SIXTH DIVISION
June 26, 2015

No. 1-13-1798

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. 12 CR 4113
	)	
RONNIE WARD,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER.

¶ 1 *Held*: We affirmed defendant's conviction of first-degree murder where the State proved him guilty beyond a reasonable doubt and the prosecutor made no misstatement of the evidence during closing argument.

¶ 2 A jury convicted defendant, Ronnie Ward, of first-degree murder and the trial court sentenced him to 52 years' imprisonment. On appeal, defendant contends: (1) his conviction should be reduced to involuntary manslaughter because his actions were merely reckless and his shooting of the victim was unintentional; and (2) the prosecutor misstated the evidence during closing argument, depriving him of a fair trial. We affirm.

¶ 3 Defendant was charged with the first-degree murder and armed robbery of Robin Davis, his girlfriend and the mother of his two children.

¶ 4 At trial, Jack Sullivan testified that on January 23, 2012, he was at 4602 South Perry Avenue in Chicago, where defendant and Robin Davis lived. Mr. Sullivan arrived there at about 9:30 a.m. and went to the bedroom of defendant and Ms. Davis, where they watched television and drank beer and vodka. None of them drank enough alcohol to get drunk.

¶ 5 Defendant and Ms. Davis began arguing because defendant could not find his cell phone charger. Ms. Davis told him it was on a shelf in the closet. Defendant found the charger, called Ms. Davis some "dirty names" and told her: "I got something for you." Defendant also repeatedly asked Ms. Davis for money and she replied that the money she had was for their children. Defendant told Ms. Davis: "I'm sick of you playing games with me. I got something for you, bitch."

¶ 6 During this time, Mr. Sullivan was seated on an orange crate behind the bedroom door. Defendant suddenly pulled a .25-caliber handgun out of his pocket and pointed it at Mr. Sullivan's face. Mr. Sullivan stood up and asked defendant why he had pulled a gun on him. Ms. Davis also jumped up and berated defendant for pulling the gun on Mr. Sullivan. Defendant laughed and said he was joking. Defendant also said the gun was unloaded, and he showed Mr. Sullivan that there was no clip in the handle. Mr. Sullivan told defendant there is "always one in the chamber."

¶ 7 Mr. Sullivan then left and went to a store at 57th and State Streets. Mr. Sullivan returned about five minutes later, and Ms. Davis asked him to go with her to her neighbor Ms. Pittman's house because she wanted to use Ms. Pittman's phone. Mr. Sullivan and Ms. Davis went to Ms. Pittman's house, where Ms. Davis phoned her sister. Then they returned to the residence of defendant and Ms. Davis and went into the bedroom.

¶ 8 Defendant again argued with Ms. Davis, asking her for money, and she again told him that the money was for their children. Ms. Davis also told defendant that she had already given him some money. Defendant again said: "I got something for you, bitch."

¶ 9 At some point, Ms. Pittman came into the bedroom and handed Ms. Davis her phone. Ms. Davis talked on the phone and then gave it back to Ms. Pittman. Defendant "started throwing little tantrums by throwing everything out of the closet, looking for a charger to his phone." Defendant eventually found his charger, and he again told Ms. Davis: "I got something for you."

¶ 10 Defendant, Ms. Davis, Ms. Pittman, and Mr. Sullivan left the bedroom and began walking toward the front door. As they were walking, defendant told Ms. Davis to give him some money, and she refused, saying the money was for the children. Defendant told Ms. Davis to stop lying to him, and he said: "Bitch, I got something for you."

¶ 11 Defendant pulled the gun from his pocket and began to point it at "everybody," including Ms. Davis, Ms. Pittman, and Mr. Sullivan, as well as three other persons who were, also, now in the house. Everyone ducked down. Defendant turned toward Ms. Davis, pointed the gun at her head, and pulled the trigger. The gun fired, and Ms. Davis "hit the floor."

¶ 12 Mr. Sullivan saw defendant run next door to his brother's house. Mr. Sullivan heard defendant say: "I just shot my baby, I'm going to jail." Defendant then returned, pulled Ms. Davis' shirt and bra up and took her money, and ran back out in the street "having tantrums" and "hollering he done kill his baby, he fittin' to go to jail."

¶ 13 The police arrived. Upon hearing their sirens, defendant ran away. Mr. Sullivan spoke to the police and, later, went to the police station and identified a photograph of defendant.

¶ 14 Mr. Sullivan admitted at trial that he had multiple convictions for possession of a controlled substance, theft, and aggravated assault to a police officer, but that he had not received any promises from the State in exchange for his testimony.

