

No. 1-09-0903

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
) the Circuit Court
 Plaintiff-Appellee,) of Cook County
)
 v.) No. 08 CR 1707
)
 MAURICE MINOR,) Honorable
) Stanley Sacks,
 Defendant-Appellant.) Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Garcia concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant's conviction for unlawful use of a weapon by a felon is affirmed over defendant's contentions that: (1) the trial court erred in refusing to instruct the jury on the defense of necessity because he presented some evidence that he used the gun in self-defense; (2) he is entitled to a new trial because the trial court failed to comply with Supreme Court Rule 431(b); and (3) his conviction is unlawful because the unlawful use of a weapon by a felon statute, as applied to him, is unconstitutional as it violates his second amendment right to possess a firearm in defense of hearth and home.

¶ 2 After a jury trial defendant Maurice Minor was found guilty of unlawful use of a weapon by a felon and sentenced to seven years' imprisonment. Defendant appeals, contending that: (1) the trial court erred in refusing to instruct the jury on the defense of necessity because he presented some evidence that he used the gun in self-defense; (2) he is entitled to a new trial because the trial court failed to comply with Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)); and (3) his conviction is unlawful because the unlawful use of a weapon by a felon statute, as applied to him, is unconstitutional as it violates his second amendment right to possess a firearm in defense of hearth and home. We affirm.

¶ 3 Defendant was arrested on January 3, 2008, in connection with a shooting that took place on January 1, 2008, at 6424 South Eberhart Avenue in Chicago. Renitta Hill and Linwood Bolton were shot during the shooting. Defendant was charged by grand jury indictment with four counts of attempted first degree murder and two counts each of aggravated battery with a firearm, aggravated unlawful use of a weapon and unlawful use of a weapon by a felon. Before trial, the State *nolle prosequed* two counts of attempted first degree murder, the two counts of aggravated unlawful use of a weapon and one count of unlawful use of a weapon by a felon.

¶ 4 Jury selection began on February 19, 2009. The court read the charges to the venire *en masse* and admonished them that defendant is presumed innocent of the charges against him, the State has the burden of proving defendant guilty beyond a reasonable doubt and defendant is not required to present evidence or testify on his own behalf. The court then told the potential jurors that it would ask them a series of questions and to raise their right hand if a particular question applied to them. The court noted that it would, later in the selection process, individually talk to

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the potential jurors who raised their hand. The court admonished the venire *en masse*:

"The one principle you're to follow and obey is the defendant is presumed innocent of the charges against him and that presumption remains with him through every stage of the trial and is not overcome unless you're convinced beyond a reasonable doubt the State proved the charges again[st] [defendant].

Anybody have any difficulty or quarrel with the principle that an accused person is innocent of the charge against [him] or [her] and the State must prove guilt beyond a reasonable doubt? No response to that question.

In conjunction with that question is the additional one, the principle; that the State *** has the burden of proving guilt beyond a reasonable doubt, and that burden stays on the State throughout the entire trial. The defendant is not required to prove to you he is innocent of the charge against him. Anybody have any difficulty or quarrel with the principle that the State must prove guilt beyond a reasonable doubt and the defendant must prove nothing to you? Again, no response.

Going along with those two things is the additional principle that the defendant *** has the absolute right to remain silent, sit where he is throughout the entire course of the trial[,] not testify on his own behalf, and rely upon the presumption of innocence.

If that should eventually happen to occur, you as jurors cannot draw any inference, either in favor or against [defendant], if he chooses to remain silent.

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Does anybody have difficulty with the principle that an accused person has the absolute right to remain silent and not testify? Again, no response."

¶ 5 The court then asked general questions of each potential juror. At the end of questioning, the court asked each potential juror if he or she had raised their hand for any question that was asked earlier. Each selected juror responded in the negative. Neither defense counsel nor the prosecutor objected to the method of selection or asked the court to inquire further.

