



murder (720 ILCS 5/9-1(a)(1) (West 2006)).

¶ 5 In February 2009, the cause proceeded to a jury trial, where the defendant claimed to have killed Andrew in self-defense (720 ILCS 5/7-1(a) (West 2006)). Testifying that he pulled his knife only after Andrew had first come at him with a knife, the defendant suggested that he had stabbed Andrew after attempting to "scare" him and "calm [him] down." The State presented eyewitnesses who indicated that Andrew had not been in possession of a weapon, however, and that prior to the stabbing, the defendant had repeatedly brandished a knife and bragged about having recently learned how to "cut" somebody. The jury also heard that when the police questioned him about the incident, the defendant had "changed his statement several times."

¶ 6 In closing arguments, suggesting that the defendant's testimony was self-serving and fabricated, the State maintained that the defendant had fatally stabbed Andrew under circumstances constituting first-degree murder as opposed to second-degree murder. The State further advised the jury that it would be instructed that it would not need to "start considering involuntary manslaughter" as an alternative lesser offense unless it first found that the State had failed to prove the propositions that were required to sustain a charge of first-degree murder or second-degree murder. In response, defense counsel zealously argued that the defendant had stabbed Andrew in self-defense and that the State had failed to prove any of the propositions required to sustain a charge of first-degree murder or second-degree murder.

¶ 7 The verdict forms that the jury subsequently received gave it the option of finding the defendant not guilty, guilty of first-degree murder, guilty of second-degree murder, or guilty of involuntary manslaughter. See Illinois Pattern Jury Instructions, Criminal, Nos. 26.02, 26.05 (4th ed. 2000) (hereinafter IPI Criminal 4th). After due deliberation, the jury ultimately returned a verdict finding the defendant guilty of second-degree murder (720 ILCS

5/9-2(a)(2) (West 2006)). When later sentencing the defendant to a 15-year term of imprisonment on the conviction, the trial court indicated its surprise that the jury had returned a verdict "finding second[-]degree murder rather than first[-]degree murder." Following the trial court's denial of his motion to reconsider sentence, the defendant filed a timely notice of appeal.

¶ 8

#### ANALYSIS

¶ 9 The defendant argues that two errors in the instructions that the jury received denied him a fair trial and due process. The defendant acknowledges that he raises these claims for the first time on appeal, but he contends that relaxation of the waiver doctrine is appropriate pursuant to Supreme Court Rule 451(c) (eff. July 1, 2006). In response, the State maintains that Rule 451(c) is inapplicable, because the errors at issue were harmless in light of all the instructions that the jury received and the jury's finding that the State had proven all the propositions that were required to sustain a charge of first-degree murder or second-degree murder. We agree with the State.

¶ 10 By failing to object to the instructions in question and by failing to include his claims of error in his amended posttrial motion, the defendant has forfeited review of the arguments that he presents on appeal. *People v. Patrick*, 233 Ill. 2d 62, 76 (2009). Rule 451(c) provides, however, that substantial defects in criminal jury instructions are not subject to waiver if the interests of justice require. *People v. Hopp*, 209 Ill. 2d 1, 7 (2004). "Rule 451(c) constitutes an exception which \*\*\* is a limited exception [citation] to be used to correct 'grave errors' [citation] or to be applied where the case is close factually and fundamental fairness requires that the jury be properly instructed [citation]." *People v. Roberts*, 75 Ill. 2d 1, 14 (1979).

¶ 11 "The purpose of jury instructions is to provide the jury with correct legal principles applicable to the evidence so that the jury may reach a correct conclusion according to the

law and the evidence." *People v. Wales*, 357 Ill. App. 3d 153, 157 (2005). Additionally, "[i]nstructions in criminal cases must be read as a whole and are sufficient if they fully and fairly announce the law applicable to the respective theories of the State and the defense." *Id.* at 157-58. Rule 451(c) is thus invocable only where there is "a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial." *Hopp*, 209 Ill. 2d at 8.

¶ 12 State's Instruction No. 5

¶ 13 IPI Criminal 4th No. 2.01I, which is to be used whenever a jury is instructed on first-degree murder, second-degree murder, and involuntary manslaughter, reads as follows:

"The defendant[s] [ (is) (are) ] charged with the offense of first[-]degree murder. The defendant[s] [ (has) (have) ] pleaded not guilty. Under the law, a person charged with first[-]degree murder may be found (1) not guilty; or (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder; or (4) guilty of involuntary manslaughter." IPI Criminal 4th No. 2.01I.

¶ 14 IPI Criminal 4th No. 2.01J, which is to be used whenever a jury is instructed on first-degree murder, second-degree murder, involuntary manslaughter, and "some other charge or charges," reads as follows:

"The defendant[s] [ (is) (are) ] charged with the offense of first[-]degree murder. The defendant[s] [ (has) (have) ] pleaded not guilty. Under the law, a person charged with first[-]degree murder may be found (1) not guilty of first[-]degree murder and not guilty of involuntary manslaughter; or (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder; or (4) guilty of involuntary manslaughter.

The defendant[s] [ (is) (are) ] also charged with the offense of \_\_\_\_\_. The defendant[s] [ (has) (have) ] pleaded not guilty to that charge." IPI Criminal 4th No.

2.01J.

¶ 15 The first instructional error that the defendant complains of on appeal is found in "State's Instruction No. 5," which instructed the jury as follows:

"The defendant is charged with the offense of first[-]degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first[-]degree murder may be found (1) not guilty of first[-]degree murder; or (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder; or (4) guilty of involuntary manslaughter."

