2019 IL App (4th) 160833-U

NO. 4-16-0833

FILED
April 16, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | McLean County |
| YUNG CHAN | ) | No. 15CM53 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Lee Ann S. Hill, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices DeArmond and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed where defendant forfeited her claims and failed to demonstrate that the plain-error rule excused her forfeiture. The appellate court further declined to address defendant's claims regarding fines, fees, assessments, or costs and the application of *per diem* credit against fines.

¶ 2 In July 2016, a jury found defendant, Yung Chan, guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)). The trial court sentenced defendant to 18 months' conditional discharge, assessed various fines and court costs, and required her to complete anger management and parenting classes and to register as a Violent Offender Against Youth with her local law enforcement agency.

¶ 3 Defendant appeals, arguing (1) the trial court failed to properly conduct *voir dire* pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and the evidence was closely balanced; (2) the prosecutor improperly asked defendant to comment on the veracity of other

witnesses, and the evidence was closely balanced; (3) we should vacate certain sheriff's fees; (4) she is entitled to $5 in *per diem* credit to be applied to her eligible fines; and (5) we should vacate a $10 probation operations fine erroneously imposed by the circuit clerk. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 On January 12, 2015, the State charged defendant by information with domestic battery (count I) (720 ILCS 5/12-3.2(a)(1) (West 2014)) and child endangerment (count II) (720 ILCS 5/12C-5(a)(1) (West 2014)). Count I alleged that on or about December 25, 2014, defendant "knowingly and without legal justification caused bodily harm, a cut lip to T.F., a household or family member, by throwing a toy at him." Count II alleged that defendant "knowingly caused the life or health of a child, T.F., five years of age, to be endangered, by hitting him in the face with a metal toy car." T.F. is defendant's son.

¶ 6 Defendant's case went before a jury in July 2016.

¶ 7 A. *Voir Dire*

¶ 8 During *voir dire*, the trial court explained to the venire the four principles contained in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Prior to explaining the principles, the court told the venire, "I'm going to ask you to confirm on the record your understanding of these principles and your ability to adhere to these principles." After explaining each principle, the court asked the prospective jurors to raise their hands if they had "difficulty or disagreement" with that principle of law. The trial court indicated for the record that no prospective juror raised their hands.

¶ 9 B. Evidence Presented at the Jury Trial

¶ 10 During defendant's July 2016 jury trial, the parties presented the following evidence.

¶ 11 1. *T.F.*

¶ 12 T.F. testified on July 20, 2016, approximately 19 months after he suffered the injury to his lip. T.F. revealed he was six years old and would begin first grade "in a few days." T.F. initially said he never had a cut to his lip. When shown a photograph of himself, taken on December 30, 2014, T.F. acknowledged he had a cut to his lip in the photograph but did not remember how he cut his lip. After being asked if he ever had to go to the doctor for his lip, T.F. then recalled how he suffered the injury.

¶ 13 T.F. recounted he was in defendant's living room when the incident occurred. He recalled defendant "was coming in [the living room] for a second" from the kitchen and "she got cranky when [he] throwed the big toy. And then she got cranky, too, and then she throwed the car at [him]." T.F. testified defendant was "cranky" because he was in trouble for throwing things. He explained, "Well, throwing things is not the thing to do. So I try throwing things very much." T.F. indicated that defendant was not in the room when he threw the toy and denied throwing the toy at her.

¶ 14 T.F. further testified the car defendant threw was a metal Lightning McQueen toy car. T.F. indicated, using his hands, the car was "this big." The court noted that T.F. gestured suggesting an approximately six-inch toy. T.F. testified he was on his knees on the floor when injured and placed the prosecutor at a distance from him that approximated where defendant stood when she threw the car. The court indicated the distance was "about six feet." T.F. said the car hit him between his nose and lip and also hit a couple of his teeth. T.F. testified defendant took him to the hospital after the toy hit his mouth and caused him to bleed.

¶ 15 2. *Kathleen Davis*

¶ 16 Kathleen Davis testified she worked as a nurse practitioner in the emergency room at Advocate BroMenn Medical Center on December 25, 2014. Davis indicated defendant brought T.F. to the emergency room with a laceration to his upper lip. Davis described the injury as a "laceration through the Vermillion border" causing a fracture to one of his front teeth and "a laceration to his gum line." Because of the laceration through the Vermillion border, Davis referred T.F. to the plastic surgery department.