¶ 6 At trial, Linwood Bolton testified that about 11:30 p.m. on January 1, 2008, he and his brother Travis Polk drove to a house at 6424 South Eberhart Avenue in Chicago. There, Linwood saw his girlfriend Tiffany Watkins and her sisters Marquita Watkins and Renitta Hill. The three women were standing on the street arguing with a group of people who were standing on the front porch of the house. Defendant and his girlfriend Chisa Taylor were among the persons standing on the front porch. Linwood approached Tiffany and her sisters and told them to leave the area. They refused and continued to argue with defendant. Linwood said Tiffany and her sisters were not armed during the argument. Linwood had a bottle in his hand.

¶ 7 As Linwood asked Tiffany and her sisters to leave the area, Travis and defendant began to argue. Travis was standing on the street and defendant was standing on the front porch of the house during the argument. Linwood heard gunshots and saw defendant shoot a gun in Travis's direction. Linwood said defendant fired at least eight to nine shots before running to a burgundy car and fleeing north on Eberhart Avenue. One of the shots struck Linwood in the arm and traveled through the side of his chest. Renitta was also shot. Linwood later identified defendant from a photo array and lineup as the shooter.

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¶ 8 Marquita Watkins testified that on the date and time in question she drove her sisters Tiffany and Renitta to their grandmother's house at 6424 South Eberhart Avenue. Marquita parked Tiffany's car on the street in front of the house. The group exited the car and stood on the street next to it. Defendant and several other people were standing on the front porch of the house. Defendant and Tiffany began to argue. Marquita said Tiffany did not have anything in her hands during the argument. Shortly after Tiffany and defendant began to argue, Linwood and Travis arrived in front of the house in Linwood's truck. The pair exited the truck and Linwood told Tiffany to leave the area. As he did so, Marquita heard gunshots coming from the porch of the house. She did not see the shooter. Marquita said neither Linwood nor Travis approached the porch of the house before the shooting started.

¶ 9 On cross-examination, Marquita said that neither Linwood nor Travis went to Linwood's car to retrieve a weapon during the argument. She also said that Tiffany did not tell defendant and his friends to "send that b*** out here, we are going to kick her a***." According to Marquita, Travis did not tell defendant "I got something for you, come on down, I'm going to give it to you." Marquita testified that Travis did not pull up his shirt or place his hands in the pockets or waistband of his pants before the shooting.

¶ 10 Tiffany Watkins testified that on the date and time in question she went to her grandmother's house at 6424 South Eberhart Avenue to talk to Chisa. Tiffany explained that she and Chisa were involved in a prolonged argument. Tiffany said that she drove to 6424 South Eberhart and waited for her sisters Marquita and Renitta to arrive at that location. Tiffany saw defendant and two other men standing on the front porch of the house. Chisa stood behind

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defendant in the front doorway of the house. Tiffany asked defendant to tell Chisa to exit the house. Tiffany and defendant began to argue. Tiffany said she and her sisters stood on the street during the argument and did not approach the house. Tiffany was holding a dust broom in her hand during the argument.

¶ 11 As the group argued, Linwood and Travis arrived on the scene. Linwood told Tiffany and her sisters to leave the area. While Linwood talked to Tiffany, Travis and defendant began to argue. Tiffany said Travis was standing on the street during the argument. Renitta stood next to Travis. As Tiffany walked toward her car, she heard gunshots and saw defendant shoot Linwood and Renitta. Defendant then gave the gun to a friend and fled the area in a burgundy car. Tiffany said neither Linwood nor Travis approached the front porch of the house before defendant started shooting. Tiffany identified defendant from a photo array and lineup as the shooter.

¶ 12 Travis Polk testified that on the date and time in question he and Linwood drove to 6424 South Eberhart Avenue. There, Travis parked Linwood's truck behind Tiffany's car, which was parked on the street in front of the house. Travis exited the truck and saw Tiffany, Renitta and Marquita standing on the street near Tiffany's car. They were arguing with defendant, who was standing on the front porch of the house. Chisa stood behind defendant inside the front doorway of the house. Travis said he did not know defendant or Chisa at that time.