¶ 16 Although State's Instruction No. 5 was labeled and referred to as "I.P.I. Criminal 2.01J," it is obviously a modified instruction hybridizing IPI Criminal 4th Nos. 2.01I and 2.01J. In any event, the defendant suggests that because State's Instruction No. 5 failed to advise the jury that it could find the defendant not guilty of involuntary manslaughter, the jury was given "no option of a general acquittal." The jury also received "State's Instruction No. 22," however, which consistent with IPI Criminal 4th No. 2.01I's companion instruction, IPI Criminal 4th No. 26.01I, instructed the jury, in pertinent part, as follows:

"The defendant is charged with the offense of first[-]degree murder. Under the law, a person charged with first[-]degree murder may be found (1) not guilty; or (2) guilty of first[-]degree murder; or (3) guilty of second[-]degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms: 'not guilty', 'guilty of first[-]degree murder', 'guilty of second[-]degree murder', and 'guilty of involuntary manslaughter'.

During your deliberations, you should first consider whether each of the propositions for first[-]degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should

continue as to the additional proposition regarding whether the defendant is guilty of second[-]degree murder instead of first[-]degree murder.

If you find that any of the propositions regarding first[-]degree murder have not been proved beyond a reasonable doubt, your deliberations on first[-]degree murder and second[-]degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter."

¶ 17 The jury also received "State's Instruction No. 16," which consistent with IPI Criminal 4th No. 7.06Y instructed the jury, in pertinent part, as follows:

"To sustain either the charge of first[-]degree murder or the charge of second[-]degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Andrew Hankins; and

*Second Proposition:* That when the defendant did so,

he intended to kill or do great bodily harm to Andrew Hankins;

or

he knew that such acts would cause death to Andrew Hankins;

or

he knew that such acts created a strong probability of death or great bodily harm to Andrew Hankins;

and

*Third Proposition:* That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first[-]degree murder and second[-]degree murder should end, and you should go on

with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second[-]degree murder instead of first[-]degree murder."

¶ 18 Lastly, the jury also received "State's Instruction No. 18," which consistent with IPI Criminal 4th No. 7.08 instructed the jury as follows:

"To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Andrew Hankins; and

*Second Proposition:* That the defendant performed those acts recklessly; and

*Third Proposition:* That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 19 Contrary to the defendant's assertions on appeal, when read and considered as a whole, the instructions that the jury received gave it the option of finding the defendant not guilty of first-degree murder, not guilty of second-degree murder, and not guilty of involuntary

manslaughter. As previously indicated, "[r]ather than considering a jury instruction in isolation, we review whether the instructions given the jury considered as a whole, fully and fairly provide the jurors with the applicable law." *People v. Ingram*, 382 Ill. App. 3d 997, 1008 (2008). Moreover, the inconsistencies in IPI Criminal 4th Nos. 2.01I and 2.01J aside, any prejudice or possible confusion that might have resulted by the jury's comparing State's Instruction Nos. 5 and 22 was ultimately rendered moot by the jury's finding that the State had proven the three propositions necessary to sustain a conviction for first- or second-degree murder. See IPI Criminal 4th Nos. 7.06Y, 26.01I. "An error in a jury instruction is harmless if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed." *People v. Pomykala*, 203 Ill. 2d 198, 210 (2003). We therefore reject the defendant's argument that State's Instruction No. 5 denied him due process and a fair trial. *Cf. People v. Biggerstaff*, 287 Ill. App. 3d 813, 815-19 (1997) (new trial warranted where the jury "was afforded no mechanism to decide whether the State had failed to prove [the] defendant's guilt beyond a reasonable doubt"); *People v. Gathings*, 99 Ill. App. 3d 1135, 1136-39 (1981) (grave error found where the instruction at issue led to unresolved jury confusion and "was tantamount to directing the jury to return a verdict of guilty of some offense").

¶ 20 IPI Criminal 4th No. 24-25.06A

¶ 21 As previously noted, State's Instruction No. 18 advised the jury as follows:

"To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Andrew Hankins; and

*Second Proposition:* That the defendant performed those acts recklessly; and

*Third Proposition:* That those acts were likely to cause death or great bodily

harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 22 The defendant rightly argues that State's Instruction No. 18 should have included, as a fourth proposition, IPI Criminal 4th No. 24-25.06A, *i.e.*, "That the defendant was not justified in using the force which he used." See IPI Criminal 4th No. 7.08, Committee Note; IPI Criminal 4th No. 24-25.06A. We note that the jury was also instructed that "[a] person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual without lawful justification by acts which are performed recklessly and are likely to cause death or great bodily harm" (see IPI Criminal 4th No. 7.07), but we need not decide whether that instruction sufficiently compensated for the absence of IPI Criminal 4th No. 24-25.06A from State's Instruction No. 18. As with the defendant's previous claim, any potential prejudice or confusion was ultimately rendered moot by the jury's finding that the State had proven the three propositions necessary to sustain a conviction for first- or second-degree murder (see IPI Criminal 4th Nos. 7.06Y, 26.01I), and the absence of IPI Criminal 4th No. 24-25.06A from State's Instruction No. 18 was thus harmless error (see *Pomykala*, 203 Ill. 2d at 210). "[I]t is 'the almost invariable assumption of the law that jurors follow their instructions'" (*People v. Sandoval*, 135 Ill. 2d 159, 192 (1990) (quoting *Richardson v. Marsh*, 481 U.S. 200, 206 (1987))), and as the State correctly observes, here, "the jury never deliberated, and could not deliberate," as to whether the defendant's conduct constituted involuntary manslaughter. We therefore reject the defendant's argument that State's

Instruction No. 18 denied him due process and a fair trial.

¶ 23

#### CONCLUSION

¶ 24 The instructional errors in the present case were not grave errors and did not affect the fundamental fairness of the defendant's trial. Accordingly, Rule 451(c) is inapplicable, and the defendant's conviction is hereby affirmed.

¶ 25 Affirmed.