SIXTH DIVISION
June 29, 2018

No. 1-15-2155

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CARLOS JENKINS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 12 CR 15201 Honorable Charles P. Burns, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held*:** We affirm defendant's conviction for armed robbery with a firearm. Trial counsel did not render ineffective assistance by failing to request the definitional firearm jury instruction. The court did not deny defendant his right to proceed *pro se*. The court made an adequate inquiry into defendant's posttrial allegations of ineffective assistance of counsel. The evidence, when viewed in the light most favorable to the prosecution, was sufficient to sustain the jury's verdict.

¶ 2 Following a jury trial, Carlos Jenkins was convicted of armed robbery with a firearm and sentenced to 34 years' imprisonment. On appeal, he contends that (1) trial counsel was ineffective; (2) the trial court abused its discretion in failing to instruct the jury on the definition

of "firearm"; (3) the circuit court improperly denied his request to proceed *pro se*; (4) the court failed to conduct an adequate inquiry into his posttrial allegations of ineffective counsel; and (5) the evidence was insufficient to establish that the robbery was committed with a firearm. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)), stemming from an incident at a coffee shop on July 15, 2012. He was also charged with the separate armed robbery of an adult novelty store earlier that same day. The State elected to try the novelty store case first. After a bench trial, defendant was found guilty and sentenced to 25 years' imprisonment. This court affirmed that conviction on appeal. *People v. Jenkins*, 2016 IL App (1st) 141673-U, ¶ 16.

¶ 5 After the being convicted in that case, defendant proceeded in this case with the same counsel. During a pretrial status conference, defendant addressed the court and announced his intention to proceed *pro se*:

> "I don't even want him representing me. I want to go *pro se*. I want to go *pro se*. I don't want him to represent me any longer. It's a conflict of interest, so I don't know [sic] want him to represent me no more. I want to use my, that's my constitutional rights. I want to represent myself, go *pro se* on this case."

¶ 6 The trial court asked defendant whether he was a trained lawyer and whether he understood that *pro se* defendants are expected to know the rules of criminal procedure and are held to the same standard as attorneys. Defendant replied that he was not a lawyer and that he understood that he would be held to the same standard as one. The court then asked whether defendant would like to wait until the next court date to make the decision. Defendant did not

respond directly to that question; he only asked for a long continuance so that he would be returned to his home prison rather than remain at the Stateville Correctional Center. Although he requested a date in January of 2015, the court set a "final status" date of December 1, 2014.

¶ 7 The trial court then indicated that the December 1 court date would stand only if defendant agreed to continue to be represented by counsel until then. Otherwise, he would require defendant to appear for additional status hearings. Defendant then agreed to stay with counsel "[f]or the time being." The court said that it could revisit the issue at the next court date.

¶ 8 On December 1, defendant again addressed the trial court. This time, he stated that he wanted to act as co-counsel on his case. The court responded that he need not act as co-counsel because he would be able to converse with his attorney and make all of the decisions reserved for defendants to make. The following exchange ensued:

> "THE DEFENDANT: So just give me an understanding of what you are saying, Judge Burns. You telling me that there is not a such thing as a person acting as a co-counsel on their case?
>
> THE COURT: What I am telling you right now, sir, is if you want to represent yourself you can do that.
>
> THE DEFENDANT: I am not asking that, Your Honor.
>
> THE COURT: Okay. Then you don't need to represent yourself and have an attorney represent you. Do you understand what I am saying?
>
> THE DEFENDANT: No, I do not, Your Honor."

¶ 9 Defense counsel then interjected that the question of defendant proceeding *pro se* had been addressed at the previous status hearing. Without returning to the issue, the court then set a trial date.

¶ 10 At the final hearing before trial, the State requested a continuance to accommodate a witness. Defendant announced that he wanted to demand a speedy trial. Defense counsel responded that he was not demanding and that "[i]f he wants to go *pro se* and demand, fine." The trial court informed defendant that whether to demand a speedy trial is a strategic matter left for counsel. Although defendant continued to complain about the delay, he did not renew his request to proceed *pro se*. Rather, he requested that the trial be held on a Tuesday so that he would not miss his Monday evening class; the court granted that request.