¶ 13 Travis and defendant began to argue. Travis said he was standing on the street in front of the house and Renitta was standing next to him. Renitta pulled Travis's shirt and urged him to leave the area. As Travis walked toward Linwood's truck, he saw defendant retrieve a handgun from his pant's pocket and start shooting. Travis said he did not approach the porch before the

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shooting started. He said Linwood, Tiffany, Marquita and Renitta also did not approach the porch. Travis heard about nine shots and saw defendant shoot Renitta in the leg. He also saw Linwood fall to the ground. After the shooting, defendant and another person fled the scene in a burgundy car. Travis identified defendant as the shooter from a lineup.

¶ 14 On cross-examination, Travis said he did not pull up his shirt or put his hands into the waistband of his pants during the argument. He also said that he did not tell defendant "I have got something for you" and "we can get this cracking right now."

¶ 15 Detective Isaac Lambert testified that he was assigned to investigate the shooting in question and went to the scene of the crime. There, Detective Lambert spoke with Tiffany and Marquita. Lambert said Marquita told him that the "victims approached the location on foot when [defendant] pointed the gun and shot [them]." Detective Lambert arrested defendant on January 3, 2008, and advised him of his *Miranda* rights. Defendant waived his rights and agreed to speak with the detective about the shooting. Assistant State's Attorney (ASA) Thomas Prisco was present for the interview. Defendant agreed to reduce his statement to writing.

¶ 16 ASA Prisco published defendant's signed handwritten statement in open court. In the statement, defendant said that on the date in question he, his cousin Carnell Gilbert and defendant's daughter drove to Crestwood, Illinois, to pick Chisa up from work. On their way back to Chicago, defendant listened to voicemail messages Tiffany, Marquita and Renitta had left for Chisa on Chisa's phone. Defendant was not sure what the messages were about but they "had something to do with one or all of the sisters fighting Chisa that night." Defendant knew Tiffany, Marquita and Renitta because their grandmother was his neighbor and landlord.

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¶ 17 When defendant arrived at his house at 6428 Eberhart Avenue, he saw Tiffany's car parked on the street and a green truck parked behind it. Defendant continued to drive past the house. As he did so, he noticed that Tiffany's car and the green truck began to follow him. When defendant stopped at a traffic light, the green truck "rammed" the rear of his car. Defendant then drove to his house.

¶ 18 At the house, defendant went into his cousin's bedroom and retrieved a handgun from a shoe box in the closet while Carnell stood on the front porch. Defendant then went to the porch of the house and placed the gun in his right front pant's pocket. Chisa and defendant's daughter stayed inside the house. Defendant's cousins Brian Reynolds and Teneer Bailey arrived at the house and joined defendant and Carnell on the front porch. As the group stood on the porch, Tiffany, Marquita and Renitta arrived in Tiffany's car and parked the car on the street in front of the house. Tiffany and her sisters exited the car and defendant heard someone yell "send that b*** out." Defendant "exchanged words" with Tiffany who had "some kind of pole" in her hand. Defendant said he did not feel threatened by Tiffany, Marquita and Renitta but he did not want them to fight with Chisa.

¶ 19 As defendant argued with Tiffany and her sisters, Linwood and Travis arrived at the house in Linwood's truck. Defendant said Linwood's truck was not the truck that "rammed" defendant's car earlier. Linwood and Travis exited the truck and defendant "exchanged words" with the pair. Linwood and Travis walked toward Tiffany's car. Defendant said he "[thought] he saw [Linwood] take something from [Tiffany's] car and put it in his coat pocket." Travis placed his hands in the waistband of his pants. Defendant said Linwood and Travis told him "they were

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going to do something to him" but defendant was not sure what they said. At this time, both Linwood and Travis were standing in the middle of the street. Linwood and Travis then ran toward the front porch of the house. Defendant retrieved the gun from his pocket and fired a single shot into the air. Linwood and Travis stopped running and turned away from the porch. They then began to run toward the porch again. Defendant pointed the gun in their direction and fired two to three more shots. Defendant dropped the gun and fled the scene in his cousin's car. Defendant said he fled the scene because "he was afraid he would get into trouble for shooting the gun because he is a convicted felon." Defendant acknowledged that no one, including Linwood and Travis, were armed at the time of the shooting.

