

2015 IL App (2d) 130663-U
No. 2-13-0663
Order filed July 14, 2015

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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 McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-520
)	
TIMOTHY SMITH,)	Honorable
)	Sharon L. Prather,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court abused its discretion in denying defendant's tendered instructions on involuntary manslaughter as there was sufficient evidence to support the instructions. Accordingly, defendant's conviction of first-degree murder would be reversed and the cause would be remanded for a new trial.

¶ 2 Following a jury trial in the circuit court of McHenry County, defendant, Timothy Smith, was found guilty of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2010)) and sentenced to a term of 50 years' imprisonment. On appeal, defendant argues that the trial court erred in denying his request to instruct the jury on involuntary manslaughter because there was both direct and circumstantial evidence to support such an instruction. We agree that there was sufficient

evidence under relevant case law to support an involuntary manslaughter instruction. Accordingly, we reverse defendant's conviction of first-degree murder and remand the cause for a new trial.

¶ 3

I. BACKGROUND

¶ 4 On the evening of May 28, 2011, Kurt Milliman was shot at a home located at 4320 Doty Road in Woodstock. Milliman later died from his injuries. Defendant was initially charged by complaint with various offenses related to Milliman's death. On June 23, 2011, a grand jury returned an indictment against defendant charging him with one count of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2010)), one count of pandering (720 ILCS 5/11-16(a)(2) (West 2010)), one count of obstructing justice (720 ILCS 5/31-4(a) (West 2010)), and one count of pimping (720 ILCS 5/11-19 (West 2010)). Prior to trial, the State informed the court that it wished to proceed solely on the first-degree murder count and that it was dismissing the remaining charges in the bill of indictment. The following evidence relevant to this appeal was presented at defendant's trial.

¶ 5 At around 11 p.m. on May 28, 2011, Laura Buker, a 911 dispatcher for the McHenry County sheriff's department received a call from an unidentified male subject reporting a home invasion at 4320 Doty Road.¹ The call disconnected, so Buker attempted to reestablish contact. Buker's call went to voicemail with the message identifying the recipient as "Tim Smith." Shortly later, Buker received a call from an unidentified female who stated that she was at 4320 Doty Road. In response to the 911 calls, Deputy Joshua Singer was dispatched to the address.

¶ 6 When Singer arrived, he observed a male subject, later identified as defendant, on his

¹ Buker actually testified that the calls were received on May 29, 2011. However, it is undisputed that the events in question occurred on the evening of May 28, 2011.

knees outside of the residence. Singer also observed a female subject pacing near defendant. Both defendant and the female subject were crying. Defendant advised Singer that there was a subject inside the house whom he had shot while trying to protect his wife. Singer located a gun a couple of feet away from defendant. Once other officers arrived, defendant and the female subject were separated and secured.

¶ 7 Deputy Daniel Kramer testified that after securing defendant and the female subject, he and two other officers entered the residence. Kramer observed a man lying on the floor. The man was positioned on his right side, face down, with his head away from the door of the home. The paramedics arrived at about 11:16 p.m. One of the paramedics, Nathaniel Burns, removed the man's shirt to assess the wound. Burns observed an entry wound underneath the man's right shoulder, but he could not locate an exit wound. Burns testified that although the man was not conscious and his breathing was shallow, he had a palpable pulse, which meant that his heart was beating. Burns applied a trauma dressing to the wound to control the bleeding. After assisting the man with ventilation, the man was secured to a backboard, placed in an ambulance, and transported to Woodstock Hospital. Kramer followed the ambulance to the hospital. Shortly after 3 a.m., Kramer was called into an operating room where the man was undergoing surgery. Kramer was given a container with a bullet that had been surgically removed from the man.

¶ 8 Dr. Mark Witeck, a forensic pathologist, performed an autopsy on Milliman. It was Witeck's opinion that, to a reasonable degree of medical certainty, Milliman died from "a gunshot wound to the back and chest." Witeck explained that the bullet entered the upper right side of Milliman's back. It then travelled upward, piercing the shoulder blade and a rib, before lodging in Milliman's neck where it struck the carotid artery. Witeck did not find any injuries to Milliman's hands, but noted that Milliman's blood-alcohol level was 0.121 when he was

admitted to the hospital.

¶ 9 Sergeant Robb Tadelman, Deputy Andrew Thomas, and Detective Mike Quick also responded to the scene of the shooting. Tadelman observed a pickup truck parked at an angle on the driveway near the home's front door. Tadelman testified that the truck was still running, but it was unoccupied. Inside the home, Tadelman observed a blood-like substance on the wall in the foyer. Tadelman thought the blood on the wall looked like it had been transferred from a piece of clothing or a person brushing against the wall. The transfer appeared to be going downward at an angle.

