front passenger's seat of the van. As defendant turned on to Marquette, people in a black SUV "started gang banging to" the group inside the van, by taunting them with gang signs. Martinez testified that defendant followed the black SUV at a rate of speed of 30 MPH. He described how the SUV sped away, but slowed down so that the van could catch up to it. As the van was following the SUV, the front passenger of the SUV hung out of the window and continued to taunt the passengers of the van. Martinez testified that the van never accelerated over the speed limit and that defendant was not "chasing" the SUV. At the intersection of 63rd

and Cicero, the SUV got into an accident with another car. Defendant continued to follow the SUV after it drove away from the intersection. Eventually, the SUV hit its breaks and the van struck the SUV, causing the accident. Martinez was impeached by a signed, hand-written statement that he gave to Assistant State's Attorney (ASA) Catherine Gregorovic and by his grand jury testimony, both of which were admitted into evidence. Martinez's previous statements described how defendant told him to jump in the van, that defendant said that the occupants of the SUV were Latin Kings, and that the van was traveling over the speed limit while "chasing" the SUV. In his hand-written statement and grand jury testimony, Martinez described how defendant hit the SUV at the intersection of 63rd Street and Cicero Avenue. He also described how defendant hit the SUV a second time, which resulted in the SUV flipping on to its side.

¶ 8 Elliot Musial, a member of the Chicago police department major accidents investigation unit, testified that he received accident investigation training at Northwestern University, on the job training, and had investigated over 1000 vehicle accidents throughout his career. When he arrived at 6125 South Cicero Avenue on June 18, 2009, he observed a black SUV upside-down in the southbound traffic lanes, a 30 to 50 feet long field of debris, as well as tire skid marks, and gouges, scrapes, and scratches in the pavement. On the driver's-side rear bumper of the SUV, Musial identified an "apparent rub or paint transfer" which was left by friction "caused upon the bumping of the vehicle." He testified that the front passenger air bags of the SUV did not deploy, which indicated that the SUV sustained a rear impact. Pursuant to trial counsel's objection, the court did not certify Musial as an expert witness, and Musial was not permitted to give an expert opinion as to what caused the SUV to begin to spin and flip out of control.

¶ 9 On cross-examination, Musial testified that it was possible that the top-heavy SUV could have began to roll over as a result of swerving or making a sharp turn. He testified that his unit did not take any samples from the rear bumper to determine whether paint from another vehicle was present, and that the scrapes on the rear bumper could have been caused by contact with the pavement. He also testified that his unit recovered red reflector lights from the field of debris which did not match the reflector lights of the SUV or a pickup truck which had also been involved in the accident.

¶ 10 After closing arguments, the trial court read the instructions to the jury regarding, *inter alia*, first degree murder. As relevant here, the murder instructions stated that:

> "To sustain the charge of first degree murder, the State must prove the following propositions:
>
> First: That the defendant performed the acts which ultimately resulted in the death of Andres Yanez;
>
> And, second: That when the defendant did so, he intended to kill or do great bodily harm to Andres Yanez;
>
> Or he knew that his acts would cause death to Andres Yanez;
>
> Or he knew that his acts created a strong probability of death or great bodily harm to Andres Yanez;
>
> Or he was committing the offense of aggravated battery of [Fred Agreano, Juan Reynaga, or] Elio Sandoval."

The jury was also instructed that:

"A person commits the offense of first degree murder when he commits the offense of aggravated battery and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of the offense of aggravated battery.

It is immaterial whether the killing is intentional or accidental.

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To sustain the charge of first degree murder, the State must prove the following propositions: First: That the defendant performed the acts which ultimately resulted in the death of Andres Yanez; and Second: That when the defendant did so, he was committing the offense of aggravated battery.

The word 'acts' referred to in the statement 'performed the acts which ultimately resulted in the death' refers to the aggravated battery."

¶ 11 During deliberations, the jury sent out two questions. First, the jury asked if it could review the transcripts of the testimony of Garcia and Martinez. The court responded "[t]ranscripts are not available. Please continue your deliberations." Second, the jury asked, "Judge, is the chase enough to find [ ] defendant guilty? We believe there was intent to harm the occupants of the Bravada by the defendant, not necessarily evidence that some sort of impact caused the rollover."

¶ 12 The court and the parties discussed the jury's question. The following exchange took place:

"THE COURT: I obviously cannot answer those questions for them. Those are questions of facts. So my proposed response is, I cannot answer these questions for you. Please continue with your deliberations. Thank you. Judge McHale.

[STATE'S ATTORNEY]: I think you just say, You have all the evidence and the law.

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[STATE'S ATTORNEY]: Continue your deliberations.

[DEFENSE ATTORNEY]: Can we refer them to a specific instruction to let them answer that question?

THE COURT: I don't think so.

