2019 IL App (1st) 181927-U

THIRD DIVISION
August 28, 2019

No. 1-18-1927

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 16-MC2-001786
	)	
ALEKSANDR SELYUTIN,	)	The Honorable
	)	James L. Allegretti,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Sufficient evidence was presented at defendant's trial to prove his guilt beyond a reasonable doubt on unlawful use of weapons charge. Defendant was not provided with ineffective assistance of counsel. Defendant forfeited review of arguments that he suffered due process violation from comments at sentencing or from State's inadequate disclosure of witnesses, that trial court should have instructed the jury on self-defense, that aggravated assault charge should have been dismissed prior to trial, and that the length of jury's deliberations indicated it did not adequately consider the evidence.

¶ 2 Defendant Aleksandr Selyutin was convicted in a jury trial of one count of unlawful use of weapons, a misdemeanor for which he was sentenced to 12 months conditional discharge. The trial court granted a directed verdict in defendant's favor on a second count for aggravated

assault. Defendant argues on appeal that: (1) his right to due process was violated when the prosecutor made a false statement at his sentencing hearing; (2) his right to due process was violated when the State did not provide him with the identities of its witnesses prior to trial; (3) the jury should have been given instructions on self-defense; (4) the aggravated assault charge should have been dismissed prior to trial; (5) the evidence at trial was not sufficient to establish his guilt beyond a reasonable doubt; (6) the length of jury deliberations indicated it did not adequately consider the evidence; and (7) he received ineffective assistance of counsel in several respects. For the reasons that follow, we affirm defendant's conviction and sentence.

¶ 3 I. BACKGROUND

¶ 4 A. Motions to Dismiss Aggravated Assault Charge

¶ 5 Defendant was charged by complaint with one count of aggravated assault and one count of unlawful use of weapons. As amended, the count of the complaint charging aggravated assault alleged that on July 3, 2016, defendant displayed a semi-automatic handgun by pointing it up in the air inside of his vehicle, all while he was being followed by Donald Howard, and these actions placed Howard in reasonable apprehension of receiving a battery. Defendant was first represented by attorney Joseph P. Kennelly in this case, who filed on his behalf a motion to dismiss the count for aggravated assault. In general, the motion argued that the act of pointing a gun up in the air while being followed in a vehicle by another person could not reasonably be construed as placing the person following defendant in imminent apprehension of receiving a battery. The trial court denied the motion, stating that whether defendant's conduct placed another person in reasonable apprehension of receiving a battery was an issue of fact for the jury. Kennelly was later granted leave to withdraw as counsel for defendant, and defendant represented himself for a period of time during the proceedings. In that time, defendant filed a

second motion to dismiss the count for aggravated assault. It was largely similar to the first motion, except that it added additional factual information about the distance that Howard's vehicle followed defendant's vehicle at "close range" after seeing the gun. The trial court denied the second motion on the basis that it raised factual determinations for the trier of fact.

¶ 6 B. State's Disclosure of Witnesses

¶ 7 Also during the time that defendant was self-represented, the trial court granted a motion by him to require the State to disclose the names and addresses of the witnesses it intended to call at trial. Defendant then filed a motion to compel this, and the trial court ordered that when the case was set for trial, the State was to give defendant a list of witnesses. At the following court date, which was then three and one-half months before the trial, the prosecutor tendered to defendant a document titled "People's List of Potential Witnesses." It stated in its entirety that any and all potential witnesses that the State intended to call at trial were listed in the police reports.

¶ 8 C. Defendant's Counsel's Tendering Work Product to State

¶ 9 The hearing at which Kennelly was granted leave to withdraw as defendant's counsel occurred on August 30, 2017. The transcript from that hearing reflects a discussion in which Kennelly tendered a file containing discovery in the case back to the assistant state's attorney. Prior to doing so, the trial court asked Kennelly if the file contained any of his work product, and he said that it did not. He then remarked that it may contain "a couple of things," and the trial court stated that he should look through the file and remove any of his work product so that the prosecutors would not see anything that they should not see. Then, on January 22, 2018, defendant filed a motion alleging that when Kennelly had tendered the discovery folder to the State after being given leave to withdraw, he had included notes about a meeting that he and a private investigator had with Howard on October 13, 2016. Defendant sought to have this turned