¶ 11 At trial, Takira Hill testified that on the evening of the robbery, she was working as a cashier at a coffee shop. That evening, two other employees were working at the restaurant. While the other employees were in the back and the restaurant was otherwise empty, an African-American man in a white shirt and red cap approached Hill at the register. He said to her, "I ain't even going to lie, I need you to open the cash register." She replied that the register was locked and that she would need to get somebody from the back to open it. In response, the man lifted the front of his shirt and tucked it behind a gun that was in his waistband. He said, "I don't want to have to blow your head off. I got a banger." Hill opened the register and gave him the money. The man then left and Hill went into the back of the restaurant to inform her co-workers of the robbery and call the police. Although the gun remained tucked in the robber's waistband for the duration of the encounter, Hill identified it as a black gun with a brown handle. She testified that neither the register nor the counter blocked her view of the gun, and that she was less than two feet away from defendant when he showed it to her. The store was lit and it was still light outside.

¶ 12 At trial, Hill also narrated surveillance camera footage of the robbery. That footage showed both defendant's face and the gun handle protruding from his waistband. The prosecution did not enter any gun into evidence.

¶ 13 After the State rested, defense counsel moved for a directed verdict. The court denied that motion and the defense rested without putting on any evidence. At the jury instruction conference, defense counsel requested an instruction on the lesser included offense of robbery, and the court confirmed with defendant that he wanted that instruction. The court then asked whether either side wanted an instruction on the definition of "firearm". The State declined and defense counsel stated, "We have considered it and decided not to have that instruction given."

¶ 14 During closing argument, defense counsel argued that Hill's lie about the cash register being locked was proof that she did not believe that defendant had a real gun. Additionally, counsel argued that the brief period of time, the stress of the situation, and the fact that the alleged gun was not pulled from the robber's waistband made it impossible for Hill to say definitively that the robber had a firearm rather than a toy or some other object. Counsel concluded by reminding the jury that no gun had been introduced into evidence.

¶ 15 After less than three hours of deliberation, the jury informed the trial court that it was hung. Over the State's objection, the court gave the jury a *Prim* instruction (*People v. Prim*, 53 Ill. 2d 62, 75–76 (1972)) and sent it back to further deliberate.

¶ 16 Soon after, the jury sent out a note asking, "What constitutes a firearm?" When the trial court discussed the note with the parties, defense counsel said, "We do have an IPI on that we could give them." However, both the defense and the State maintained their initial position that they did not want that instruction to be given to the jury. The State suggested that the court instruct that jury that they had been given the instruction of law and heard the evidence. The

defense agreed: "Judge, we are going to agree with the [S]tate that they have been given the instruction of law and heard the evidence." The court stated:

> "I tried to see just in one of my books, my evidence books, whether or not we could give an instruction to the jury after the deliberations have started. I have not been able to find it. I don't know the answer to that question. I think it would have been an appropriate instruction to be given beforehand.
>
> Neither side has an opportunity to argue this instruction. I am going to be cautious and I think it could be improper. If somebody could educate me after this trial as to whether I could give it, it will be great. But as of now I am going to say, you have all the instructions of law. Please continue to deliberate."

¶ 17 The jury again sent out a note that it was hung, and again both sides requested that the jury should continue to deliberate. Soon after, the jury announced that it had reached a verdict. The jury found defendant guilty of armed robbery with a firearm.

¶ 18 At a posttrial court appearance, defendant complained to the trial court about a lack of communication with his counsel. He claimed that he "had no counseling or client communication" since the trial, despite making several calls to his attorney's office. He also stated that he was unhappy with the posttrial motion that his counsel had filed:

> "I want the record to reflect as well I'm not in agreement with the motion he filing on my behalf. I understand that my counselor only can give me advice on legal how I should go with my case. They do not 'pose to make no decisions for me."

¶ 19 The court explained to defendant the sorts of decisions that are within the attorney's power to make and the decisions that are reserved exclusively for the defendant. Defendant

indicated that he understood, but persisted in complaining that he was unhappy with the posttrial motion because it failed to raise certain issues. The court then advised defendant to talk to his attorney and address any remaining issues at the posttrial motion hearing.