¶ 17 According to Davis, defendant told her the injury "was caused by another child throwing a toy at [T.F.] thus causing the laceration." She maintained there was no language barrier between herself and defendant and that she was able to understand defendant. Davis testified she dictated her notes of the injury using a voice recognition program. She could not recall the exact duration of her conversation with T.F. or the amount of time that elapsed between the conversation and her dictation. As far as she remembered, the beginning of the notes stated, "the reason for presentation was a toy car thrown at—or toy car laceration—laceration caused by toy car." Despite the notes reading "20" instead of "toy," further into the dictation, Davis maintained she was positive defendant told her "that another child threw a toy at her child."

¶ 18 3. *Dr. Otis Allen*

¶ 19 Dr. Otis Allen testified he was the plastic surgeon who treated T.F. in the emergency room at Advocate BroMenn Medical Center on December 25, 2014. He described how he "repaired the pink part of the lip with a suture," the inside of the lip "with chromic," and "the injury over the gum *** with chromic as well." Allen testified he was able to engage in a

conversation with defendant and had no difficulty understanding defendant. He further represented defendant told him "the child injured himself with a toy."

¶ 20 4. *Sheila Scholtz*

¶ 21 Sheila Scholtz testified she was the receptionist at the Shining Star Learning Center (Learning Center), where T.F. was a student. Scholtz greeted T.F. at the Learning Center on December 30, 2014, and noticed a mark on his upper lip. Scholtz asked T.F., " 'Oh, what happened to you?' " Scholtz noted defendant quickly responded, characterizing defendant's response as "monosyllables and a few words." Scholtz was able to discern, "Dad's house, Christmas, stitch." According to Scholtz, when defendant stated, "Dad's house," T.F. turned to defendant and said, "No, not Dad's house." Scholtz testified that defendant spoke in broken English and that she (Scholtz) was not "100 percent sure of the gist of the conversation."

¶ 22 5. *Michelle Carter*

¶ 23 Michelle Carter testified she was a pre-Kindergarten teacher at the Learning Center and T.F. was a student in her classroom. Carter recounted that when T.F. walked into her classroom on December 30, 2014, she noticed stitches on his lip and asked T.F. what happened. Carter testified T.F. answered, "Mommy threw a car at me." Carter asked if it was an accident, and T.F. responded, "No, she was very, very angry." Carter testified that she "left it alone after that." She further testified that she is a "mandated reporter," meaning "if a child has any physical marks on them, I am to immediately report it to the [Illinois Department of Children and Family Services] hotline." Carter indicated she did not speak to defendant about what happened to T.F.

¶ 24 6. *Amber Davis-Harvey*

¶ 25 Amber Davis-Harvey testified she was a child protection specialist with the Illinois Department of Children and Family Services (DCFS), responsible for investigating

reports of child abuse and neglect that come to the central hotline. Davis-Harvey recounted that she received Carter's report on December 30, 2014, and immediately went to the Learning Center, where she spoke with Learning Center employees and then met with T.F. During the interview, Davis-Harvey noticed T.F. had "a split in his upper lip that had several stitches" and a discolored tooth. Davis-Harvey took a photo of the injury, which was entered into evidence. During the interview, when asked about his injury, Davis-Harvey testified that T.F. told her that "he was cranky and he was throwing toys, and that his mom threw a toy car at him, and she was mad, and it was a red metal toy car." Davis-Harvey estimated the interview with T.F. lasted less than five minutes.

¶ 26 Davis-Harvey testified that after the meeting with T.F., she had a phone conversation with defendant. During that conversation, defendant told Davis-Harvey "that [T.F.] was throwing toys and they were standing approximately one person width between them" when a "toy car hit her on the hand leaving a bruise, bounced off of her hand and hit [T.F.] in the face causing the injury." Several days after the phone conversation, Davis-Harvey interviewed defendant in person to, among other things, recreate the scene defendant described. Davis-Harvey testified that defendant brought to the interview the toy that allegedly bounced off her hand. Davis-Harvey described the toy as "a very small plastic car, slightly larger than a matchbox car, and very, very lightweight." She indicated that the toy defendant brought did not match the toy T.F. described. Davis-Harvey further testified defendant had an accent but added that defendant's English was "very understandable."