¶ 20 The State introduced a certified copy of defendant's 1999 felony conviction for possession of a stolen motor vehicle. The State then rested.

¶ 21 Defendant's cousin Brian Reynolds testified on defendant's behalf. Brian said that on the date and time in question, he and Teneer drove to defendant's house at 6428 South Eberhart Avenue. Teneer entered the house and Brian stood on the porch. A short time later, defendant, Chisa, Carnell and defendant's daughter arrived at the house. Chisa, defendant and his daughter went inside the house. Defendant returned to the porch. A few minutes later, Tiffany and her sisters arrived on the scene in Tiffany's car. They exited the car and Marquita shouted in the direction of the house. Brian said Marquita stood by the driver's side of the car and held a bat in her hand. Tiffany stood near the trunk of the car and held a pole in her hand. Brian said Tiffany and Marquita threatened Chisa, who was standing behind defendant on the porch of the house.

¶ 22 Around this time, Linwood and Travis arrived on the scene in a black truck. Travis

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parked the truck behind Tiffany's car and the pair exited the truck. Linwood walked toward Tiffany's car. As he did so, he held a bottle of alcohol in one hand and had his other hand in his coat pocket. Travis walked toward the porch of the house and shouted "let's get it crack[in]" As he did so, he had his hand under his shirt. When Travis was on the second step of the stairs leading to the front porch, defendant started shooting. Defendant fired a total of four shots. Brian said defendant told Travis not to walk up the stairs before defendant started shooting.

¶ 23 Carnell testified that on the date in question he, defendant and defendant's daughter drove to Crestwood to pick Chisa up from work. On their way back, Carnell listened to voicemail messages Tiffany, Marquita and Renitta had left for Chisa on Chisa's phone. Carnell said the messages indicated that Tiffany, Marquita and Renitta would be waiting for Chisa at defendant's house. When Carnell, defendant, defendant's daughter and Chisa arrived at the house, Carnell saw Tiffany's car and a black truck parked on the street. Defendant drove past his house.

¶ 24 At a traffic light, Carnell noticed that Tiffany's car and the black truck were behind defendant's car. The truck "rammed" into the rear of defendant's car. Defendant then drove to his house. Defendant, Chisa and his daughter entered the house. Carnell stayed on the front porch. Brian and Teneer arrived at the house a short time later. Teneer went inside the house. Brian stayed on the front porch with Carnell. Defendant exited the house and joined Carnell and Brian on the porch.

¶ 25 At that time, Tiffany and her sisters arrived at the house. Carnell testified that a woman exited from the driver's side of the car, holding a "wooden stick." Another woman exited from the passenger side of the car, holding a pipe. The women walked toward the porch, shouting and

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demanding Chisa exit the house. As the women shouted, a black truck arrived in front of the house. Linwood and Travis exited the truck. Carnell said that during the argument, Linwood went toward the "back part" of Tiffany's car and bent down. Travis walked toward the truck. Carnell said it "looked liked [Travis] was going under the seat" inside the truck. Carnell acknowledged that neither Linwood nor Travis retrieved a weapon. Travis then walked toward the porch and Carnell heard four gunshots. Carnell said Travis reached the stairs leading to the porch before the shooting started.

¶ 26 Chisa testified that on the date in question she received phone calls from Tiffany and Renitta, threatening her that they would be waiting for her outside of defendant's house because they were going to "kick [her] a***." Defendant, Carnell and defendant's daughter picked up Chisa from work and the group drove to defendant's house. There, Chisa saw Tiffany's car and a green truck parked on the street. Defendant drove past his house. Tiffany's car and the green truck followed. At a traffic light, the green truck "rammed" the rear of defendant's car. Defendant then drove to his house.