¶ 20 At his next court appearance, defendant reiterated that he was unhappy with the amount of communication he had with counsel. Counsel stated, for the record:

> "I have gone over everything with [defendant] several times, including today we reviewed the case law. We reviewed my posttrial motion that I already filed, we reviewed on previous court dates, we reviewed the issues again today. I have had lots of communications with [defendant].
>
> * * *
>
> I will state we have communicated over these previous months. He was found guilty by a jury on March 18. I have reviewed all of the issues with him actually posttrial, and I reviewed it with him every court date. I believe we spoke over the phone at least once during that time as well. And, as I stated, I have tendered him copies of my motion. He asked me to review the case law, I have done all that."

¶ 21 Defendant denied that there had been communication and reiterated that counsel had not responded to his phone calls. He requested an additional week before hearing on the motion for a new trial so that he could consult with counsel. The trial court continued the matter to the following day.

¶ 22 At the final hearing, the court stated that a *Krankel* hearing (*People v. Krankel*, 102 Ill. 2d 181, 189 (1984)) had already been conducted. The court then realized that it had the file from a different case and asked whether there were any *Krankel* issues in this case. Defense counsel

replied, "[defendant] was addressing the court yesterday, but has – to my knowledge, has not filed any *pro se* motions alleging ineffectiveness." When asked whether that was correct, defendant responded, "I haven't filed nothing." Defendant went on to allege that the transcript was inaccurate, asserting that one of the jurors had answered "no" when polled as to whether her verdict was guilty. Defense counsel stated that after discussing the transcript with defendant and reviewing the case law, he decided that it would be inappropriate to raise defendant's concern about the accuracy of the transcript in the posttrial motion. He informed defendant that "if he and his State Appellate Defender wish to try and correct the transcript in order to raise that issue, they have mechanisms to do so." The court repeated that defense counsel had an obligation to provide zealous advocacy, but that he could not raise any issues without a good-faith basis. The court advised defendant that he could "take a notice of appeal from anything that happened during the trial or the sentencing."

¶ 23 The trial court denied the motion and sentenced defendant to 34 years' imprisonment, concurrent with the 25-year sentence for the robbery of the adult novelty store. This appeal followed.

¶ 24 ANALYSIS

¶ 25 Defendant contends that (1) trial counsel rendered ineffective assistance by failing to request a jury instruction on the definition of "firearm"; (2) the court abused its discretion in not giving that instruction even after the jury specifically asked "what constitutes a firearm?"; (3) defendant was denied his right to proceed *pro se*; (4) the court failed to conduct an adequate inquiry into his posttrial allegations of ineffective assistance of counsel; and (5) the evidence was insufficient to establish that the robbery was committed with a firearm. We address each argument in turn.

¶ 26 Jury Instruction

¶ 27 Defendant argues that trial counsel was ineffective because, despite arguing that the object tucked into defendant's waistband was not a firearm, counsel did not request a jury instruction on the legal definition of "firearm". Alternatively, he argues that the trial court abused its discretion by not giving the firearm instruction after the jury asked for the definition.

¶ 28 Both the federal and state constitutions guarantee to criminal defendants the right to the effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, Art. I, § 8. To establish a claim of ineffective assistance of counsel, a defendant must show both a deficiency in counsel's performance and prejudice resulting from that deficiency. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984) (adopting *Strickland*). To prevail on a claim of ineffective assistance, defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) the deficient performance so prejudiced the defense as to deny defendant a fair trial. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008) (citing *Strickland*, 466 U.S. at 687). Failure to show either deficient performance or sufficient prejudice defeats an ineffectiveness claim. *Strickland*, 466 U.S. at 687. Whether defendant received ineffective assistance of counsel is a mixed question of fact and law. *Strickland*, 466 U.S. at 698. We thus defer to the trial court's findings of fact, but review *de novo* the ultimate legal issue of whether counsel's omission supports an ineffective assistance claim. *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004).

¶ 29 To satisfy the first prong of the *Strickland* test, a defendant must overcome the "strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence." *People v. Coleman*, 183 Ill. 2d 366, 397 (1998). An

attorney's "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 687.