¶ 27 7. *Michael Burns*

¶ 28 Michael Burns testified he was a detective with the Bloomington Police Department and was assigned as lead detective for any allegations of sexual abuse against

children or serious physical abuse. Burns interviewed T.F. on January 9, 2015, at the Children's Advocacy Center. The interview was recorded and played for the jury. In the interview, T.F. told Burns that his mom was angry and threw a metal toy at him that hit him in the mouth. T.F. also told Burns that after seeing what happened, defendant took T.F. to the hospital.

¶ 29 8. *Dr. Gregory Dietz*

¶ 30 The parties entered into an agreed stipulation as to the testimony of Dr. Gregory Dietz, which the trial court read to the jury. The parties agreed that Dietz, a pediatric dentist, who treated T.F. on December 29, 2014, would if called as a witness, state:

> "[O]n December 29, 2014, the mother explained she and [T.F.] struggled over a toy and her hand slipped off and hit his mouth. The teeth could be discolored by this type of action as it does not take much force to have this happen, however he does think it would be difficult to lacerate the lip with the hand though he is not an expert in that area. He did not give much thought to the explanation for the injury as [T.F.] seems so comfortable and happy around his mom."

¶ 31 9. *Defendant*

¶ 32 Defendant testified she had been in the United States for 15 years and that she speaks three languages: Mandarin, Cantonese, and English. She described her ability to speak English as "[m]iddle, above." Defendant later elaborated on her ability to speak English by testifying, "In normal communication I am okay. But anything legal or complicated I will need translation." Defendant represented she spoke with the various individuals involved in this case without an interpreter because "I have a basic skill of English."

¶ 33 Defendant maintained she never threw a toy at T.F. Instead, she testified that T.F. became agitated when she told him he could not have M&M's and he began throwing little toy cars in all directions, including toward her. Defendant tried to calm T.F. down, but she did not have a chance because T.F. was already throwing things. Defendant testified she was about six to eight feet from T.F. when T.F. was throwing the little toy cars. T.F. continued "throwing things all over the place," almost hitting defendant's face. Defendant testified she blocked a toy car with her arm "and the following thing is he was crying and I took him to the hospital." Defendant entered into evidence a picture of her right arm, taken on December 29, 2014, that showed "a bruise mark where the car hit [her]."

¶ 34 Defendant denied saying T.F. was injured by another child. Instead, she told Davis-Harvey, Allen, and Dietz that it was a "toy car injury" or a "toy car accident." She also testified she brought "a pile of cars" to her interview with Davis-Harvey, stating they were the cars T.F. threw at defendant. Defendant could not remember the color of the car that hit T.F.'s lip, only that it was "very small." Defendant asserted that at no point did she lie to or mislead any of the "professionals or investigators."

¶ 35 During the State's cross-examination of defendant, the following exchange occurred:

> "Q. Now, you were present in court yesterday when [T.F.] testified, right?
>
> A. Yes.
>
> Q. And based on your testimony today you want us to believe that [T.F.] made up his testimony?
>
> A. His memory is not correct.
>
> * * *

Q. You were in court when Dr. Kathy Davis testified?

A. Yes.

Q. And Dr. Davis told us that you stated another kid threw the toy at [T.F.]?

A. I never told her that.

Q. So it's your testimony that Dr. Davis is mistaken as well?

A. I only told her it was a toy car injury. I am not sure how she elaborated.

Q. So my question is, yes or no, it's your statement or your belief that Dr. Davis is mistaken as well?

A. That's correct.

Q. Yes or no, it's your belief that Dr. Allen's statement that you stated the child injured himself with the toy is also incorrect?

* * *

A. I did not tell doctor that he injured himself.

Q. Okay. Dr. Dietz, the testimony and evidence—not testimony. The stipulation evidence that was presented is that Dr. Dietz said you told him that you and [T.F.] were struggling over the toy and your hand slipped and hit him in the mouth. Your testimony is that that's not true either, correct?