¶ 27 When Chisa, defendant, Carnell and defendant's daughter arrived at the house, they were joined by Brian and Tener. Chisa and defendant's daughter went inside the house. A few minutes later, Chisa heard Tiffany's voice and saw her standing in front of the house on the street, holding a "steel rod." Chisa also saw Linwood and Travis standing near Linwood's black truck. Chisa said she did not see Linwood walk toward Tiffany's car or remove anything from it. At some point during the argument, Travis opened one of the doors of the truck and reached inside. Chisa said she did not see if Travis retrieved anything from inside the truck. Travis then

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"slammed" the door of the truck and shouted that he had "something for [defendant]." Chisa said at this time Travis had "his hands on his pants, and, was like shifting them, moving them like he had something." Travis approached the porch and asked defendant "what [do] you want to do?" When Travis reached the stairs leading to the front porch, Chisa heard two gunshots. Chisa said she heard defendant yell "don't come up here" before the shooting started.

¶ 28 On cross-examination, Chisa said Linwood did not approach the porch before the shooting. She also said that Linwood's truck was not the truck that "rammed" defendant's car earlier in the night.

¶ 29 Donta Patterson, defendant's neighbor, testified that on the date and time in question he was standing on the front porch of his house at 6428 South Eberhart Avenue. Donta saw Tiffany, Marquita and Renitta arrive in front of defendant's house in a car. The women exited the car and stood on the street in front of defendant's house. Donta said the women threatened defendant and Chisa, who were standing on the front porch of defendant's house. As Tiffany argued with defendant and Chisa, she reached inside her car but did not retrieve anything. Donta said the women were not armed at the time.

¶ 30 About a minute after Tiffany and her sisters arrived at the house, Linwood and Travis arrived on the scene in Linwood's truck. The pair exited the truck and Linwood walked toward Tiffany. Travis stood by the truck. Linwood had a bottle of alcohol in his hand. Linwood told Tiffany to leave the area but she refused. Linwood then reached inside Tiffany's car but did not retrieve anything from it. Travis walked toward Linwood's truck, went inside the truck and reached under the driver's seat. As Travis walked away from the truck, he "pull[ed] at the

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waistband of his pants with his right hand." Travis told defendant that "he was going to beat his a***, [and] that he [had] something for him." Travis then approached the front porch of defendant's house. Renitta tried to stop him but Travis continued to approach the porch and threaten defendant. When Travis was near the stairs leading to the front porch, defendant started shooting. After the shooting, defendant gave the gun to Brian and fled the scene. Donta said that neither Linwood nor Travis was armed during the shooting.

¶ 31 Regina Hill, Donta's girlfriend and Tiffany's, Marquita's and Renitta's sister, testified that on the date and time in question she was at Donta's house and saw her sisters sitting in Tiffany's car parked on the street in front of defendant's house. Regina said her sisters were waiting for Chisa to arrive because Tiffany was going "to jump on [her]." Regina saw defendant drive past his house and her sisters follow him. About 30 minutes later, Defendant arrived at the house with Carnell, Chisa and his daughter. A few minutes later, Brian arrived at the house. Brian and Carnell stood on the porch while defendant and Chisa went inside the house. Defendant exited the house and stood on the porch with Brian and Carnell. Chisa was standing in the front doorway of the house.

¶ 32 About this time, Tiffany, Marquita and Renitta arrived in Tiffany's car. Tiffany exited the car and began to yell at Chisa. Regina said Tiffany had a rod in her hand. Linwood and Travis arrived on the scene in Linwood's truck. The pair exited the truck and Linwood walked toward Tiffany's car. Regina said Linwood "bent down" near Tiffany's car and retrieved "something" from inside. Travis began to argue with defendant and said that he had "something for b*** like you." Travis then walked toward the truck, went inside it and reached under one of the seats.

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Travis exited the truck and asked defendant to "step off" the porch. Regina said Travis had his hands "tucked" in his pants and walked toward the stairs leading to the porch. When Travis was on the second step, defendant started shooting.

¶ 33 The court admonished defendant about his right to testify. Defendant elected to forego that right and rested. Before closing arguments, the court held an *in camera* jury instruction conference with the parties. The court allowed a self-defense instruction to the two charges of attempted first-degree murder and aggravated battery with a firearm. Defendant also offered a necessity instruction for the unlawful use of a weapon by a felon charge. The State objected. The court denied defendant's necessity instruction, finding that there was no evidence presented to support the instruction. The court noted that defendant retrieved the gun before Tiffany and her sisters arrived on the scene.