¶ 30 Here, defendant has failed to establish that his attorney's performance fell below an objective standard of reasonableness. "Instructions convey the legal rules applicable to the evidence presented at trial and thus guide the jury's deliberations toward a proper verdict." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). There must be some evidence in the record to justify an instruction, and instructions which are not supported by either the evidence or the law should not be given. *Id.* at 65-66.

¶ 31 Illinois Pattern Jury Instructions, Criminal, Nos. 14.05 and 14.06 (4th ed. 2000) (IPI 14.05 and 14.06) (definition of armed robbery and issues in armed robbery) previously tracked the language of the prior armed robbery statute (720 ILCS 5/18–2 (West 1998)). However, IPI 14.05 and 14.06 were amended, effective January 24, 2014, to reflect the current version of the armed robbery statute which designates different sentencing consequences for armed robbery with a firearm or "a dangerous weapon other than a firearm" (720 ILCS 5/18–2 (West 2012)). The committee comments to IPI 14.05 and 14.06 do not require that a definition for "firearm" be given when the offense involves a firearm, even though there is a pattern instruction defining "firearm" consistently with section 1.1 of the Firearm Owners Identification Card ("FOID") Act (430 ILCS 65/1.1 (West 2012)). See Illinois Pattern Jury Instructions, Criminal, No. 18.35G (4th ed. 2000) (defining "firearm"); *People v. Wright*, 2017 IL 119561, ¶ 88 n.6.

¶ 32 "When words used in a jury instruction have a commonly understood meaning, the court need not define them with the use of additional instructions; this is particularly true where the pattern jury instructions do not provide that an additional definition is necessary." *People v.*

Manning, 334 Ill. App. 3d 882, 890 (2002) (citing *People v. Washington*, 184 Ill. App. 3d 703, 708 (1989); *People v. Powell*, 159 Ill. App. 3d 1005, 1015 (1987)).

¶ 33 IPI 18.35G defining "firearm" states: "The word 'firearm' means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. [The term does not include _____.]" Illinois Pattern Jury Instructions, Criminal, No. 18.35G (4th ed. 2000). The committee notes to that instruction indicate that the bracketed portion should be used "when appropriate." *Id.*

¶ 34 Defendant argues that because trial counsel's theory of the case was that the State did not prove beyond a reasonable doubt that the gun in defendant's waistband was a "firearm" rather than a B-B gun, toy, or some other non-firearm object, it would have been appropriate for the court to give the firearm definition instruction, including the bracketed portion listing items that are not firearms for the purpose of the statute. This mistakes argument for evidence. It is clear from the text of IPI 18.35G and the committee notes that the bracketed portion of the instruction is only appropriate when there is some evidence to support the theory that the object was one of the excluded items, such as a B-B gun or paintball gun. If there had been any evidence in this case that a B-B gun or paintball gun had been recovered, it would have been appropriate to instruct the jury as to that particular excluded item. No such evidence was introduced in this case. Nothing in the record indicates that the object in defendant's waistband was a B-B gun or any other of the specified exclusions. So even if the instruction were given, it would not have been appropriate to include the bracketed portion.

¶ 35 Even if it were appropriate to include the bracketed portion of the instruction, defense counsel could reasonably have decided that it was more advantageous for the jury to rely on its own common understanding of what constitutes a "firearm" than to have it instructed on the

FOID definition. In fact, defense counsel stated explicitly that he had reviewed the applicable law and made the tactical decision not to request that IPI. Such a decision is not objectively unreasonable. For the same reasons, it was not objectively unreasonable to maintain that decision even after the jury asked for a definition. By that point, the jury had already indicated that it was hung, so counsel could reasonably have concluded that his decision not to request the instruction had been effective with regard to at least one juror.

¶ 36 Given that "firearm" has a commonly understood meaning and that the committee comments to the pattern instructions on armed robbery do not require that a definition for "firearm" be given, it was well within the wide range of reasonable trial tactics for defense counsel to have decided not to request the instruction. Because the deficiency prong of the *Strickland* test has not been met, there is no need to analyze the prejudice prong. See *Strickland*, 466 U.S. at 687.