¶ 15 Alice Pittman testified that in January 2012, she lived three houses down from the residence of defendant and Ms. Davis. At about midnight on January 23, 2012, Ms. Davis and Mr. Sullivan came to her home. Ms. Davis asked to use her phone to call her sister. Ms. Pittman gave Ms. Davis the phone, and she left a voice mail for her sister. Ms. Davis asked Ms. Pittman to bring the phone over to her house if her sister called back; Ms. Davis and Mr. Sullivan then left Ms. Pittman's house.

¶ 16 At about 12:30 a.m., Ms. Pittman received a phone call, got dressed, and took the phone to Ms. Davis' house. Ms. Pittman went to the back bedroom and saw Mr. Sullivan, Ms. Davis, and defendant. Ms. Pittman gave Ms. Davis the phone. Ms. Pittman observed defendant standing by the television, throwing phone cords and broken phones, and kicking shoes.

¶ 17 Ms. Davis and defendant began arguing, and defendant went into the closet and began taking his clothes out. Ms. Davis told defendant he was a coward and that she was tired of him always pulling guns on her. She told him to get out and leave her alone. Defendant raised his voice and told Ms. Davis that she never did anything for him or bought him anything. Defendant told Ms. Davis he would kill her, and then left the room for a minute or two.

¶ 18 Defendant returned to the bedroom with a gun in his hand and put it up to Ms. Davis' head. Defendant told Ms. Davis to give him his "stuff." Ms. Davis told defendant to let her go and to stop putting the gun in her face. Defendant took the gun away from Ms. Davis' face, waved it around, and went toward Ms. Pittman and Mr. Sullivan. Defendant repeatedly

"clicked" the gun at all of them (Ms. Davis, Ms. Pittman, and Mr. Sullivan) and pulled the trigger five times.

¶ 19 Ms. Davis started to leave the bedroom. Defendant grabbed Ms. Davis by the collar with one hand and held onto the gun in his other hand. They left the room together. Defendant was not laughing or smiling, nor did he appear to be "playing" with Ms. Davis. Defendant kept telling Ms. Davis to give him his stuff, and she kept telling him to let her go and leave her alone. Ms. Pittman and Mr. Sullivan followed behind.

¶ 20 When they got to the living room, Ms. Davis continued to tell defendant she had nothing of his to give him and she told him to leave her alone. Defendant fired his gun at Ms. Davis and she fell to the floor. Defendant ran next door to his brother's house and screamed that he had killed Ms. Davis and was going to jail.

¶ 21 Defendant's brother did not open the door, so defendant returned to his residence and then went back into the street, laid down, and yelled: "I killed her, I killed her." The gun was still in his hand.

¶ 22 Ms. Pittman called 911. Defendant fled. The officers took Ms. Pittman to the police station, where she identified a photograph of defendant.

¶ 23 Detective John Murray testified that shortly after 1 a.m. on January 24, 2012, he was assigned to investigate a homicide at 5602 South Perry Avenue. When he went inside, Detective Murray saw a black female lying on her back on the living room floor. There was a "pool of blood surrounding her head." The victim was fully clothed from the waist down. She was bare chested and her bra was draped across her body.

¶ 24 Detective Murray observed a single expended .25-caliber shell casing on the floor to the right of Ms. Davis' body. Detective Murray went into the bedroom, where he saw one live .25-caliber shell.

¶ 25 Officer Cedric Campbell testified that defendant surrendered himself on January 24, 2012.

¶ 26 The parties stipulated that Cook County Assistant Medical Examiner, Dawn Holmes, would testify she performed the postmortem examination of the body of Robin Davis on January 24, 2012, and that Ms. Davis had suffered a gunshot wound to her right cheek. Dr. Holmes would testify that her opinion, within a reasonable degree of medical and scientific certainty, was that the cause of death was a gunshot wound to the face and that the manner of death was homicide.

¶ 27 Following the stipulation, the trial court conducted an instructions conference. In pertinent part, defendant submitted an instruction on involuntary manslaughter. The State objected on the basis that there was no evidence of recklessness where defendant threatened Ms. Davis throughout the day, grabbed her by the collar, pointed the gun at her face and fired, even though he had been warned of the likelihood that there was a bullet remaining in the chamber. In response, defendant argued there was evidence of recklessness where he had pulled the trigger five times without it firing, and where he showed that the gun had no clip, and stated that it was not loaded. The trial court found sufficient evidence of recklessness to warrant the giving of the involuntary manslaughter instruction.