[STATE'S ATTORNEY]: It says the word "acts" referred to in the statement refer to the acts which ultimately resulted in the death refers to the aggravated battery.

THE COURT: I'm not -- No, I'm not inclined to start picking and choosing.

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THE COURT: So these are obvious questions of fact. I'm not going to get involved in the deliberation process. It hasn't even been two hours yet and, no, I'm not inclined to refer them to anything. They have the instructions. So I'm going to just give the standard response which is, you have all the evidence and the law. Please continue your deliberations.

[DEFENSE ATTORNEY]: Your Honor, very briefly just for the record, we believe that that first question, is the chase enough, is a mixture of fact and law, but.

THE COURT: Regardless, it's not something I can answer [for] them at this time. Are you [proposing] that I do?

[DEFENSE ATTORNEY]: I think the instruction that [the ASA] pointed to, which I think was People's 18, I mean, I think all along in this case –

THE COURT: They have it. I'm not going to highlight it for them, no. That's like answering the question. I'm not going to do it. Over your objection, if you want to make it a formal objection.

[DEFENSE ATTORNEY]: That's it, Judge, just what we've said.

THE COURT: Very good. I think it I don't think there's any problem with me saying I cannot answer those questions. I'm going to say, I'm sorry, I cannot answer those questions for you because I don't want more questions to come. I want them to know this Court can't answer questions for them. So I'm going to say, I'm sorry, I cannot answer those questions for you. You have all the evidence and the law. Please continue your deliberations."

¶ 13 After three hours of deliberation, the jury returned a general guilty verdict for the first degree murder of Yanez, and found defendant guilty of the aggravated batteries of Agredano, Reynaga, and Sandoval. The trial court denied defendant's motion for a new trial, which argued, in pertinent part, that the trial court erred by failing to answer the jury's question regarding whether the chase was enough to find defendant guilty. In denying the motion, the court reasoned that "[i]n our case, the jury had clear jury instructions and asked a mixed question of law and facts" which indicated that they had yet to resolve a factual issue and that it believed "that the instructions were clearly understandable."

¶ 14 During sentencing, trial counsel argued in mitigation that "[a]ll of these individuals were engaged in risky behavior, driving recklessly through the streets of Chicago" and that "[defendant] stands here taking the full weight of the bad decisions of all the people involved" because "[e]verydody could have been charged with the same thing." He also argued:

> "Lastly we would ask the Court to consider that under the law had this been charged as a reckless conduct or at least if that had been an option, we believe there's a possibility the jury might have found him guilty of that rather than first degree murder. Clearly it was reckless behavior that led to the death. The jury instructions were full of references to the fact that the death itself could have been an accident and still would suffice under the rules. While we don't wish to change the fact of the way things were charged, we look to the Court to bear in mind the reckless conduct or clearly a reckless homicide would have a maximum sentence well below the minimum here."

After hearing arguments in aggravation and mitigation, the trial court sentenced defendant to concurrent sentences of 45-years for the murder and 10-years for each of the three aggravated battery convictions.

¶ 15 On appeal, defendant first argues that the trial court abused its discretion for failing to, *sua sponte*, instruct the jury regarding the lesser-included offenses of involuntary manslaughter and reckless homicide. In setting forth this argument, defendant acknowledges that he failed to raise this issue in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both a trial objection and a written posttrial motion raising the issue are required in order to preserve the issue for review on appeal). Nevertheless, he argues that we may review the issue for plain error.

¶ 16 The plain error doctrine allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant or (2) that 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. *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 18.

Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Id.* at ¶ 19. A reviewing court conducting plain error analysis must first determine whether an error occurred, as "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). For the following reasons, we find no error here.

¶ 17 "Generally, the only situations where a fair trial requires the court to *sua sponte* offer an instruction included 'seeing that the jury is instructed on the elements of the crime charged, on the presumption of innocence and on the question of the burden of proof.' " *People v. Turner*, 128 Ill. 2d 540, 562-63. (1989) (quoting *People v. Parks*, 65 Ill. 2d 132, 137 (1976). However, our supreme court has held that, if the evidence in a case supports a finding of a lesser-included offense, a trial court has the discretion to *sua sponte* instruct the jury regarding the lesser included offense. *People v. Garcia*, 188 Ill. 2d 265, 282 (1999). "A defendant is entitled to a lesser-included offense instruction only if the evidence at trial is such that a jury could rationally find the defendant guilty of the lesser offense, yet acquit him of the greater." *People v. Medina*, 221 Ill. 2d 394, 405 (2006). However, " '[s]imply identifying the existence of a lesser-included offense does not necessarily create an automatic right to an instruction on that offense.' " *People v. Perry*, 2011 IL App (1st) 081228, ¶ 28 (quoting *People v. Greer*, 336 Ill. App. 3d 965, 978 (2003)). We review a trial court's decision of whether to give an instruction on a lesser-included offense for an abuse of discretion. *Perry*, 2011 IL App (1st) 081228, ¶ 27.