¶ 37 Alternatively, defendant argues that the court abused its discretion by not giving the firearm definition instruction in response to the jury question "what constitutes a firearm?" Specifically, defendant argues that the court failed to recognize that it had the discretion to give the instruction in response to the jury's question. In general, the trial court must provide instruction in response to an explicit question on a point of law from the jury. *People v. Childs*, 159 Ill. 2d 217, 229 (1994). "This is true even though the jury was properly instructed originally." *Id*. Even if a term in a jury instruction "has a plain meaning within the jury's common knowledge" the trial court must instruct the jury where clarification is requested. *People v. Landwer*, 279 Ill. App. 3d 306, 316 (1996). However, we need not reach this issue because it has been waived.

¶ 38 Waiver is the intentional relinquishment of a known right, while forfeiture is the failure to timely assert a known right. *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). "In the course of representing their clients, trial attorneys may (1) make a tactical decision not to object to otherwise objectionable matters, which thereby waives appeal of such matters, or (2) fail to recognize the objectionable nature of the matter at issue, which results in procedural forfeiture." *People v. Bowens*, 407 Ill. App. 3d 1094, 1098 (2011) (tactical decision not to exercise a peremptory challenge and to acquiesce to a jury panel waived the issue of the court's ruling on a challenge for cause). While a forfeited issue may still be reviewed for plain error, if defense counsel affirmatively acquiesces to actions taken by the trial court, a defendant's only challenge may be presented as a claim for ineffective assistance of counsel. *Id.* at 1101.

¶ 39 "Where a defendant acquiesces in the circuit court's answer to the jury's question, the defendant cannot later complain that the circuit court abused its discretion." *People v. Reid*, 136 Ill. 2d 27, 38 (1990). This rule allows the trial court to promptly correct any error and prevents a party later receiving an advantage on appeal by having chosen not to object. *Id.* Otherwise, counsel might attempt to "plant a seed of error" by actively acquiescing to improper decisions by the court. *Bowens*, 407 Ill. App. 3d at 1001.

¶ 40 Here, the jury sent out a note asking: "What constitutes a firearm?" The trial court inquired of the parties whether they still did not want the court to give the IPI defining "firearm". The State reaffirmed its position that the instruction was unnecessary and defense counsel said, "Judge, we are going to agree with the state that they have been given the instruction of law and heard the evidence." The court asked the parties: "With regards to the question that came out what constitutes a firearm, I am going to send back a note. You have all the instructions of law. Please continue to deliberate. Either party object to the wording of that?" The parties did not.

Because defense counsel positively acquiesced in the court's answer to the jury's question, the issue has been waived and is beyond review. See *id.* ("In a situation like this, where defense counsel affirmatively acquiesces to actions taken by the trial court, a defendant's only challenge may be presented as a claim for ineffective assistance of counsel on collateral attack.").

¶ 41 Self-Representation

¶ 42 Defendant next argues that he was denied his constitutional right to represent himself. The right to appear *pro se* in criminal proceedings is a constitutional right. *Faretta v. California*, 422 U.S. 806, 835 (1975); *People v. Baez*, 241 Ill. 2d 44, 115 (2011). A defendant who wishes to invoke that right must knowingly and intelligently relinquish the right to counsel. *Id.* at 115-116. The waiver of counsel must be clear and unequivocal. *Id.* at 116. Even after expressing a desire to proceed *pro se*, a defendant can acquiesce to representation by counsel, so the court may look to subsequent conduct to determine whether the defendant persisted in his request. *Id.* at 118; *People v. Meeks*, 249 Ill. App. 3d 152, 170 (1993) (right to represent oneself can be waived by "subsequent conduct indicating that [defendant] is vacillating or had abandoned his request altogether"). This court will not disturb the trial court's decision on a request to self-represent absent an abuse of discretion. *Baez*, 241 Ill. 2d at 116. An abuse of discretion occurs when no reasonable person would have adopted the view of the trial court, or where the decision is "arbitrary, fanciful, [or] unreasonable". *Id.* at 106.

¶ 43 *Baez* is particularly instructive. In that case, the defendant made multiple complaints about the level of communication that he had with his attorney. *Id.* at 118. The trial court, without denying the defendant's request to proceed *pro se*, suggested that the defendant confer with counsel first, and revisit the question at the next hearing. *Id.* At the next court appearance, the defendant acknowledged that he had met with counsel and agreed to be represented by him.