over to him. At the hearing on that motion, the assistant state's attorney stated that she did not think the file contained any work product or notes, but she would look into it. The trial court ordered the State to review its file specifically for information that had been passed by Kennelly to the State and turn it over to defendant. At the following court appearance, on March 7, 2018, the assistant state's attorney made an oral motion to reconsider the trial court's order that the State tender Kennelly's work product notes and a file to defendant. The assistant state's attorney stated that the State believed that materials had been tendered by Kennelly in error, and she asked the trial court to seal the file for the State to return it to Kennelly. The trial court granted this request, sealed the file with tape and initialed it, and stated that Kennelly would be called to personally come and retrieve the file from the court. The trial court stated to defendant that he would have to arrange with Kennelly directly to obtain the contents of the file. Further, the record on appeal contains an order dated April 16, 2018, stating, "A folder containing the partial file of attorney Joseph Kennelly has been placed in the court file and will be under seal."

¶ 10 D. Trial

¶ 11 The case proceeded to jury trial, at which defendant was represented by new counsel. The evidence presented at the jury trial disclosed that as of July 3, 2016, defendant possessed a valid Firearm Owner's Identification Card, but did not possess a valid license under the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.* (West 2016)).

¶ 12 Howard testified at the trial that from approximately August 2013 to August 2015, he had lived in a condominium directly above defendant but never spoke to him. He testified that after he moved away, defendant "would randomly appear at places I was at." He saw defendant "in front of my house a couple of times" and at two venues where he coached youth sports. On the day at issue, Howard was returning home from dinner with his then-fiancée, Andrea McClendon,

who was driving the car in which he was a passenger. As they approached his house, he saw defendant in a car parked across the street from it. Defendant drove his car out of the spot where it was parked and drove away. Howard and McClendon decided to follow defendant's car, to get its license plate number to make a police report. They followed his car for a distance of about a mile and a half, until they caught up to it on Lincoln Avenue near the Lincolnwood Police Department. At that point, they were about 30-40 feet behind it. Howard testified that he then saw defendant reach into the passenger's seat and lean over for about 15-20 seconds. Defendant then pulled out a gun, which Howard described as a semiautomatic pistol, and held it in his right hand above the seat, where Howard could clearly see it. He held the gun straight up in the air and waved it. Howard testified that he then called 911. He and McClendon continued to trail defendant's car as they did so, although he agreed that the 911 operator had told him not to follow defendant anymore. He told the 911 operator that he wanted to be there when the police caught defendant. After the call ended, they went to the Lincolnwood police station. Eventually they were taken by the police to a parking garage in Skokie, where Howard identified defendant.

¶ 13 Officer Rannochio of the Skokie Police Department testified that while working patrol on the evening at issue, he observed a vehicle matching the description he had received on a radio dispatch. The vehicle turned into a residential parking garage, and he followed it. He identified the driver of the vehicle as defendant. He stated that defendant exited his vehicle and got onto the ground. Officer Rannochio then detained defendant until Howard and McClendon were brought to the parking garage for a show-up identification. He testified that he also witnessed defendant sign a written form giving the police permission to search his vehicle.

¶ 14 The final witness at trial was Detective Michael Kieca of the Lincolnwood Police Department. He testified that he was working as a patrol officer as of the date at issue and was

sent to a parking garage in Skokie where defendant was being detained. When he arrived, he took custody of defendant and placed him into his squad car. Detective Kieca testified that as he did so, defendant admitted to him that he had two firearms in his vehicle, inside a backpack on the front passenger seat. After he placed defendant inside the squad car, Detective Kieca went to photograph defendant's vehicle. He took the backpack from the front passenger seat and removed its contents. Inside the backpack, he first found a small zippered pouch bag, and inside of that was a Smith & Wesson 380 Bodyguard. Also inside the pouch bag (but not in the gun itself) was a loaded magazine. Second, he found a black plastic carrying case containing a loaded 9-millimeter magazine, but no firearm. Third, he found a large zippered pouch bag containing a black CZ P-09 9-millimeter handgun with a loaded magazine inside the weapon. The backpack contained other items also, but no other handguns. Detective Kieca testified that he photographed the pistols, ensured they were safe to handle, retuned them to their pouches, and placed them in his squad car. He then transported defendant and the evidence to the Lincolnwood Police Department. During his testimony, Detective Kieca described what was depicted in the various photographs he had taken, which were admitted into evidence and published to the jury.

