

THIRD DIVISION
January 18, 2017

No. 1-14-2274

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 CR 414 |
| |) | |
| ROBERT GOODMAN, |) | Honorable |
| |) | James B. Linn, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Evidence sufficient to convict defendant of possession of contraband in a penal institution, and jury instruction defining a weapon was not improper.

¶ 2 Following a jury trial, defendant Robert Goodman was convicted of possession of contraband in a penal institution and sentenced to 4½ years' imprisonment. On appeal, he contends that the evidence was insufficient to convict him beyond a reasonable doubt and that a jury instruction was improper. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with possession of contraband in a penal institution for allegedly possessing "a dangerous weapon, to wit; sharp metal object" in Cook County Jail on or about November 19, 2013.

¶ 4 At the June 2014 trial, jail correctional officer Steven Sabel testified that the jail held about 10,000 inmates and was divided into 11 divisions. The Ninth Division, where Officer Sabel was posted, held about 950 inmates in 24 tiers of 22 cells with two inmates in each cell. One officer guarded each tier, and thus 44 inmates. Each inmate in the tier gets 1½ hours out of their cell per shift. On the day in question, Officer Sabel had just returned an inmate who had attended court to his cell when Officer Sabel noticed another inmate "with his body up towards the door" of a cell, which he considered suspicious. Specifically, the inmate was leaning against the outside of a cell door with his hands inside a "chuck hole," or hatch in the cell door, and thus not visible to Officer Sabel. When Officer Sabel ran to the cell in question, the inmate near the door stepped away. Officer Sabel had both inmates in the cell, which included defendant, stand with their hands on the wall and he patted them down. As he patted defendant downward, he felt a hard object at defendant's waist move downward until two sharpened metal "shanks" from defendant's right pant leg fell to the floor near defendant's foot with a clinking sound. He recovered the shanks and later inventoried them in a sealed bag. At trial, Officer Sabel identified one object as a sharpened piece of a desk drawer and the other as a screw, both wrapped in a jail sheet. On cross-examination, Officer Sabel testified that he did not request fingerprint or DNA testing of the shanks, there was no video of the incident, and he had not attempted to find the inmate he had seen near the cell door. On redirect examination, Officer Sabel testified that he was immediately concerned with what the inmate had passed into the cell; that is, his focus was

inside the cell and not outside it. There is no video of the interior of cells, which each have a toilet and sink.

¶ 5 The parties stipulated to the chain of custody for the shanks inventoried by Officer Sabel, to the jail's inmate handbook, and that defendant had been issued said handbook upon his June 2013 arrival in jail.

¶ 6 The jury instruction conference was not transcribed but the court later spread of record that it gave pattern instructions "by agreement" except for denying a non-pattern instruction offered by the defense. Following closing arguments, the court gave the jury its instructions. The jury was instructed that a person commits possession of contraband in a penal institution by knowingly possessing contraband in a penal institution, regardless of the intent with which he possesses it, was given a definition of a penal institution, and was told that " 'contraband' means a weapon" and " 'weapon' means a sharp metal object." See Illinois Pattern Jury Instructions, Criminal, Nos. 22.69C, 22.69G (4th ed. 2000)("IPI 22.69C" and "IPI 22.69G"). Following deliberations, the jury found defendant guilty of possession of contraband in a penal institution.

¶ 7 Defendant filed a post-trial motion challenging (in relevant part) the sufficiency of the evidence and the denial of the non-pattern jury instruction requested by the defense. However, the motion did not challenge any of the jury instructions actually given. Following arguments, the court denied the motion. Following a sentencing hearing, the court sentenced defendant to 54 months' imprisonment, and this appeal followed.

¶ 8 On appeal, defendant contends that that the evidence was insufficient to convict him beyond a reasonable doubt and that the jury instruction defining a weapon as a sharp metal object improperly directed a verdict against defendant.

¶ 9 We note initially that defendant did not object to the jury instruction at issue during the instruction conference or in his post-trial motion. Generally, a defendant forfeits a claim when he does not preserve it by both objecting at trial and including it in his post-trial motion. *People v. McDonald*, 2016 IL 118882, ¶ 45. However, plain error is an exception to such forfeiture. *Id.* The plain error doctrine permits this court to consider an otherwise-forfeited error when it is clear or obvious and either (1) the evidence was so closely balanced that the error threatened to tip the scales of justice against the defendant, or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Id.*, ¶ 48. The first step in plain error analysis is determining whether an error occurred at all. *Id.* Another exception to forfeiture is a contention that trial counsel rendered ineffective assistance by not raising the forfeited issue. See *People v. Tate*, 2012 IL 112214, ¶ 14. A defendant demonstrates ineffective assistance by showing that counsel's performance was both objectively unreasonable and resulted in prejudice to defendant. *Id.*, ¶ 18. Defendant contends that his jury instruction claim should be considered under plain error and as a matter of trial counsel's ineffectiveness.