Id. at 68. On appeal, the defendant argued that he had made his knowing and intelligent waiver of counsel at the earlier hearing, and his right to proceed *pro se* was violated by the court at that time. *Id.* at 118. The supreme court disagreed, finding that the defendant had abandoned his request to represent himself and acquiesced to representation by counsel. *Id.* at 119.

¶ 44 Just as in *Baez*, defendant's initial request to waive the right to counsel was clear and unequivocal, but he agreed to remain with counsel until the next court date. From that point on, defendant never again made a request to proceed *pro se*. He did ask to act as co-counsel and he attempted to demand trial, but when asked if he intended to represent himself, defendant did not persist or make a clear statement of his intent to do so. The trial court did not coerce defendant into staying with his attorney, and it did not abuse its discretion in finding that defendant had abandoned his request to represent himself.

¶ 45 *Krankel* Hearing

¶ 46 Defendant argues, in the alternative, that the circuit court failed to conduct a proper inquiry into his posttrial claims of ineffective assistance of counsel. When a defendant brings a *pro se* posttrial claim of ineffective assistance of counsel, the court must conduct an inquiry into the claim and under certain circumstances, appoint new counsel to argue the claim. *Krankel*, 102 Ill. 2d at 187-89. The court, however, is not required to automatically appoint new counsel merely because a defendant makes such a claim; instead, the court must first examine the factual basis underlying the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). The court can base its evaluation on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face. *Id.* at 79. The court need not make a formal statement that it is conducting a *Krankel* inquiry. See *People v. Dean*, 2012 IL App (2d) 110505, ¶ 15. If, after conducting a *Krankel* inquiry, the court has reached a determination on the

merits of a defendant's claim, we will reverse only if the court's action was "manifestly erroneous." *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 41. Error is manifest when it is "plain, evident, and indisputable." *Id.* (citing *People v. Morgan*, 212 Ill. 2d 148, 155 (2004)). Even if the trial court did err, we will not reverse if the error was harmless. *Id.* ¶ 42 (citing *Moore*, 207 Ill. 2d at 80).

¶ 47 Defendant argues that the circuit court did not conduct an adequate inquiry into his claims of ineffectiveness. He complained that his attorney refused to communicate with him and that he did not agree with the issues raised in the posttrial motion. However, the record shows that the court sufficiently inquired into these claims.

¶ 48 With regard to the allegation that there was insufficient communication between defendant and his attorney, the court heard enough to decide the issue. At multiple posttrial hearings, defendant complained that his attorney had not answered his phone calls and had not communicated with him since the trial. We note, however, that defendant did not request new counsel to pursue a claim of ineffective assistance of counsel, but only requested additional time to confer with his attorney.

¶ 49 A *Krankel* inquiry can include discussion with both trial counsel and the defendant about the allegations of ineffective assistance. *People v. Jolly*, 2014 IL 117142, ¶ 30. The circuit court satisfied its obligations under *Krankel* on the issue of client communication by hearing extensively from both defendant and counsel and determining that there was no merit to the allegation that counsel rendered ineffective assistance by failing to communicate with defendant.

¶ 50 Defendant also complained that he disagreed with some portions of the posttrial motion. Specifically, defendant expressed concern that counsel was making decisions for him rather than simply advising him and that the motion did not raise the issue of the allegedly inaccurate

transcript. The Supreme Court has recently reiterated that trial management is the province of the attorney, while some decisions are reserved for the client. *McCoy v. Louisiana*, 584 U.S. ___, ___, 138 S. Ct. 1500, 1508 (2018). The circuit court explained this division of responsibilities to the defendant. Defendant acknowledged the court's explanation and did not press his complaint any further on that issue.

¶ 51 As to the issue of the transcript, defendant argued that the transcript inaccurately reflected the polling of the jury. As defendant remembered the proceedings, one of the jurors answered "no" when polled. Defendant now argues that counsel was mistaken as to the law and misled the court by stating that the transcript could only be corrected on appeal. However, it is clear from the record that counsel believed that there was no good-faith basis to challenge the accuracy of the transcript and that if appellate counsel disagreed, that issue could also be raised on appeal. Counsel informed the trial court that he had researched the case law and did not think that it was appropriate to raise the transcript issue in the posttrial motion. His belief that there was no good-faith basis to challenge the transcript is supported by the probability that if a juror *had* answered "no" when polled, the proceedings would have ground to a halt and there would be several pages of transcripts of discussion on the procedural next steps.