¶ 15 On cross-examination, Detective Kieca confirmed that the two pouches he found inside the backpack were zipped and closed. He testified that the gun that had the magazine inside it did not have a round in the chamber and was not technically ready to shoot. He also confirmed that the "zippered bag with the weapons in it" was not at the top of the backpack, and there were some items inside the backpack above the weapons. The weapons were neither at the bottom nor the top of the backpack. He agreed they were "just in there mixed in with all the other stuff."

¶ 16 After the State rested, defendant moved for a directed verdict. After hearing argument, the trial court denied the motion for directed verdict as to the count for unlawful use of weapons.

However, it granted a directed verdict on the count for aggravated assault. In doing so, the trial court determined that no reasonable trier of fact could conclude that Howard, who was in the car that was pursuing defendant and continued to do so after he allegedly saw defendant flash a gun, was in reasonable apprehension of receiving a battery. The trial court stated, "The guy who is in fear of receiving a battery is the guy that's getting chased. *** You start following somebody down the street and around blocks and everything else, and that's the person who is in apprehension of receiving a battery, not the one doing the following."

¶ 17 Defendant did not testify on his own behalf. Among defendant's counsel's arguments in closing, he argued that the fact that Howard and McClendon pursued defendant for miles showed that they were the aggressors in this circumstance, not defendant. He argued that Howard's testimony that he saw defendant flash a gun was not credible, because he and McClendon would not have continued following him if he had truly seen him display a gun.

¶ 18 After closing arguments, the trial court instructed the jury. No jury instructions were requested or given on the defenses of self-defense or necessity. Following its deliberations, the jury found defendant guilty of the offense of unlawful use of weapons. Although the exact time of the jury's deliberations is not reflected in the record, the trial court did comment to the jurors that it had seldom seen a jury come back as fast as this one did. Defendant then filed a timely posttrial motion, in which one of the arguments was that the jury had deliberated for only seven minutes, indicating that it had decided the case without properly considering all the evidence. In its argument, the State did not dispute that the jury deliberated for only seven minutes. The trial court denied defendant's motion for a new trial.

¶ 19 E. Sentencing Hearing

¶ 20 At the sentencing hearing, the assistant state's attorney stated that in aggravation that

defendant "does not have any publishable background." He did inform the trial court, however, that a restraining order had been issued against defendant involving Howard, based on events that occurred before the offense at issue. He further stated that the basis of the restraining order was defendant's appearing at Howard's home and at his child's sports events. In mitigation, defendant's counsel informed the court that defendant was 49 years old, a naturalized United States citizen, an accountant who is fully employed, and the primary caretaker for his elderly, disabled parents. He suggested that a sentence of supervision would be appropriate. The trial court sentenced defendant to 12 months conditional discharge and ordered him to avoid contact with Howard or his family. This direct appeal then followed.

¶ 21 II. ANALYSIS

¶ 22 A. Comments at Sentencing

¶ 23 In his *pro se* appeal, defendant's first argument is that his constitutional right to due process was violated when, during the sentencing hearing, the assistant state's attorney knowingly made a false statement about the facts giving rise to the stalking/no-contact order entered against him and in favor of Howard in a separate proceeding. Specifically, he contends that the assistant state's attorney falsely stated that the basis for the restraining order was defendant's appearing at Howard's home and at his child's sports events. Defendant was given leave to supplement the record on appeal in this case with Howard's petition for the stalking/no-contact order, which defendant contends shows that Howard never stated that he was seeking a restraining order on the basis that defendant was appearing at his home or his child's sports events. Defendant argues that the statement by the assistant state's attorney misled the trial court, resulting in his receiving a harsher sentence with special conditions. He further argues that he was not allowed to present evidence in his own defense concerning the allegations of the case involving the stalking/no-

contact order. He argues that his sentence should be reversed or alternatively reduced to court supervision with all conditions removed from his sentence.