¶ 28 Tonia Ms. Brubaker testified she was employed by the Illinois State Police as a forensic scientist specializing in the field of firearms identification and that she has examined .25-caliber semiautomatic handguns hundreds of times. Ms. Brubaker explained that a magazine is the

compartment of the gun that contains the loaded cartridges, but that it is possible to load cartridges into the chamber of the gun even without a magazine. Ms. Brubaker also stated that it is possible for a person to lightly tap the trigger of the gun, causing it to make a clicking sound without it firing.

¶ 29 After the State rested, Dr. Christofer Cooper testified on behalf of defendant. Dr. Cooper was employed by the Forensic Clinical Services as the chief of psychology. Dr. Cooper administered an intelligence quotient (IQ) test to defendant, which revealed that he was in the extremely low range of overall intellectual abilities. The IQ test did not measure whether defendant knew how to load and unload a gun, nor did it measure what defendant knew or knew not to do concerning a gun.

¶ 30 Following closing arguments, the jury convicted defendant of first-degree murder. The jury also found that during the commission of the first-degree murder, defendant personally discharged a firearm that proximately caused Ms. Davis' death. The jury found defendant not guilty of armed robbery.

¶ 31 The trial court denied defendant's posttrial motion and sentenced him to 52 years' imprisonment. Defendant appeals.

¶ 32 First, defendant argues that we should reduce his conviction to involuntary manslaughter because his actions were merely reckless and his shooting of the victim was unintentional. We review defendant's argument that the evidence supported a conviction for involuntary manslaughter rather than first-degree murder as a challenge to the sufficiency of the evidence to support the jury's verdict. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005). In 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. *Id.* It is the province of the trier of fact to assess the credibility of the witnesses, determine the weight to be given their testimony, resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *Id*.

¶ 33 Defendant is guilty of first-degree murder when he kills an individual without lawful justification if, in performing the acts, he intends to kill or do great bodily harm or knows that his acts create a strong probability of death or great bodily harm to that individual. *Id*. (citing 720 ILCS 5/9-1(a)(1), (a)(2) (West 1998)).

¶ 34 In contrast, defendant is guilty of involuntary manslaughter when he unintentionally kills an individual without lawful justification while performing acts that are likely to cause death or great bodily harm and he performs them recklessly. *Givens*, 364 Ill. App. 3d at 43-44 (citing 720 ILCS 5/9-3(a) (West 1998)).

¶ 35 The state of mind for murder is knowledge, while the state of mind for involuntary manslaughter is recklessness. *Givens*, 364 Ill. App. 3d at 44. Defendant has knowledge when he is consciously aware that his conduct is practically certain to cause a particular result. *Id*. (citing 720 ILCS 5/4-5(b) (West 1998)). Defendant acts recklessly when he " 'consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow *** and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.' " *Givens*, 362 Ill. App. 3d at 44 (quoting 720 ILCS 5/4-6 (West 1998)). Accordingly, involuntary manslaughter requires a less culpable mental state than first-degree murder. *People v. Eason*, 326 Ill. App. 3d 197, 209 (2001).

¶ 36 In the present case, viewed in the light most favorable to the State, the evidence at trial was sufficient for the jury to convict defendant of first-degree murder on the basis that defendant intended to kill Ms. Davis or, at the very least, knew that his actions created a strong probability

of death or great bodily harm. Specifically, there was evidence that defendant and Ms. Davis had been arguing, off and on, about money all day on January 23, 2012, that he called her "dirty names," and repeatedly said: "I got something for you, bitch." During the course of their arguing, defendant pulled a .25-caliber handgun and pointed it at Mr. Sullivan. Mr. Sullivan and Ms. Davis objected to defendant's pulling the gun on him, and defendant laughed, said he was joking, and showed Mr. Sullivan that there was no clip in the handle. Mr. Sullivan told defendant, though, that there is always a bullet in the chamber. Defendant subsequently resumed arguing with Ms. Davis, demanding money from her and throwing things out of his closet. When she refused to give him money, he again said: "Bitch, I got something for you," and threatened to kill her. Defendant left the bedroom for a minute or two, then returned with the gun in his hand. Defendant waved the gun at Ms. Davis, Ms. Pittman, and Mr. Sullivan and pulled the trigger five times without it firing. As Ms. Davis left the bedroom, defendant grabbed her by the collar and continued to argue with her, telling her to give him his "stuff." When they got to the living room, Ms. Davis told him to leave her alone. Defendant put the gun to her head and pulled the trigger. The gun discharged, killing her.

