2024 IL App (2d) 240315-U
No. 2-24-0315
Order filed July 11, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRIAN J. KING, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 22-CF-573 Honorable George D. Strickland and Mark L. Levitt Judges, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Mullen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in instructing the jury with IPI 23.28A, which accurately conveyed the definition of "proximate cause" to the jury.

¶ 2 At issue here is whether Ill. Pattern Jury Instr.-Criminal 23.28A (4th ed. 2000), defining "proximate cause," accurately reflected the law.

¶ 3 I. BACKGROUND

¶ 4 We limit our recitation of the trial evidence to that which is relevant to the issue on appeal. On June 3, 2021, at approximately 6:30 p.m., defendant, Brian King, was driving along Route 59 when he collided with a pedestrian, Michael Brennan (Brennan), killing him. In connection with

this incident, defendant was charged on April 27, 2022 with one count of aggravated driving with any amount of drug in urine resulting in the death of Brennan, in violation of 625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(F) (Count I), one count of driving under the influence of drugs, in violation of 720 ILCS 5/9-3(a) (Count II), and one count of reckless homicide, in violation of 720 ILCS 5/9-3(a) (Count III). The State dismissed Count III on August 15, 2023, the same day the parties proceeded to a jury trial.

¶ 5 At trial, the state presented several witnesses who testified to the collision in its aftermath. Todd Radek, a retired Arlington Heights police officer, testified that he observed the defendant's Chrysler 3000 driving erratically, swerving onto the right shoulder, and speeding up before suddenly braking. Radek called 911 to report defendant's driving. As he followed defendant, he noticed a pedestrian, Brennan, walking along a grassy area to the right of the highway, facing traffic. As he observed the man walking, the Chrysler again veered to the right and collided with Brennan; the impact launched Brennan into the air.

¶ 6 Lake County Sheriff's Deputy Sean Werchek arrived on the scene of the accident. He testified that upon his arrival, Brennan was lying on the ground, breathing but unresponsive, with visible injuries to his head and right arm. Defendant was also on scene and, while distressed, he did not appear impaired. Deputy Werchek transported defendant to the hospital. There, defendant willingly submitted blood and urine samples. These samples returned positive for multiple narcotics, including methamphetamine.

¶ 7 Lake County Sheriff's Deputy Wayne McCracken testified to his investigation of the scene of the accident. Based upon damage to defendant's car, the presence of blood in the grass, and the reports of other officers, he concluded that Brennan was walking in the grass when defendant struck him.

¶ 8 Following the close of evidence, at the jury instruction conference, the State submitted Illinois Pattern Jury Instruction 23.28A, defining proximate cause. Defendant objected and requested that the court either reserve giving the instruction until the jury requested a definition of proximate cause or, alternatively, give only the instruction's first sentence. The trial court overruled the objection. Following closing arguments, the jury convicted defendant of Count I, aggravated driving with any amount of drug in urine.

¶ 9 Defendant filed a motion for judgment notwithstanding the verdict or, alternatively, for a new trial on February 19, 2024, alleging, *inter alia*, that the trial court erred in providing the jury with Illinois Pattern Jury Instruction 23.28A, where the instruction did not accurately state the definition of proximate cause. The court denied the post-trial motion following a hearing on April 17, 2024. Defendant filed a timely notice of appeal on May 8, 2024.

¶ 10 II. ANALYSIS

¶ 11 A. Whether Defendant Preserved This Issue for Appeal

¶ 12 At the outset, we consider the state's argument that Defendant failed to preserve his objection to the jury instruction. Generally, the burden of preparing instructions is on the parties, not the trial court. "The trial court is under no obligation to give instructions not requested by counsel or to rewrite instructions tendered by counsel, and no party may raise on appeal the failure to give an instruction unless he has tendered it." *People v. Fetter*, 227 Ill.App.3d 1003, 1007 (2d Dist. 1992). To preserve an issue for appeal, both a trial objection and a posttrial motion raising the issue are required. *People v. Enoch*, 122 Ill.2d 176, 186 (1988). The purpose of this rule is to maintain judicial efficiency, as it ensures that the trial court is twice confronted with the claimed error before it comes before a court of review. See *People v. Caballero*, 102 Ill.2d 23, 31 (1984).

¶ 13 Here, the defendant did not tender its own written instruction defining "proximate cause." Rather, defendant requested that the trial court exclude the bracketed second and third sentences of IPI 23.28A, tendered by the State. This request, we believe, satisfied defendant's obligation to propose an alternative instruction to that the trial court gave. At trial, defendant objected to second and third sentences because "in the event that Michael is at fault in this particular case, but Brian hit him with the vehicle anyway [….] that definition of proximate cause means that [the jury] can still find that Brian was responsible, that he's guilty." [R. 644-45]. Defendant repeated the essence of this objection in his post-trial motion, stating "by giving the proximate cause definition, the jury was led to believe that Michael Brennan could have been at fault wholly or partially by being in the roadway and those actions did not matter if the cause of death included being hit by the automobile driven by Defendant. This is not an accurate statement of the law." [C.195]. In both instances, defendant's point is clear: under the proposed instruction, the jury would be required to return a guilty verdict against defendant even if it determined that Brennan was to blame for the collision. Despite superficial differences between the language of the trial objection and the posttrial motion, defendant's claim of error is essentially consistent. See *People v. Mohr*, 228 Ill.2d 53, 65 (the forfeiture rule does not require "the defendant to assert the same argument at trial and in his posttrial motion as to why an instruction was improper.") Accordingly, we find that defendant preserved this issue for appeal. Because we find that defendant preserved this issue, we do not reach issues of plain error or ineffective assistance of counsel.