¶ 52 The court, having thus inquired into the transcript issue reminded defendant that although counsel was obliged to zealously advocate, he could not raise any issues for which he did not have a good-faith basis. Again, the court satisfied its *Krankel* obligations by hearing from both the defendant and counsel.

¶ 53 In *Jolly*, the trial court erred by allowing the State to participate as an adversary in the *Krankel* inquiry. *Id.* ¶ 48. No similar error occurred here, despite defendant's contention that the court was misled by defense counsel's statements as to the facts and the law. The court properly

heard from both defendant and counsel and determined that there was no further need for inquiry or to appoint other counsel.

¶ 54 Sufficiency of the Evidence

¶ 55 Finally, defendant contends that his conviction for armed robbery with a firearm should be reduced to robbery because there was insufficient evidence that he was armed with a firearm.

¶ 56 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The trier of fact is not required to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Only when the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt, is reversal justified. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 57 A person commits armed robbery when he commits robbery while armed with a firearm or a dangerous weapon other than a firearm. 720 ILCS 5/18-1(a), 18-2(a)(1), (2) (West 2012). For the purpose of the armed robbery statute, the definition of the term "firearm" comes from the FOID Act. That definition is: "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas" except for B-B guns, paint-ball guns, flare guns, nail and rivet guns, and antique firearms designated as such by the State Police. 430 ILCS 65/1.1 (West 2012).

¶ 58 In *Wright*, our supreme court addressed what type of evidence would be sufficient to uphold an armed robbery with a firearm conviction. *Wright*, 2017 IL 119561, ¶ 76. Relying on *People v. Washington*, 2012 IL 107993, ¶ 6, the supreme court concluded that the testimony of a

single eyewitness can be sufficient to permit a rational trier of fact to conclude that a firearm was used in the offense, even if no physical evidence is presented. See *Wright*, 2017 IL 119561, ¶ 76 (testimony including that the defendant had what "looked like a black automatic" handgun sufficient to conclude that a firearm was used during the robbery).

¶ 59 Viewing the evidence in the light most favorable to the State, we cannot conclude that a rational trier of fact would not have found that defendant was armed with a firearm during the robbery. Hill testified that defendant told her that he had "a banger" that he could use to "blow [her] head off." She saw him lift the front of his shirt to reveal a gun in the waistband of his pants. From a distance of under two feet in a well-lit restaurant, Hill identified the object in defendant's waistband as a black gun with a brown handle. The security camera footage corroborates what Hill saw and the conditions under which she saw it.

¶ 60 Defendant cites *People v. Crowder*, 323 Ill. App. 3d 710 (2001) for the proposition that evidence that an object looks like a firearm is insufficient to prove that the object actually is a firearm. *Crowder* is distinguishable because the issue there was not sufficiency of the evidence but a discovery sanction. *Id.* at 711–12; *People v. Clark*, 2015 IL App (3d) 140036, ¶ 29 (distinguishing *Crowder* on the same grounds).

¶ 61 Defendant argues that the State did not prove that his gun was not a toy, B-B gun, or similar non-firearm object, relying on *People v. Ross*, 229 Ill. 2d 255 (2008). However, in *Ross*, the police recovered a small B-B gun that the defendant had attempted to dispose of in some bushes. *Id.* at 258. Here, there was no evidence that a B-B gun, toy, or any other non-firearm object was recovered from defendant. Without any evidentiary support for defendant's theory that the gun was not what it appeared to be, the jury was under no obligation to conjure reasonable doubt out of every possible innocent explanation. See *Jonathon C.B.*, ¶ 60. All of the

evidence, when viewed in the light most favorable to the State, was adequate to support a conviction of armed robbery with a firearm.

¶ 62 CONCLUSION

¶ 63 Accordingly, we affirm the judgment of the circuit court.

¶ 64 Affirmed.