A. I never told him that.

Q. In regards to the daycare workers, it's your testimony that they are mistaken as well?

A. That is correct. I did not tell them."

¶ 36 10. *The State's Closing Argument*

¶ 37 In closing argument, the prosecutor summarized the five different stories witnesses testified defendant gave to them to explain T.F.'s injury. The prosecutor then added:

> "Now, the defendant wants you to believe that fifth story, that that's what happened, and that everybody else is telling a lie. Everybody else is making up what happened, including her son [T.F.]. Ask yourselves why would they make up these stories? What do they have to gain by making up an excuse as to what happened? Who has something to gain by telling another explanation and trying to figure out a way to explain what happened? It's not the doctors, it's not the daycare workers, and it sure isn't [T.F.]."

In rebuttal, the prosecutor stated, "The evidence is clear, the evidence is consistent, nobody has reason to make up these stories except for one person that came before you today." The prosecutor went on to state, "You solely get to decide who you believe, what you believe, how you believe it happened, and make that decision by yourself."

¶ 38 C. Verdict and Sentence

¶ 39 The jury found defendant guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and not guilty of child endangerment (720 ILCS 5/12C-5(a)(1) (West 2014)). The trial court subsequently sentenced defendant to 18 months' conditional discharge and ordered a $250 fine in addition to court costs. Defendant's sentence also required her to complete anger management and parenting classes and to "register as a Violent Offender Against Youth with her local law enforcement agency."

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, defendant argues (1) the trial court failed to properly conduct *voir dire* pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and the evidence was closely balanced; (2) the prosecutor improperly asked defendant to comment on the veracity of other witnesses, and the evidence was closely balanced; (3) we should vacate certain sheriff's fees; (4) she is entitled to $5 in *per diem* credit to be applied to her eligible fines; and (5) we should vacate a $10 probation operations fine erroneously imposed by the circuit clerk. We address defendant's arguments in turn.

¶ 43 A. *Voir Dire*

¶ 44 Defendant first argues the trial court erred by failing to comply with the mandates of Rule 431(b) when it asked "whether any of the potential jurors had any 'difficulty or disagreement' with the instructions" rather than asking if "the jurors understood and accepted the principles," as required by *People v. Zehr*, 103 Ill. 2d 472, 477, 469 N.E.2d 1062, 1064 (1984) and Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Defendant concedes she failed to preserve this issue for review but maintains we may address it under the plain-error doctrine.

¶ 45 "To obtain relief under [the plain-error doctrine], a defendant must first show that a clear or obvious error occurred." *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). After showing a clear or obvious error occurred, a defendant must then show either (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." *People v.Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). "[A] [d]efendant bears the burden of persuasion in showing both

that a clear and obvious error exists and that one of the prongs is satisfied." *People v. Marcos*, 2013 IL App (1st) 111040, ¶ 58, 995 N.E.2d 446.

¶ 46 We begin by determining whether the trial court erred in its application of Rule 431(b). See, *e.g.*, *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) ("The first step of plain-error review is determining whether any error occurred."). Because we are construing a supreme court rule, our standard of review is *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42, 862 N.E.2d 977, 979 (2007).

¶ 47 1. *The Trial Court's Admonishments Were Improper*

¶ 48 In *Zehr*, the supreme court held a trial court erred during *voir dire* when it failed to ensure jurors understood four principles now memorialized in Rule 431(b), which states the following:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the

principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 49 "The language of Rule 431(b) is clear and unambiguous." *Thompson*, 238 Ill. 2d at 607. "Rule 431(b) requires that the trial court ask potential jurors whether they *understand* and *accept* the enumerated principles, mandating 'a specific question and response process.' " (Emphases in original.) *People v. Wilmington*, 2013 IL 112938, ¶ 32, 983 N.E.2d 1015 (quoting *Thompson*, 238 Ill. 2d at 607). "While it may be arguable that the court's asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court's failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself." (Emphases in original.) *Id*.