¶ 34 After closing arguments and deliberations, the jury found defendant guilty of unlawful use of a weapon by a felon and not guilty of the two counts of attempted first degree murder and of aggravated battery with a firearm. Defendant filed a motion for a new trial, arguing that the court erred in not instructing the jury on the defense of necessity. The court denied the motion, finding that the evidence presented did not support the instruction and that defendant as a felon had no right to possess a firearm.

¶ 35 After hearing arguments in aggravation and mitigation, the court sentenced defendant to seven years' imprisonment. Defendant appeals.

¶ 36 We first address defendant's contention that he was denied his right to a fair and impartial jury because the trial judge failed to question the prospective jurors about two of the four

principles set forth in *People v. Zehr*, 103 Ill. 2d 472, 469 N.E.2d 1062 (1984), and codified in Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)). Defendant claims that the trial court failed to ensure that the jury understood and accepted the principles that he was not required to offer evidence on his own behalf and that his failure to testify cannot be held against him. Defendant maintains that the trial court's error requires automatic reversal. The State responds that no error occurred because the court complied with Rule 431(b).

¶ 37 This issue is controlled by our supreme court's decision in *People v. Thompson*, 238 Ill. 2d 598, 939 N.E.2d 403 (2010). We first note that defendant forfeited review of this issue by failing to object to it at trial or raise it in a timely-filed posttrial motion. *Thompson*, 238 Ill. 2d at 611-12 (citing *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988)). Defendant argues that requiring defense counsel to object to a violation of Rule 431(b) would be inconsistent with the purpose of the rule that the trial judge is required to comply with the rule without being prompted by counsel. Contrary to defendant's argument and as suggested in *Thompson*, "[a] simple objection would have allowed the trial court to correct the error during *voir dire*." *Thompson*, 238 Ill. 2d at 612. Although a defendant may bypass normal forfeiture principles under the plain error rule, defendant here has failed to show that error occurred. See *Thompson*, 238 Ill. 2d at 613 (citing *People v. Walker*, 232 Ill. 2d 113, 124-25, 902 N.E.2d 691 (2009)).

¶ 38 The record shows the court admonished the venire of all four *Zehr* principles, including that defendant is not required to offer evidence on his own behalf and that his failure to testify cannot be held against him. The court then told the venire that it would ask them a series of

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questions and to raise their right hand if a particular question applied to them. The court admonished the potential jurors:

"The defendant is not required to prove to you he is innocent of the charge against him. Anybody have any difficulty or quarrel with the principle that the State must prove guilt beyond a reasonable doubt and the defendant must prove nothing to you? Again, no response.

Going along with those two things is the additional principle that the defendant *** has the absolute right to remain silent, sit where he is throughout the entire course of the trial[,] not testify on his own behalf, and rely upon the presumption of innocence.

If that should eventually happen to occur, you as jurors cannot draw any inference, either in favor or against [defendant], if he chooses to remain silent. Does anybody have difficulty with the principle that an accused person has the absolute right to remain silent and not testify? Again, no response."

We find that the above inquiry sufficiently complies with the requirements of Rule 431(b). As a result, the plain error doctrine does not provide a basis for relaxing defendant's forfeiture of this issue. *Walker*, 232 Ill. 2d at 124-25.

¶ 39 In reaching this conclusion, we are unpersuaded by defendant's argument that the court's failure to ask the potential jurors whether they "understood" and "accepted" the *Zehr* principles, rather than whether they had "difficulty" or "quarrel" with the principles, violated Rule 431(b). See *People v. Vargas*, 409 Ill. App. 3d 790, 796, 949 N.E.2d 238 (2011) (holding the trial court

complied with the question and answer methodology mandated by the *Thompson* court where the language employed by the trial court was sufficient to ascertain the understanding and acceptance of the potential jurors of the principles articulated); *People v. Strickland*, 399 Ill. App. 3d 590, 603, 926 N.E.2d 744 (2010) (holding the trial court substantially complied with the requirements of Rule 431(b) where the court admonished the prospective jurors of the four *Zehr* principles and asked them to raise their hand and express concern).