¶ 24 The State argues that defendant has forfeited appeal of this claim because he failed to object to the statement during the sentencing hearing or to include the error in a post-sentencing motion. See *People v. Harvey*, 2018 IL 122325, ¶ 15. Defendant does not dispute that he failed to preserve review of the claim in this manner, but he argues in reply that this court can review the error under the plain-error doctrine. "Pursuant to the plain error doctrine, a reviewing court may address a forfeited claim in two circumstances: ' "(1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error and (2) where 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, regardless of the closeness of the evidence." ' " *Id.* (quoting *People v. Hood*, 2016 IL 118581, ¶ 18 (quoting *People v. Belknap*, 2014 IL 117094, ¶ 48)). The initial step in either circumstance is to determine whether the claim presented on review actually amounts to a "clear or obvious error" at all. *Id.* (citing *People v. Staake*, 2017 IL 121755, ¶ 33). Defendant bears the burden of demonstrating a clear or obvious error. *Id.* ¶ 23.

¶ 25 In Howard's petition for a stalking/no-contact order, he certified under penalty of perjury that in mid-September 2015, he was in the driveway in front of his house when he saw the defendant drive by slowly, look at him, and drive away. He also certified that in mid-January 2016, he was running a youth hockey practice at an ice rink in Skokie with over 30 nine- and ten-year-old children present, when he saw the defendant there watching for about five minutes. These statements by Howard are largely consistent with his testimony at the trial in this case, in which he testified, "I coach a lot of youth sports, and I would see him at the ice rink," and "he

was in front of my house a couple of times." Based on this, we find no clear or obvious error in the assistant state's attorney's statements at the sentencing hearing that could support plain error review of this forfeited claim.

¶ 26 B. Adequacy of State's Disclosure of Witnesses

¶ 27 Defendant's second argument on appeal is that he was denied due process and the right to a fair trial by the fact that the State did not release to him the names and addresses of the witnesses it intended to call prior to trial. Instead, three and one-half months before trial, the prosecutor tendered to defendant in court a document titled "People's List of Potential Witnesses," which stated in its entirety, "Any and all potential witnesses the People intend to call at trial are listed in the police reports." Defendant argues that the failure to disclose the names and addresses of the prosecution witnesses prior to trial deprived him of the ability to adequately investigate the witnesses and the testimony they would provide against him.

¶ 28 The State again argues that defendant has forfeited review of this issue because he neither objected to the list of potential witnesses that the State provided nor alleged in his posttrial motion that the State failed to comply with its discovery obligations. See *Staake*, 2017 IL 121755, ¶ 30. Defendant again does not dispute this forfeiture but asserts the issue can be reviewed as plain error. This requires us first to determine whether the claim actually amounts to a clear or obvious error at all. *Id.* ¶ 33.

¶ 29 As the State points out, the supreme court has held that the State satisfactorily complied with its requirements to disclose to the defense the identities of persons whom it intends to call as witnesses "with a single, general reply that it might call as witnesses anyone named in a variety of documents including police reports." *People v. Jones*, 153 Ill. 2d 155, 163 (1992). The State made the same kind of disclosure in this case. This occurred three and one-half months

before trial, after which defendant never raised any objection in the trial court that this disclosure was insufficient or otherwise failed to comply with the State's discovery obligations. Therefore, we find no clear or obvious error occurred to justify reviewing this claim as plain error.

¶ 30 C. Arguments Involving Jury Instructions

¶ 31 Defendant next makes two largely-similar arguments on appeal pertaining to the fact that the jury was not instructed to consider whether he acted in self defense. We address these together. In the first, he argues that the trial court erred by failing to provide the jury with an instruction on self-defense and to instruct the jury that, to establish the offense of unlawful use of weapons, the State was required to prove beyond a reasonable doubt that he did not act in self-defense. In the second, he argues that his trial counsel provided him ineffective assistance by failing to tender such an instruction on self-defense, failing to timely object to the absence of such an instruction, and failing to raise this error in the posttrial motion. As to both, defendant points to the comments that trial court made in granting a directed verdict on the aggravated assault charge. The trial court questioned how any reasonable trier of fact could conclude that Howard, who was in the car pursuing defendant, was the one in reasonable apprehension of receiving a battery. The trial court stated, "The guy who is in fear of receiving a battery is the guy that's getting chased. *** You start following somebody down the street and around blocks and everything else, and that's the person who is in apprehension of receiving a battery, not the one doing the following."