¶ 14 B. Whether the Jury Instruction Accurately Reflected the Law

¶ 15 We next turn to whether IPI 23.28A accurately reflected the law applicable to this case. In its entirety, IPI 23.28A states as follows:

> The term "proximate cause" means any cause which, in the natural or probable sequence, produced the death of another person. It need not be the only cause, nor

> the last or nearest cause. It is sufficient if it concurs with some other cause which in combination with it, causes the death of another person.
>
> IPI 23.28A

¶ 16 Generally, we review a trial court's decision to give or refuse a jury instruction for an abuse of discretion. *People v. Olaska*, 2017 IL App (2d) 150567 ¶ 119. When, as here, however, the question is whether the instructions adequately conveyed the applicable law to the jury, our review is *de novo*. *Id.* "The function of jury instructions is to convey to the jury the law that applies to the evidence presented." *People v. Herron*, 215 Ill.2d 167, 187 (2005). They are adequate if "taken as a whole, they fairly, fully, and comprehensively apprised the jury of relevant legal principles." *People v. Parker*, 223 Ill.2d 494, 501 (2006). "The closing arguments of the parties are also instrumental in forming a jury's understanding of the law and can compensate for confusing aspects of the instructions." *Olaska*, 2017 IL App (2d) at ¶ 127. Whenever applicable, an IPI instruction shall be used, unless the court determines that it does not accurately state the law. *People v. Ramey*, 151 Ill.2d 498, 535 (1992).

¶ 17 Relying on the Third District's opinion in *People v. Mumaugh*, 2018 IL App (3d) 140961, defendant argues that the IPI instruction inaccurately defines "proximate cause." *Mumaugh*, although well-reasoned, does not revolutionize the law of proximate cause. Instead, it presents well-established principles of causation in a factually similar context to that before us. *Mumaugh* presents proximate causation as consisting of two elements: (1) cause-in-fact (whether the injury would have occurred but for the defendant's conduct) and (2) legal cause. *Id.* at ¶ 28. Legal cause "is essentially a question of foreseeability"; the relevant inquiry is "whether the injury is of a type that a reasonable person would see as a

likely result of his or her conduct." *First Springfield Bank & Trust v. Galman*, 188 Ill.2d 252, 258 (1999). In its discussion of foreseeability, *Mumaugh* briefly delves into "intervening and efficient causes" (intervening causes). An intervening cause is a "new and independent force which breaks the causal connection between the original wrong and the injury and itself becomes the direct and immediate cause of the injury." *Ney v. Yellow Cab Co.*, 2 Ill.2d 74, 78 (1954). The intervention of such an intervening cause will not break the causal connection if its intervention was, itself, foreseeable. *Id*. Defendant claims that because the IPI's instruction does not mention intervening causes, it cannot adequately inform the jury of proximate cause.

¶ 18 Our supreme court has already weighed in on a similar argument. In *People v. Hudson*, 222 Ill.2d 392 (2006), the court endorsed a proximate cause jury instruction essentially identical to the one at issue here. In *Hudson*, the court found that it was permissible to omit the term "foreseeability" from proximate cause instructions. "Although foreseeability is a necessary component to the proximate cause analysis," the court reasoned, "it need not be specifically mentioned in a jury instruction to communicate the idea of "proximate" to a jury." *Id*. at 401-2. Given that the concept of an intervening cause is itself a question of foreseeability, the same logic should apply here.

¶ 19 Moreover, it is not at all clear that a jury would benefit from a jury instruction which digresses into the sometimes-esoteric nuances of causation, foreseeability, and intervening causes. While jury instructions must be thorough and accurate, they ought not confuse a jury room. See *Schultz v. Northeast Illinois Regional R.R. Corp.*, 201 Ill.2d 260, 280 (2002). Nor must they state all the relevant law on a given subject. *People v. Sperry*, 2020 IL App (2d) 180296, ¶ 25. If an intervening cause breaks the causal connection between the

defendant's act and the resulting death, then the IPI instructions account for it. In such a circumstance, the injury at hand would not have resulted from the "natural or probable sequence" flowing from the defendant's actions. By finding the defendant guilty, the jury concluded that Brennan's injury did result from such a sequence. We determine that presenting proximate cause in the IPI's manner is more likely to result in a jury room that considers intervening causes than yet another paragraph of legal minutiae.

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 21 Affirmed.