¶ 40 Even were we to conclude that the trial court's *voir dire* examination did not comport with Rule 431(b), we note that defendant would not be able to bypass forfeiture under the plain error doctrine. Defendant relies upon the plain error doctrine under its second prong, requiring a finding that "a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process[.]" *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007). In that regard, defendant claims that the court's alleged violation of Rule 431(b) infringed his right to an impartial jury and affected the fairness of his trial. However, defendant has the burden of persuasion on this issue and he has failed to present any evidence that the jury was biased in this case. *Thompson*, 238 Ill. 2d at 614. We will not presume the jury was biased simply because the trial court may have erred in conducting the Rule 431(b) questioning. *Thompson*, 238 Ill. 2d at 614.

¶ 41 Defendant next contends that the trial court erred in refusing to instruct the jury on the defense of necessity for the charge of unlawful use of a weapon by a felon. Defendant argues that he was entitled to the instruction because his handwritten statement, combined with the testimony of the defense witnesses, constituted "some evidence" that he was justified in

retrieving a gun to protect himself and his family. He maintains that the trial court's refusal to tender the instruction violated his right to a fair trial and warrants reversal. Defendant asks that on remand defense counsel be permitted to question prospective jurors about their views on handguns.

¶ 42 Generally, the giving of jury instructions is a matter within the sound discretion of the trial court. *People v. Jones*, 219 Ill. 2d 1, 31, 845 N.E.2d 598 (2006). However, "[i]t is a matter of law whether the defendant has met the evidentiary minimum entitling him to instructions on an affirmative defense." *People v. Everette*, 141 Ill. 2d 147, 157, 565 N.E.2d 1295 (1990). A defendant is entitled to an instruction on an affirmative defense even if the evidence presented of that defense is "slight." (Internal quotation marks omitted.) *Everette*, 141 Ill. 2d at 156.

"Although the threshold of evidence required to raise an affirmative defense is low, the defendant bears the burden to satisfy that requirement [citation], and where the defendant presents no supporting evidence, the proffered instruction should be refused [citation]." *People v. Kite*, 153 Ill. 2d 40, 45, 605 N.E.2d 563 (1992).

¶ 43 The elements of the affirmative defense of necessity are: (1) the person claiming the defense was without blame in occasioning or developing the situation; and (2) this person reasonably believed his conduct was necessary to avoid a public or private injury greater than that which might reasonably have resulted from his conduct. 720 ILCS 5/7-13 (West 2008); *People v. Janik*, 127 Ill 2d 390, 399, 537 N.E.2d 756 (1989). The defense of necessity is "viewed as involving the choice between two admitted evils where other optional courses of action are unavailable [citations], and the conduct chosen must promote some higher value than the value

of literal compliance with the law [citation]." *Janik*, 127 Ill. 2d at 399.

¶ 44 Here, the evidence presented was not sufficient to entitle defendant to an instruction on the defense of necessity for the charge of unlawful use of a weapon by a felon. Section 24-1.1 of the Criminal Code of 1961 provides that "[i]t is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode *** any firearm *** if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2008). As noted by the trial court, defendant completed this offense before Tiffany and her sisters arrived at his house.

¶ 45 Defendant still argues that the threats to Chisa from Tiffany and her sisters earlier in the night, combined with the fact that the sisters waited for Chisa at defendant's house, followed him and allegedly "rammed" his car, were sufficient to justify his possession of the weapon. Contrary to defendant's argument, this evidence does little to establish the two elements of the affirmative defense of necessity. First, we cannot say that defendant was without blame in occasioning or developing the situation. The record shows that after defendant's car was "rammed," defendant drove to his house, retrieved a handgun and stood on his front porch. Second, we likewise cannot say that defendant reasonably believed his conduct of retrieving the gun was necessary to avoid a greater public or private injury. Defendant failed to present evidence that, at the time his car was rammed, he knew Tiffany and her sisters were armed such that his retrieval of the gun was necessary to avoid a greater injury.