¶ 32 *1. Trial Court's Duty to Give Instruction not Requested*

¶ 33 Defendant argues that, because the trial court recognized that Howard and McClendon placed him in apprehension of receiving a battery, it should have provided a self-defense instruction to the jury on the unlawful use of weapons charge, and its failure to do so was error.

¶ 34 The State argues that defendant has forfeited review of the first argument because he never tendered a self-defense instruction to the trial court, objected to the asserted error in the jury instructions, or raised the asserted error in a posttrial motion. See *People v. Sargent*, 239 Ill. 2d 166, 188-89 (2010). Recognizing this forfeiture, defendant argues that the error can be reviewed under Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013), which states in pertinent part, "Except as otherwise provided in these rules, instructions in criminal cases shall be tendered, settled, and given in accordance with section 2-1107 of the Code of Civil Procedure [(735 ILCS 5/2-1107 (West 2016))], but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require." The purpose of Rule 451(c) is "to permit correction of grave errors and errors in cases so factually close that fundamental fairness requires that the jury be properly instructed." *Sargent*, 239 Ill. 2d at 189. The rule is "coextensive" with the plain-error doctrine. *Id.* Thus, as discussed above, our analysis requires an initial determination of whether a clear or obvious error occurred at all in the trial court's failure to instruct the jury on self-defense. *Id.*

¶ 35 It is undisputed in this case that the defendant did not tender a jury instruction on self-defense. It is the responsibility of the parties to prepare jury instructions and tender them to the trial court. *People v. Alexander*, 408 Ill. App. 3d 994, 1001 (2011). " 'Generally, the trial court is under no obligation either to give jury instructions not requested by counsel or to rewrite instructions tendered by counsel.' " *Id.* (quoting *People v. Underwood*, 72 Ill. 2d 124, 129 (1978)). To ensure a fair trial in criminal case, the trial court must instruct the jury on such basic matters as the elements of the offense, the presumption of innocence, and the burden of proof. *People v. Koen*, 2014 IL App (1st) 113082, ¶ 46. Here, the defendant does not contend that the trial court failed to properly instruct the jury on these matters. Thus, we find no clear or obvious

error on the part of the trial court that would support review of this forfeited issue.

¶ 36 *2. Ineffective Assistance for Failure to Request Instructions*

¶ 37 As stated above, the defendant also makes the related argument that his trial counsel provided ineffective assistance by failing to request a jury instruction on self-defense or raise the error in the posttrial motion. He relies on the same comments by the trial court referenced above. He further cites the arguments that his trial counsel made in arguing for a directed verdict on the aggravated assault charge, to the similar effect that Howard was the actual aggressor in this instance who was chasing the defendant.

¶ 38 To succeed in a claim of ineffective assistance of counsel, a defendant must establish both (1) that counsel's performance fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Dupree*, 2018 IL 122307, ¶ 44 (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)). Satisfying the first prong requires a defendant to overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *Id.* Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Id.* A defense attorney's decision about whether to raise the issue of self-defense and to seek to have the jury instructed on it can be a matter of trial strategy. See *People v. Sanchez*, 2014 IL App (1st) 120514, ¶ 31.

¶ 39 In this case, defendant has failed to establish that his trial counsel's performance fell below an objective standard of reasonableness in not requesting a jury instruction on self defense. As a necessary condition for raising the issue of self-defense, defendant would have had to admit to displaying the weapon, based upon his reasonable belief that the use of such force was necessary. *People v. Chatman*, 381 Ill. App. 3d 890, 897 (2008). Here, defendant did not testify or admit to

displaying a weapon. Instead, his counsel made a sound decision of trial strategy to attack the credibility of Howard's testimony that he saw the defendant flash a gun, including specifically by arguing that Howard and McClendon would not have continued to pursue defendant's car if Howard had truly seen defendant display a gun. Thus, the evidence did not support counsel's submitting an instruction on self-defense. *People v. Salas*, 2011 IL App (1st) 091880, ¶ 84. Counsel did not provide ineffective assistance to defendant by not doing so.

