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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—3427
)	
MARY SATTERWHITE,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of aggravated unlawful use of a weapon, as she admitted she knew that her gun was in her van, and the jury could credit the officer's testimony that it was immediately accessible; the trial court did not err in granting the State's motion *in limine* to exclude certain evidence, as it actually denied it; the trial court did not violate Rule 431(b) by failing to question the potential jurors individually and by failing to obtain audible answers to its questions, and in any event defendant failed to make any argument that either prong of the plain-error doctrine applied such that we could reverse any error.

Following a jury trial, defendant, Mary Satterwhite, was convicted of aggravated unlawful use of a weapon (720 ILCS 5/24—1.6(a)(1) (West 2006)) and sentenced to 18 months' conditional discharge and 40 hours of community service. Defendant appeals, contending that (1) the State

failed to prove her guilty beyond a reasonable doubt; (2) the trial court erred in granting the State's motion *in limine* to exclude evidence that defendant possessed a valid firearm owner's identification card (FOID card); and the trial court erred in failing to comply with Supreme Court Rule 431(b) (eff. May 1, 2007) during *voir dire*. For the reasons that follow, we affirm.

BACKGROUND

Defendant was indicted on one count of aggravated unlawful use of a weapon. The indictment alleged that on November 19, 2007, defendant knowingly possessed a handgun in a motor vehicle that was not on her land, in her abode, or at her fixed place of business, and that the handgun was uncased, loaded, and immediately accessible.

Prior to trial, the State filed a motion *in limine* seeking, among other things, to prevent the introduction of evidence indicating that defendant possessed a valid FOID card at the time of the offense. After hearing arguments on the issue, the trial court denied the motion, finding that the issues raised in the motion were better addressed if and when they arose during trial.

Much of the evidence presented at trial was undisputed. On November 19, 2007, at approximately 5 p.m., Trooper Christopher Kozel of the Illinois state police, along with two other troopers, was conducting seat belt detail at the toll plaza on the on-ramp to eastbound Interstate 88 from Farnsworth Avenue in Aurora. He observed a white 2002 Dodge van carrying a passenger who was not wearing a seat belt. Kozel instructed the driver of the van to pull over, which the driver did. Defendant's son was driving the vehicle. Defendant's ex-husband was in the passenger seat, and defendant was seated on a milk crate between her son and ex-husband. The rest of the van was filled with miscellaneous household items because defendant was in the process of moving. While the van was stopped, Kozel conducted a search of the van and found a loaded, uncased .22-caliber revolver.

When Kozel exited the van and held up the gun, defendant informed the troopers that the gun belonged to her. She was then placed under arrest.

The only evidence that was disputed related to the location of the revolver when Kozel found it. Kozel testified that he found the revolver directly behind the driver's seat, mixed in with some other items. The gun was readily visible and within arm's reach of defendant. Defendant, on the other hand, testified that early that morning, she had placed the gun, along with some other items, under the driver's seat. She did this to prevent her son and his friends from discovering the gun during the process of moving. When Kozel pulled over the van, there also were other items placed behind the driver's seat. The gun was not visible, and due to the number of items in the van, she would not have been able to access the gun without moving the items around.

The jury found defendant guilty, and the trial court sentenced her to 18 months' conditional discharge and 40 hours of community service. Defendant timely appealed.

ANALYSIS

On appeal, defendant makes three arguments: (1) the State failed to prove her guilty beyond a reasonable doubt; (2) the trial court erred in granting the State's motion *in limine* to exclude evidence that defendant possessed a valid FOID card; and (3) the trial court erred in failing to comply with Supreme Court Rule 431(b) during *voir dire*.

1. Sufficiency of the Evidence

Defendant first argues that the State failed to prove her guilty beyond a reasonable doubt because it failed to prove that she knew the weapon was in the van and that the revolver was readily accessible. This argument is without merit.

We review claims of insufficient evidence to determine “ ‘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.’ ” (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id.* at 261. It is not the function of this court to retry the defendant. *Id.* at 261. The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

To prove defendant guilty of aggravated unlawful use of a weapon, the State had to prove that defendant knowingly possessed the revolver in her vehicle while it was uncased, loaded, and immediately accessible. 720 ILCS 5/24—1.6(a)(3)(A) (West 2006).

Defendant contends that the State failed to prove that she knew the revolver was in the van, because defendant testified that she forgot that she put the revolver in the van until Kozel pulled it out. Although defendant did testify that with all of the chaos that accompanied the move, she forgot that the revolver was in the van, she also testified that she knew she had put the gun in the van that morning and that it remained there during at least five trips between her old home and new apartment. When specifically asked whether she knew the revolver was in the van during the trip in which Kozel stopped the van, defendant testified that she did. Defendant also testified that she was “shocked” when Kozel pulled the revolver out of the van, not because she was surprised to see the gun, but because she did not want her son to see it. From this, a reasonable trier of fact could

find that defendant knew the revolver was in the van. As the State argues in its brief, the fact that the presence of the gun might not have been the first thing on defendant's mind does not mean that she did not know it was there. In addition, given defendant's testimony that she knew the gun was present, it is not necessary, despite defendant's contention, to examine whether defendant's knowledge could be inferred from the circumstances.