¶ 46 The defense of necessity requires the balancing of two evils. Here, the evidence does not support that defendant was confronted with and required to make such a choice. See *Janik*, 127

Ill. 2d at 399. Defendant was safely in his car when he encountered Tiffany and her sisters, and there was no need for him to return home to retrieve the gun. Rather than selecting between two evils, defendant could have driven to a police station or other safe environment, thereby avoiding a confrontation with Tiffany and her sisters. Additionally, when defendant did return home, he could have simply stayed inside his house and called the police. It was not a required choice that he arm himself and go out on the porch to confront Tiffany and her sisters, and there were certainly alternatives available to defendant that did not involve violating the law..

¶ 47 Having found that the evidence presented did not support the giving of a necessity instruction, we need not address defendant's related argument that, on remand, defense counsel should be permitted to question prospective jurors about their views on handguns.

¶ 48 Defendant finally contends that his conviction for unlawful use of a weapon by a felon is unlawful because the statute, as applied to him, violates his second amendment right to "keep and bear arms." He claims that despite his status as a convicted felon the State was prohibited from criminalizing his act of possessing a handgun on the front porch of his house for the core lawful purpose of self-defense. In support of his argument, defendant relies on *District of Columbia v. Heller*, 554 U.S. 570, 171 L. Ed. 2d 637, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, ___ U.S. ___, 177 L. Ed. 2d 894, 130 S. Ct. 3020 (2010).

¶ 49 A statute is presumed constitutional and it is the duty of a reviewing court to construe a statute so as to affirm its constitutionality, if such a construction is reasonably possible. *People v. Cornelius*, 213 Ill. 2d 178, 189, 821 N.E.2d 288 (2004). The party challenging the statute bears the burden of rebutting this presumption and clearly establishing that the statute violates

the constitution. *Cornelius*, 213 Ill. 2d at 189; *People v. Jones*, 223 Ill. 2d 569, 596, 861 N.E.2d 967 (2006). Whether a statute is unconstitutional is a question of law subject to *de novo* review. *People v. Johnson*, 225 Ill. 2d 573, 584, 870 N.E.2d 415 (2007).

¶ 50 Here, defendant has failed to meet his burden and overcome the presumption that the unlawful use of a weapon by a felon statute is constitutional. In *Heller*, the United State Supreme Court limited the fundamental right to bear arms to a "law-abiding responsible citizen[']s" right to possess and carry firearms in his home for the purpose of self-defense. *Heller*, 554 U.S. at 635. In doing so, the *Heller* court explained its holding by saying that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]" *Heller*, 554 U.S. at 626. The court went on to say "assuming that [the defendant was] not disqualified from the exercise of Second Amendment rights," he had the right to possess a firearm in his home. *Heller*, 554 U.S. at 635.

¶ 51 More recently, the United States Supreme Court revisited this issue in *McDonald* and held that the second amendment right to bear arms is applicable to the states through the due process clause of the fourteenth amendment. *McDonald*, 130 S. Ct. at 3050. The *McDonald* court quoted *Heller* and reiterated that its holding was not intended to "cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons[.]' " *McDonald*, 130 S. Ct. at 3047 (quoting, *Heller*, 554 U.S. 626).

¶ 52 We are unpersuaded by defendant's argument that this language in *Heller* and *McDonald* is dicta that should not be given weight because it does not apply to felons keeping firearms for self-defense purposes. As mentioned, in limiting the right to bear arms to law-abiding citizens'

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right to possess firearms for the purpose of self-defense, the *Heller* court specifically excluded felons from exercising this right. See *Heller*, 554 U.S. at 634-35. *Stare decisis* requires us to follow the decisions of higher courts. *People v. Hill*, 408 Ill. App. 3d 23, 29, 945 N.E.2d 1246 (2011).

¶ 53 For the reasons stated we affirm the judgment of the trial court.

¶ 54 Affirmed.