¶ 40 Defendant makes an additional related argument that his trial counsel was ineffective for failing to tender a jury instruction on the defense of necessity, object to the absence of instructions on this defense, and raise this error in the posttrial motion. He again cites the comments made by the trial court when it granted the directed verdict on the aggravated assault charge. We reject this argument also. As we discussed above with self-defense, invoking the defense of necessity would have required the defendant to admit that he committed the offense, since necessity merely justifies an otherwise criminal act. *People v. Gengler*, 251 Ill. App. 3d 213, 222 (1993). Here, defendant did not admit that he engaged in conduct otherwise constituting the unlawful use of weapons. Thus, the defense did not apply, and no reason existed for counsel to seek an instruction on the issue. Rather, counsel employed a sound trial strategy of attacking the credibility of Howard's testimony that he saw the defendant display a gun instead of conceding that his client committed the offense and seeking to establish the defense of necessity.

¶ 41 D. Motions to Dismiss Aggravated Assault Charge

¶ 42 The defendant next argues on appeal that the trial court erred in denying the two pretrial motions that sought to dismiss the count against him for aggravated assault. The State argues that the defendant has forfeited review of this issue because he failed to include it in his posttrial motion. See *Staake*, 2017 IL 121755, ¶ 30. The State further points out that the defendant was

acquitted of the aggravated assault charge when the trial court granted his motion for directed verdict and argues that the defendant may not appeal from the trial court's pretrial rulings relating to a charge of which he was acquitted. The defendant does not dispute that he has forfeited review of this issue and makes no argument that it can be reviewed despite the forfeiture, stating only that it should be up to this court to decide if these errors should be addressed. We find no basis upon which to reach defendant's argument on this issue.

¶ 43 E. Sufficiency of Evidence

¶ 44 Defendant's next argument on appeal is that the evidence the State presented at trial was insufficient to prove his guilt beyond a reasonable doubt. In reviewing the sufficiency of evidence in a criminal case, our inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the offense beyond a reasonable doubt. *People v. Hardman*, 2017 IL 121453, ¶ 37. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. This standard of review does not allow this court to substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). All reasonable inferences from the evidence must be drawn in favor of the prosecution. *Hardman*, 2017 IL 121453, ¶ 37. This court will reverse a conviction only when the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 45 In this case, defendant was charged with and convicted of the offense of unlawful use of weapons under section 24-1(a)(4) of the Criminal Code of 2012. 720 ILCS 5/24-1(a)(4) (West 2016). A person commits this offense when that person knowingly:

"Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; or

(ii) are not immediately accessible; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

(iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act[.]" *Id.*

¶ 46 Defendant's argument is that to sustain the charge, the State had to prove that a loaded weapon was immediately accessible to him. He argues that it failed to do so because Detective Kieca found two firearms in his vehicle, only one of them was loaded, and there was no evidence about which of the two firearms was allegedly displayed to Howard. However, Defendant's argument stems from an incorrect interpretation of the requirements of the statute. The statutory subsection above does not exempt from criminal liability the transportation of a firearm that is immediately accessible but unloaded. See *id.* § 24-1(a)(4)(ii). In other words, if a firearm is immediately accessible, it is irrelevant whether it is loaded or not. Whether the firearm being transported is unloaded only becomes relevant if it therefore satisfies one of the other exceptions

to criminal liability, *e.g.*, being "unloaded and enclosed in a case, firearm carrying box, shipping box, or other container" and being transported "by a person who has been issued a currently valid Firearm Owner's Identification Card." *Id.* § 24-1(a)(4)(iii).[1]