¶ 10 Under section 31A-1.1 of the Criminal Code (Code), a "person commits possessing contraband in a penal institution when he or she knowingly possesses contraband in a penal institution, regardless of the intent with which he or she possesses it." 720 ILCS 5/31A-1.1(b) (West 2014). The Code defines "item of contraband" to include a weapon, which it defines as

"any knife, dagger, dirk, billy, razor, stiletto, broken bottle, or other piece of glass which could be used as a dangerous weapon. This term includes any of the devices or implements designated in subsections (a)(1), (a)(3) and (a)(6) of Section 24-1 of this

Code, or any other dangerous weapon or instrument of like character." 720 ILCS 5/31A-0.1, citing 720 ILCS 5/24-1 (West 2014).

This court has held that a "shank" – which we described as a "homemade knife made of sharpened metal" or a "pointed or sharp-edged weapon, usu[ally] a dagger or knife, that is usu[ally] either homemade or made by a prisoner" – is encompassed by article 31a's inclusion of "any knife" in contraband. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 23, quoting *People v. Baez*, 241 Ill. 2d 44, 72 (2011), and Black's Law Dictionary (10th ed. 2014).

¶ 11 IPI 22.69G provides the instruction: "The word 'weapon' means a [(knife) (dagger) (dirk) (billy) (razor) (stiletto) (broken bottle) (piece of glass which could be used as a dangerous weapon) (____)]." The notes to IPI 22.69G direct the trial court to "[u]se applicable bracketed material" and "[i]nset in the blank any device or implement designated in Chapter 720, Section 24-1(a)(1), (a)(3), or (a)(6), or any other dangerous weapon or instrument of like character."

¶ 12 The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence so the jury may reach a correct conclusion according to the law and the evidence. *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). Jury instructions should not be misleading or confusing, in light of whether ordinary persons acting as jurors would fail to understand them rather than whether defense counsel can imagine a problematic meaning. *Id.* If the pattern instructions contain an applicable instruction on a relevant subject, the trial court must use that instruction unless it determines that the instruction does not accurately state the law, in which case it has sound discretion whether to give a non-pattern instruction. *Id.* Whether a court has abused its discretion will depend on whether the non-pattern instruction is an accurate, simple, brief, impartial, and non-argumentative statement of the law. *Id.*

¶ 12 A penal statute will be construed to afford lenity to the defendant, but only if the statute is ambiguous. *In re Q.P.*, 2015 IL 118569, ¶ 14. The statute must contain " 'grievous ambiguities' " that force us to merely guess the legislature's intent. *People v. Fiveash*, 2015 IL 117669, ¶ 34, quoting *People v. Gutman*, 2011 IL 110338, ¶¶ 43-44. When a statute is silent on a particular point, we focus on the legislature's intent and will not interpret statutory silence in a way that defeats the purpose of the statute. *Fiveash*, ¶ 34.

¶ 13 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Q.P.*, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must, we cannot find that no rational trier of fact would agree with the jury that defendant was guilty of possession of contraband in a penal institution. Officer Sabel testified clearly that, as he patted down defendant, he felt a hard object at defendant's waist move downward until two sharpened metal "shanks" fell to the floor near defendant's foot, with a clinking sound, from defendant's right pant leg. The jury was presented with those objects as evidence rather than relying on Officer Sabel's description of them.

¶ 15 As to the nature of those shanks as contraband, we agree with the *Bowen* court that a shank – a sharpened metal object – falls squarely under article 31a's inclusion of "any knife" in contraband. We reject defendant's contention that *Bowen* runs afoul of the rule of lenity because we find no ambiguity in the statute. While article 31a of the Code is silent on further defining knives, we will not interpret that silence to defeat the clear purpose of the article: keeping a broad category of contraband, including weapons, out of the possession of inmates of penal institutions. In reaching the conclusion that shanks or homemade sharpened objects are knives for purposes of article 31a, this court in *Bowen* cited persuasive authority, including *dicta* from our supreme court, describing shanks as homemade sharpened objects and including them in the class of knives.

¶ 16 We find no error – and thus neither plain error nor ineffective assistance of counsel – in the jury instruction defining a weapon as a sharp metal object. While an instruction strictly following IPI 22.69G could have defined a weapon as a knife, we find that the instruction at issue was within the trial court's sound discretion to give. Article 31a of the Code expressly provides that contraband includes weapons which include knives, and *Bowen* holds that a knife

includes a homemade sharpened metal object. The instruction that a weapon is a sharp metal object is thus merely an omission of the intermediate steps in the *Bowen* definition, complying with the requirement that non-pattern instructions be brief and simple. We similarly find no misstatement of the law, inaccuracy, partiality (as defendant contends), or argumentativeness in the instruction at issue.

¶ 17 Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.