¶ 50 In *People v. Dismuke*, 2017 IL App (2d) 141203, 79 N.E.3d 864, the reviewing court faced facts nearly identical to those now before us. There, the trial court asked the prospective jurors if they had any "difficulty or disagreement" with each principle. (Emphasis omitted.) *Id*. ¶ 22. The Second District held this violated Rule 431(b). *Id*. ¶ 55. "Asking if [the prospective jurors] had any 'difficulty or disagreement' was not equivalent to asking if they understood. For example, someone might not disagree with a statement simply because he or she does not understand it." *Id*. ¶ 53. The appellate court added that "difficulty" was not synonymous with "understanding" and the "[trial] court never repeated, or even alluded to, the word 'understand' in its questioning after the recitation of each principle." *Id*. ¶ 55.

¶ 51 Here, as in *Dismuke*, the trial court asked the prospective jurors if they had any "difficulty or disagreement" with each *Zehr* principle. As the Second District noted, neither "difficulty" nor "disagreement" is equivalent to or synonymous with "understanding." Although the trial court in this case initially told the prospective jurors it was "going to ask [them] to

confirm on the record [their] understanding" of the principles, it "never repeated, or even alluded to, the word 'understand' in its questioning after the recitation of each principle." See *Dismuke*, 2017 IL App (2d) 141203, ¶ 55. As noted, Rule 431(b) is "clear and unambiguous"; the trial court "must ask" whether each prospective juror "understands" each principle. *Thompson*, 238 Ill. 2d at 607. Accordingly, because the trial court merely stated it was "going to ask" the prospective jurors to confirm their understanding of the *Zehr* principles but ultimately asked if the prospective jurors had any "difficulty or disagreement" with the principles, we find a clear error occurred.

¶ 52 2. *The Admonishments Did Not Constitute Plain Error*

¶ 53 Having concluded the trial court's admonishments were improper, we now consider whether reversal is warranted pursuant to the plain-error doctrine. "A Rule 431(b) violation is not cognizable under the second prong of the plain[-]error doctrine absent evidence that the violation produced a biased jury." *People v. Sebby*, 2017 IL 119445, ¶ 52, 89 N.E.3d 675. Defendant does not contend the violation produced a biased jury; rather, she contends only that the evidence was closely balanced under the first prong of the plain-error doctrine.

¶ 54 "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *Id.* ¶ 53. "A reviewing court's inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses' credibility." *Id*.

¶ 55 Citing *Sebby*, defendant argues the evidence was closely balanced "because the verdict rested solely on the jury's determination of a credibility contest between [her] and T.F." The defendant in *Sebby* was charged with resisting a peace officer (720 ILCS 5/31-1(a-7) (West

2010)). *Sebby*, 2017 IL 119445, ¶ 1. On the resistance element, the responding officers testified defendant resisted, while three other witnesses, including the defendant, testified the defendant did not resist and was instead being pulled around by the officers. *Id*. ¶¶ 55-58. The court concluded that the evidence was closely balanced because "the outcome of th[e] case turned on how the finder of fact resolved a 'contest of credibility.' " *Id*. ¶ 63 (quoting *People v. Naylor*, 229 Ill. 2d 584, 607-08, 893 N.E.2d 653, 667 (2008)). " 'Given these opposing versions of events, and the fact that no extrinsic evidence was presented to corroborate or contradict either version, the trial court's finding of guilty necessarily involved the court's assessment of the credibility of the *** officers against that of defendant.' " *Id*. (quoting *Naylor*, 229 Ill. 2d at 607).

¶ 56 Here, the State had to prove beyond a reasonable doubt that defendant "knowingly" caused bodily harm to T.F. 720 ILCS 5/12-3.2(a)(1) (West 2014). Defendant's version of the event was that T.F. was throwing little toy cars "all over the place," almost hitting defendant's face. Defendant blocked the toys with her arms "randomly." Defendant testified that "the following thing is, he was crying and I took him to the hospital." Defendant confirmed that as she was blocking the cars, one "connect[ed]" with T.F.'s lip. On the other hand, T.F.'s version of the event was that defendant got "cranky" with him because he threw a big toy and defendant then threw a toy car at him.