¶ 47 A weapon is considered "immediately accessible" if it is in such proximity to the defendant as to be within easy reach, so that it is readily available for use. *People v. Smith*, 71 Ill. 2d 95, 102 (1978). Here, the State presented evidence through the testimony of Howard that he saw defendant holding a handgun in his right hand above the seat of his vehicle, waving it in the air. Whether to accept this evidence was within the province of the jury. This evidence that defendant was able to hold a firearm in his right hand above the seat of his vehicle supports the conclusion that it was "immediately accessible" to him. 720 ILCS 5/24-1(a)(4)(ii) (West 2016). It further supports the conclusion that the firearm was not then "enclosed in a case, firearm carrying box, shipping box, or other container." *Id.* § 24-1(a)(4)(iii). Therefore, whether the gun displayed to Howard was unloaded or not, it would not satisfy the exception of section 24-1(a)(4)(iii). The jury further heard evidence from Detective Kieca that, after defendant exited his vehicle in the parking garage, two firearms were found in a backpack on the front passenger-side seat of that vehicle. This testimony would also support the conclusion that a firearm was "immediately accessible" to defendant. *People v. Bolling*, 181 Ill. App. 3d 845, 850 (1989) (handgun inside zippered athletic bag in rear seat of car was immediately accessible to driver). We reject defendant's argument that neither firearm was immediately accessible because both were inside pouch bags within the backpack, or because the backpack contained additional contents. Finally, Detective Kieca testified that one of the two handguns in the backpack was

[1] Defendant makes no argument concerning the applicability to this case of exceptions for firearms that are broken down in a non-functioning state or those carried or possessed by a person with a valid concealed carry license. 720 ILCS 5/24-1(a)(4)(i), (iv) (West 2016).

loaded, although it was inside a zippered pouch bag. Thus, because it was loaded, at least one of the firearms would fail to satisfy the exception of section 24-1(a)(4)(iii). Based on this evidence, we cannot say that no rational trier of fact could have found the required elements of the offense beyond a reasonable doubt.

¶ 48 F. Length of Jury Deliberations

¶ 49 Defendant also argues that the fact that the jury deliberated for only seven minutes indicates that it decided the case without properly considering all the evidence. He asks us to reverse the verdict against him on this basis. However, defendant has failed to cite any authority in support of the argument that we may do so. A point raised in a brief but not supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7) (eff. May 25, 2018) and is therefore forfeited. *People v. Ward*, 215 Ill. 2d 317, 332 (2005). However, even if we were to consider this issue, we find no merit to the argument that the relatively short time the jury deliberated in this case is a reason to reverse the verdict against defendant.

¶ 50 G. Ineffective Assistance of Counsel

¶ 51 Finally, defendant argues on appeal that he was provided with ineffective assistance of counsel by Kennelly when, at the time he withdrew, he provided the State with his attorney work product, defendant's confidential emails and materials, and a witness interview by an investigator. Defendant argues that the knowledge gained by the State from its receipt of these materials enabled the State to file a motion *in limine* to prevent the defendant from using or mentioning instances of misconduct, police reports, and interviews with federal agencies from other cases during his trial.

¶ 52 Based on comments in the record by the assistant state's attorneys, defendant, and the trial court, it does appear that the file tendered by Kennelly to the State included materials beyond

those that the State should have received. However, we are unable to determine what those materials were or the effect it had on the case, because the record on appeal does not include any of the materials that defendant contends was improperly tendered. As the appellant, the burden is on defendant to present a sufficiently complete record to enable the reviewing court to determine whether the error claimed by him occurred. *People v. Carter*, 2015 IL 117709, ¶ 19. Any doubts that may arise from the incompleteness of the record will be resolved against the appellant. *Id.* (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). The fact that the materials about which defendant complains are not in the record prevents us from reviewing his claim that it was ineffective assistance of counsel to tender them to the State or that his defense was prejudiced by it. We further note that the defendant has not provided a citation to the record for the motion *in limine* which he claims the State presented based on its review of the improperly tendered materials. Ill. S. Ct. R. 341(h)(7) (appellant's argument shall contain citation to the pages of the record relied upon). Although we see in the record a motion *in limine* to prohibit the defendant from interjecting into the trial any instances of misconduct from other cases by police or prosecutors, we see nothing in it about his using police reports or mentioning interviews with federal agencies. That motion appears to have been granted without objection. However, the defendant has similarly failed to provide the transcript of the hearing on the motions *in limine*. For all of these reasons, we find the defendant has forfeited review of this claim.

¶ 53 III. CONCLUSION

¶ 54 For the reasons set forth above, the judgment of the trial court is affirmed.

¶ 55 Affirmed.