¶ 18 Here, we find that the trial court did not abuse its discretion by failing to *sua sponte* instruct the jury regarding lesser-included offenses. Trial counsel did not request any instructions regarding lesser-included offenses. This decision may have been the result of counsel's viable trial strategy. See *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007) ("Counsel's decision to

advance an 'all-or-nothing defense' has been recognized as a valid trial strategy"). Under these circumstances, our supreme court has stated that "it may be assumed that the decision not to tender [a lesser-included offense instruction] was defendant's, after due consultation with counsel." *Medina*, 221 Ill. 2d 394, 410 (2006).

¶ 19 Defendant argues that the court's failure to *sua sponte* give these instructions, "especially without making any inquiry of counsel, cannot be squared with the duty of the court to weigh the propriety of such instruction after giving consideration to the interests of the State, the defendant, and society." He also suggests that the trial court's failure to "raise the issue with counsel" may have been due to its misunderstanding of our supreme court's holding in *Medina*. However, the holding of *Medina* is clear: the trial court has an obligation to inquire into the decision to tender lesser-included instructions because lesser-included instructions expose the defendant to criminal liability that might be avoided if the instructions are not given. *Medina*, 221 Ill. 2d at 409-10. Defendant has not cited, and we have not found, any cases which hold that the trial court is required to inquire into trial counsel's decision not to request instructions regarding lesser-included defenses. To the contrary, this court has expressed concerns that "generalized admonishments by a trial court that implicate strategic choices reserved for a defendant carry the risk of improperly intruding on and interfering with the attorney-client relationship." *People v. Peden*, 377 Ill. App. 3d 463, 473 (2007) (citing *Medina*, 221 Ill. 2d at 409). Accordingly, we decline defendant's invitation to find that the trial court abused its discretion by failing to inquire into counsel's decision not to tender instructions on a lesser-included offense.

¶ 20 As we find no error, defendant's claim does not constitute plain error and is, therefore, forfeited. See *McGee*, 398 Ill. App. 3d at 794 ("[w]ithout reversible error, there can be no plain error").

¶ 21 Next, defendant argues that his trial counsel was ineffective for failing to request jury instructions regarding the lesser-included offenses of involuntary manslaughter and reckless homicide, and for failing to request the Illinois Pattern Instructions (IPI) regarding accomplice testimony.

¶ 22 To prevail on a claim of ineffective assistance of counsel, "a defendant must show that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Domagala*, 2013 IL 113688, ¶ 36 (quoting *Strickland v. Washington*, 466 U.S. 688, 694 (1984)). To establish deficient performance, "defendant must overcome a strong presumption that counsel's actions were the product of sound trial strategy." *People v. Moore*, 358 Ill. App. 3d 683, 689 (2005). "Counsel's decision to advance an all-or-nothing defense has been recognized as a valid trial strategy and is generally not unreasonable unless that strategy is based upon counsel's misapprehension of the law." *Walton*, 378 Ill. App. 3d at 589. Because defendant must satisfy both prongs of the test, the failure to establish either one is fatal to his claim. *Moore*, 358 Ill. App. 3d at 689.

¶ 23 Here, we find that the defendant is unable to overcome the presumption that counsel's decision not to request instructions regarding lesser-included offenses was a product of sound trial strategy. The record shows that counsel was pursuing an all-or-nothing trial strategy. During closing argument, defense counsel repeatedly argued that the collision which resulted in Yanez's

death was the result of reckless behavior by both drivers, but that the State only charged defendant with first degree murder and aggravated battery and that "the only way that you find him guilty of murder is if you feel that he actually committed the intentional act of ramming [the Bravada]."

¶ 24 As noted above, the decision to pursue an all-or-nothing trial strategy is generally not unreasonable unless it is based on counsel's misapprehension of the law. See *Walton*, 378 Ill. App. 3d 580, 589 (2007). Defendant argues that counsel's arguments in mitigation during sentencing, specifically that "had this been charged as a reckless conduct or at least if that had been an option, we believe there's a possibility the jury might have found him guilty of that rather than first degree murder" demonstrate that counsel "appears to have believed that, in the absence of an involuntary manslaughter or reckless homicide count in the indictment, defendant's only option was a verdict of not guilty of first degree murder and, if that failed hope to use evidence of a lesser mental state in mitigation of his sentence." We disagree with defendant's characterization of counsel's comments. These comments during sentencing demonstrate nothing more than counsel's attempt to secure for his client a lesser sentence. Under these circumstances, defendant is unable to overcome the presumption that counsel's decision not to request instructions regarding lesser-included offenses was the product of trial strategy.