¶ 57 Defendant argues the facts of her case are the same as those in *Sebby* and *Naylor*, namely, they all consist of two credible, opposing versions of events, requiring us to find that the evidence is closely balanced. However, the present case is distinguishable from *Sebby* and *Naylor*. In those cases, the finder of fact faced opposing versions of events *and* no extrinsic

evidence to corroborate *or contradict either version*. See *Sebby*, 2017 IL 119445, ¶ 63; *Naylor*, 229 Ill. 2d at 607. Here, there was in fact evidence to contradict defendant's version of the event.

¶ 58 First, Kathleen Davis, the nurse practitioner who attended to T.F. in the emergency room, testified defendant told her another child injured T.F. Although she could not recall the exact time frame of the conversation and her dictated notes used the word "20" instead of "toy," Davis testified she was positive defendant told her "that another child threw a toy at [defendant's] child." Second, Dr. Otis Allen, the plastic surgeon who treated T.F. in the emergency room, testified that defendant told him "the child injured himself with a toy." Lastly, Dr. Gregory Dietz, the pediatric dentist who treated T.F., testified via a stipulation that defendant told him "she and [T.F.] struggled over a toy and her hand slipped off and hit his mouth." The testimony of each of these witnesses contradicted defendant's version of the event, *i.e.*, T.F. was throwing little toy cars, defendant blocked the cars with her arms, and a toy car hit T.F. in the lip. See *Sebby*, 2017 IL 119445, ¶ 63; *Naylor*, 229 Ill. 2d at 607.

¶ 59 Defendant argues the testimony of these witnesses was unpersuasive because they likely did not understand defendant because of her broken English. Alternatively, defendant contends that the statements she made to these witnesses are actually not different in substance when viewed in context. We disagree with both contentions.

¶ 60 Defendant testified that her English-speaking ability was "[m]iddle, above." She elaborated by stating, "In normal communication I am okay. But anything legal or complicated I will need translation." Nothing in her conversations with the witnesses mentioned above involved legal or complicated matters. Additionally, none of these witnesses testified that they had difficulty understanding defendant. As to defendant's second contention, although it may be arguable that defendant saying T.F. injured himself with a toy is not different in substance than

defendant's ultimate version of the event, in no context are the statements that (1) another child injured T.F. and (2) defendant's hand slipped in a struggle with T.F. over a toy, hitting T.F. in the face substantively equivalent to the defendant's ultimate version of the event.

¶ 61 Evaluating the totality of the evidence and conducting a qualitative, commonsense assessment, we conclude that the evidence was not closely balanced. See *Sebby*, 2017 IL 119445, ¶ 53. Although T.F., when called to testify, initially had difficulty recalling the injury to his lip, the essential facts of his version remained consistent. A commonsense assessment of the evidence presented against defendant demonstrates that defendant contradicted her version numerous times before finally resting on the testimony she gave at trial. Accordingly, we find the evidence was not so closely balanced as to warrant plain-error review.

¶ 62 B. The State's Cross-Examination of Defendant

¶ 63 Next, defendant argues that during the State's cross-examination of her, "the State improperly asked [her] to comment on the veracity of other witnesses." She further argues that "the State improperly speculated on the reasons for [her] testimony" during closing argument. Defendant concedes she failed to preserve this issue for review but contends these alleged improprieties constitute first-prong plain error.

¶ 64 Even if we were to assume that error occurred, we reject defendant's argument as we have already determined that the evidence was not closely balanced. Defendant fails to argue that the alleged error in this case falls under the second prong of the plain-error doctrine.

¶ 65 C. Fines, Fees, and Credit

¶ 66 Defendant also argues (1) we should vacate $208 in sheriff's fees, (2) she is entitled to $5 in *per diem* credit to be applied to her eligible fines, and (3) we should vacate the $10 "Probation Operations" fine erroneously imposed by the circuit clerk.

¶ 67 Illinois Supreme Court Rule 472 states that the trial court retains jurisdiction to correct errors "in the imposition or calculation of fines, fees, assessments, or costs" and errors "in the application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). Moreover, no appeal may be taken on the ground of any of these errors "unless such alleged error has first been raised in the [trial] court." Ill. S. Ct. R. 472(c) (eff. Mar. 1, 2019). The record does not show defendant raised the alleged errors in the trial court. Accordingly, because the trial court retains jurisdiction to correct the alleged errors, we lack jurisdiction to address defendant's arguments.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 70 Affirmed as modified.