¶ 37 On this evidence, where defendant was arguing with Ms. Davis off and on all day, called her derogatory names, told her he had "something" for her and threatened to kill her, and purposely grabbed her, pointed a gun at her head, and pulled the trigger, the jury could find that defendant possessed the intentional or knowing mental state for first-degree murder. Defendant argues, though, that he only possessed the lesser "recklessness" mental state for involuntary manslaughter, as he thought that the gun was unloaded at the time he pulled the trigger. Defendant made this same argument at trial, and the jury was instructed on involuntary manslaughter; however, it returned a verdict finding defendant guilty of first-degree murder.

The jury's verdict was supported by Mr. Sullivan's testimony that he specifically told defendant, prior to his shooting Ms. Davis, that even though the gun appeared unloaded, there is "always" a bullet in the chamber. Thus, Mr. Sullivan put defendant on notice as to the dangerousness of the weapon. Despite this warning from Mr. Sullivan, defendant purposely aimed the gun at Ms. Davis' face and fired, killing her. Viewing all the evidence in a light most favorable to the State, the jury could find that defendant intended to kill or cause great bodily harm to Ms. Davis when he disregarded Mr. Sullivan's warning, purposely put the gun to Ms. Davis' head, and fired; alternatively, the jury could find from this evidence that defendant knew his act of purposely firing his gun at Ms. Davis' head created a strong probability of death or great bodily harm to her. Thus, the State sufficiently proved the mental state necessary to sustain defendant's conviction for first-degree murder.

¶ 38 The cases cited by defendant, *People v. Bauman*, 34 Ill. App. 3d 582 (1975), *People v. Chew*, 45 Ill. App. 3d 1024 (1977), and *People v. Schwartz*, 64 Ill. App. 3d 989 (1978), are inapposite. None of those cases involve the precise fact pattern here, *i.e.*, a continuing argument between defendant and the victim, a threat by defendant to kill the victim, a warning from a third person that despite there being no clip in the handle of defendant's gun, there is "always" a bullet in the chamber, and defendant then purposely pointing the gun at the victim's head and firing.

¶ 39 Next, defendant argues that the prosecutor made an improper remark during rebuttal closing arguments depriving him of a fair trial. Prosecutors have great latitude in making their closing arguments, and such arguments are proper if they are based on the record or are reasonable inferences drawn therefrom. *People v. Moya*, 175 Ill. App. 3d 22, 24 (1988). Prosecutorial comments constitute reversible error only if they engender "substantial prejudice."

People v. Wheeler, 226 Ill. 2d 92, 123 (2007). Substantial prejudice occurs when "the improper remarks constituted a material factor in a defendant's conviction." *Id*.

¶ 40 In *Wheeler*, our supreme court applied a *de novo* standard of review to the issue of prosecutorial statements during closing argument. *Id*. at 121. In *People v. Blue*, 189 Ill. 2d 99 (2000), which was cited by *Wheeler*, our supreme court applied an abuse of discretion standard. *Id*. at 128. We need not resolve the issue of the appropriate standard of review, because our holding affirming the trial court would be the same under either standard.

¶ 41 Defendant contends the prosecutor misstated the testimony and deprived him of a fair trial when he argued: "Remember this, before he shot and killed Ms. Davis as his money was walking out that door and trying to leave that house, before he did it, please don't forget that it was discussed. It was discussed that a bullet was in the chamber."

¶ 42 Defendant contends on appeal that the evidence at trial indicated only that Mr. Sullivan told defendant that it was *possible* for there to be a bullet in the chamber even if there is no clip, but that he never told defendant there *was* a bullet in the chamber of his gun. Defendant argues that he was substantially prejudiced by the prosecutor's alleged misstatement that Mr. Sullivan told him there *was* a bullet in the gun's chamber, because the prosecutor thereby indicated that defendant knew the gun was loaded and, thus, that he possessed the mental state for first-degree murder instead of involuntary manslaughter. Defendant contends the prejudice was compounded when the trial court overruled his objection and stated in front of the jury that the prosecutor's comment "does not misstate the testimony."

¶ 43 We find no error committed by the prosecutor. At trial, Mr. Sullivan testified in pertinent part:

"Q. [D]id you say anything to defendant when he pulled the gun on you?

A. 'Why did you pull a gun on me, why you playing games with a gun.'

Q. What did the defendant say?

A. He was just joking around.

Q. What was he saying?

A. 'Ain't no bullets in the gun.'

Q. Did you reply?

A. I told him it's *always one in the chamber*." (Emphasis added.)

¶ 44 The prosecutor's comment during rebuttal closing arguments that "[i]t was discussed that a bullet was in the chamber," was properly based on Mr. Sullivan's testimony and did not constitute error.

¶ 45 For the foregoing reasons, we affirm the circuit court.

¶ 46 Affirmed.