Defendant also argues that the State failed to prove that the gun was immediately accessible, because she testified that she placed the gun, along with some other items, under the driver's seat and that the gun could not be accessed without moving a number of other items out of the way. Defendant fails to acknowledge, however, Kozel's testimony that the gun was directly behind, not under, the driver's seat and that it was readily visible and within arm's reach of defendant. He also testified that the gun was not covered by any other items and was readily accessible. Clearly, the jury credited Kozel's testimony over defendant's, and we may not substitute our judgment for that of the jury on issues of credibility. *Ortiz*, 196 Ill. 2d at 259.

Defendant cites a number of cases where courts found that weapons were not immediately accessible to the defendants. See *People v. Reed*, 72 Ill. App. 3d 405 (1979) (shotgun locked in trunk); *City of Chicago v. Roma*, 58 Ill. App. 3d 686 (1978) (gun in an attache case 25 feet away from the defendant); *People v. Cook*, 46 Ill. App. 3d 511 (1977) (gun under the hood of the car); *People v. Adams*, 73 Ill. App. 2d 1 (1962) (gun was on the floor of the car's passenger side and the defendant was a stout man who could not reach the gun from his position). These cases are distinguishable, however, because there was no evidence presented that the defendants could immediately access the weapons. In contrast, there was evidence presented in this case that the revolver was within arm's reach of defendant.

2. Motion *in Limine*

Defendant next contends that the trial court erred in granting the State's motion *in limine* to prevent defendant from presenting any evidence that she possessed a valid FOID card at the time of the offense. We conclude that the trial court did not err in granting the State's motion *in limine*, because the trial court did not grant the motion. Rather, it explicitly denied the motion, concluding that the issues were better addressed if and when they arose at trial. At trial, defendant did not seek to admit evidence that she possessed a valid FOID card and, thus, the trial court never made a definitive ruling on the issue of whether such evidence should be allowed.

3. Rule 431(b)

Defendant finally argues that we should reverse her conviction and remand for a new trial, because the trial court failed to comply with Rule 431(b) during *voir dire*. Defendant did not, however, object during *voir dire*, nor did she raise the issue in her written posttrial motion. Accordingly, defendant has forfeited review of this issue. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (“Both a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial” (emphases in original)).

Acknowledging that she failed to preserve this issue for review, defendant urges us to review the issue under the plain-error doctrine. Under the plain-error doctrine, we may review a forfeited error when either (1) “the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence” or (2) “the error is so serious that the defendant was denied a substantial right, and thus a fair trial.” *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Defendant bears the burden of persuasion under both prongs. *Id.* at 187. The first step in

the plain-error analysis is to determine whether any error occurred. *People v. Cosby*, 231 Ill. 2d 262, 273 (2008).

Rule 431(b) provides:

“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 the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure 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. May 1, 2007).

Prior to questioning the potential jurors, the trial court addressed the entire venire and informed them that defendant was presumed to be innocent, the State had to prove defendant guilty beyond a reasonable doubt, defendant did not have to present any evidence on her behalf, and defendant's failure to testify could not be held against her. The trial court then asked the entire venire, as a group, whether they could apply the four Rule 431(b) principles. The trial court requested that any person who felt he or she could not follow the principles stand. When none of the potential jurors indicated any objection to the four principles, the trial court noted their agreement as indicated by their silence.

Defendant argues that the trial court's failure to question the potential jurors individually and its failure to obtain audible answers from the potential jurors constituted violations of Rule 431(b). We disagree based on the clear language of Rule 431(b). First, Rule 431(b) specifically provides for the questioning of potential jurors as a group. Thus, the trial court's failure to question the potential jurors individually did not constitute error. Second, Rule 431(b) requires that the trial court provide potential jurors "an opportunity" to respond to questions regarding the four principles; it does not require that the trial court obtain audible answers to every question from each potential juror. The jurors in this case were given an opportunity to respond to the trial court's questions, and none elected to take it.

Defendant cites to *People v. Owens*, 394 Ill. App. 3d 147 (2009), and *People v. Blair*, 395 Ill. App. 3d 465 (2009), in support of her contention that the trial court violated Rule 431(b). In *Owens*, the trial court instructed the venire on the four principles but did not question any of the potential jurors, either individually or as a group, about any of the principles. *Owens*, 394 Ill. App. 3d at 148-51. In *Blair*, the trial court failed to question many of the jurors about all four of the principles. *Blair*, 395 Ill. App. 3d at 475-76. Neither of these cases supports defendant's position, as neither hinged on the trial court's questioning the venire as a group or its failure to obtain audible answers. Moreover, unlike in *Owens* and *Blair*, the trial court in this case provided all of the potential jurors the opportunity to respond to questions regarding all four of the principles. Accordingly, no error occurred.

Even if error had occurred, defendant has failed to present any argument as to why such an error would be reversible under the plain-error doctrine. Defendant makes no argument that the evidence in this case was closely balanced or that the trial court's error was so serious that it denied

her a substantial right. As the burden of persuasion is on defendant in this respect, her failure to make any such argument is fatal to her request that we review the error under the plain-error doctrine. *People v. Nieves*, 192 Ill. 2d 487, 502-03 (2000); see also *People v. Thompson*, No. 109033, slip op. at 13 (Ill. Oct. 21, 2010) (where the defendant failed to present any evidence of a biased jury, he failed to meet his burden under the second prong of the plain-error doctrine).

CONCLUSION

For the reasons stated, the judgment of the Kane County circuit court is affirmed.

Affirmed.