¶ 25 Similarly, we find that defendant cannot establish that trial counsel was ineffective for failing to request IPI 3.17, which states that "[w]hen a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be examined in light of the other

evidence in this case." Illinois Pattern Jury Instructions, Criminal, No. 3.17 (approved October 17, 2014).

¶ 26 This court has held that the instruction should be given "when there is probable cause to believe the witness, not the defendant, was responsible for the crime as a principal or as an accessory under an accountability theory, despite his denial of involvement." *People v. Zambrano*, 2016 IL App (3d) 140178, ¶ 25. An accomplice "must participate in some part, perform some act, or owe a duty to the person in danger to make him responsible to prevent the crime." *Zambrano*, 2016 IL App (3d) 140178, ¶ 26. "Our supreme court has emphasized that triers of fact should view the testimony of accomplices with suspicion and accept it only with great caution, especially when a promise of leniency or immunity induced the testimony." *People v. Simpson*, 2013 IL App (1st) 11914, ¶ 21 (quoting *People v. Newell*, 103 Ill. 2d 465, 470 (1984)). "Where the accomplice testifies, 'strategic reasons for not requesting [the accomplice-witness instruction] typically have eluded the courts.' " *Zambrano*, 2016 IL App (3d) 140178, ¶ 27 (quoting *People v. Davis*, 353 Ill. App. 3d 790, 795 (2004)).

¶ 27 Here, even assuming, *arguendo*, that counsel's failure to request the IPI regarding accomplice testimony constituted deficient performance, defendant cannot show that he was prejudiced where the evidence of his guilt was overwhelming. His convictions did not hinge solely on the credibility of Martinez or Garcia. See *People v. Wheeler*, 401 Ill. App. 3d 304, 314 (2010) (finding that the defendant was prejudiced by his counsel's failure to request the accomplice liability instruction where "the evidence was closely balanced and the State's case rested upon [the alleged accomplice's] credibility as its key witness."). Agrendo, Reynaga, and Sandoval testified that the SUV started to flip over after the van chased it and ran into it from

behind. Sandoval identified defendant as the driver of the van. In addition, the jury was presented with the general credibility instruction, which instructed the jury to consider any interest, bias, or prejudice the witnesses might have. See *Davis*, 353 Ill. App 3d at 798 (2004) ("The inclusion of the general credibility instruction factors in favor of finding the lack of prejudice caused by the exclusion of the accomplice witness instruction."). Accordingly, defendant's claim of ineffective assistance of counsel fails.

¶ 28 Lastly, defendant argues that the trial court abused its discretion by declining to answer the question posed by the jury during its deliberations. " 'Generally, a trial court must provide instruction when the jury has posed an explicit question or asked for clarification on a point of law arising from facts showing doubt or confusion.' " *People v. Boston*, 2017 IL App (1st) 140369, ¶ 95 (quoting *People v. Averett*, 237 Ill. 2d 1, 24, (2010)). A trial court may exercise its discretion to decline answering a question from the jury under appropriate circumstances such as: (1) when the jury instructions are readily understandable and sufficiently explain the relevant law; (2) when additional instructions would serve no useful purpose or may potentially mislead the jury; (3) when the jury's request involves a question of fact; or (4) when giving an answer would cause the trial court to express an opinion likely directing a verdict one way or the other. *Boston*, 2017 IL App (1st) 140369, ¶ 96 (citing *Averett*, 237 Ill. 2d at 24).

¶ 29 Here, we find that the trial court did not abuse its discretion in declining to answer the jury's question because it involved a question of fact and was sufficiently answered by the instructions that the jury had in its possession and. The record shows that the jury asked the court whether the chase itself was enough to find defendant guilty of murder or whether they needed to find that "some sort of impact caused the rollover." In asking this question, the jury stated that it

"believed there was intent to harm the occupants of the Bravada by the defendant, not necessarily evidence that some sort of impact caused the rollover." Whether there was evidence that the rollover was caused by an impact is a question of fact. See *Boston*, 2017 IL App (1st) 140369, ¶ 96 (a court may exercise its discretion to decline answering a question from the jury when the jury's request involves a question of fact).

¶ 30 Moreover, the jury was instructed that, to sustain a charge of first degree murder, the State had that to prove "that the defendant performed two acts which ultimately resulted in the death of Andres Yanez" and that "when defendant did so * * * he was committing the offense of aggravated battery" of Agredano, Reynaga, or Sandoval. The court also instructed the jury that "the word 'acts' referred to in the statement 'performed the acts which ultimately resulted in the death'" referred to the aggravated battery. Under the circumstances, where the jury's question included a question of fact and the jury instructions were readily understandable and sufficiently explained the relevant law, the trial court did not abuse its discretion in declining to answer the jury's question.

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.