¶ 10 Thomas testified that a damaged cell phone and a cell phone battery were found on the left, front portion of the driveway. Thomas also testified that ammunition was found in two locations in the home, including on a table off the rear porch. Further, Thomas observed a red, congealed-like substance in the front hallway of the home, a \$50 bill in a bathroom next to the foyer, condoms in the rear bedroom, and a computer and overturned dryer in the mudroom.

¶ 11 Quick testified that when he arrived at the residence, he observed a white shirt and a blue shirt both of which were covered in a brownish-red substance. Quick stated that the blue shirt also had "[a] hole from some kind of impact." Quick collected a black Motorola cell phone outside the east side of the residence. In the mudroom, Quick observed a computer with a dryer on top of it. Quick also collected a revolver, blood samples, a \$50 bill, and condom wrappers from the scene. Quick stated that the weapon was loaded until he was able to empty it at the sheriff's office. Quick could not recall how many bullets were in the revolver before he removed them. Quick testified that he briefly spoke with defendant at the residence and defendant admitted that he used the gun found at the scene to shoot Milliman. Quick further testified that no one except Milliman was bleeding at the scene.

¶ 12 Quick also testified that he had been trained in computer and cell phone forensics by the National White Collar Crime Center. Quick performed a forensics analysis of the computer found at 4320 Doty Road and discovered more than 1,000 pages of Yahoo Instant Messaging data on the hard drive. Quick explained that Yahoo Instant Messaging is similar to text messaging on a cell phone, but is done on the Yahoo network. The data collected identifies when a message is sent, who sent the message, who received the message, and the content of the message. The logs on the computer found at the scene showed a conversation between a user named “tksmith8482” and a user named “kmbigtoe00.” Quick testified that the user name “tksmith8482” was associated with the computer found at 4320 Doty Road. The conversation began at about 9:03 p.m. on May 28, 2011, and ended at about 9:44 p.m. on the same date.

¶ 13 Karen Pratscher testified that she was Milliman’s fiancée. Pratscher stated that Milliman’s e-mail address was Kmbigtoe00@yahoo.com. Pratscher last saw Milliman alive at about 9 p.m. on May 28, 2011.

¶ 14 Detective Travis McDonald testified that he and his partner interviewed defendant and his wife, Kimberly Smith (Smith). McDonald did not observe any injuries to Smith and saw only “small cuts” on defendant’s arm. McDonald testified that prior to interviewing defendant, he was read his *Miranda* rights. McDonald authenticated People’s exhibits 92 through 95 as video recordings of the custodial interview with defendant and People’s exhibits 89 and 90 as the same interview with long periods of inactivity redacted. The recordings of the custodial interview were admitted into evidence, and the redacted version of the interview was played for the jury in open court.

¶ 15 In the video, defendant initially told the detectives that he was on his way home when he received a call from his wife. According to defendant, his wife was “freaking out” because

someone was in the house. Defendant called 911, but hung up when he reached the residence. Defendant exited his truck, taking with him a gun which he kept in his vehicle. As defendant approached the front door, he heard his wife screaming for help. Defendant tried to enter through the front door of the house, but it was blocked, so he went to the back door. Defendant stated that the back door opens onto a porch where he and his wife store items they do not want. Defendant noted, for instance, that there was “a busted computer” and “a busted dryer” on the back porch. Defendant stated that upon gaining entry, he shoved the dryer out of the way and ran to the hallway near the front door. There, defendant saw a man with his wife. Defendant observed the man strike his wife. Defendant stated that the man was pushing his wife against the door and had one hand on her shoulder. Defendant did not recognize the man, but described him as a “big gentleman.”

¶ 16 Defendant told the man he had a gun. Defendant then instructed the man to get off his wife and warned that he would shoot if the man did not leave the premises. The man did not budge, so defendant tried pulling on the man’s shirt. Defendant stated that the gun was loaded and the hammer was cocked back when he placed the weapon against the man’s back. Defendant further stated that “[his] finger hit the trigger and [the gun] went off.” After the shooting, Smith stated, “You shot him.” According to defendant, he responded, “Yeah, I shot this guy. I didn’t know who the f*** he is.” Nevertheless, defendant also told the detectives that “[t]his is not something [he] would ever f***ing do” and that “never in [his] life *** would [he] intentionally shoot somebody.” Defendant stated that he wanted to scare the man but the gun has “a really hairy, hairy trigger.” Defendant believed that the man was just a “random” guy who showed up at his house. Defendant felt what he did was “justified” and that he “did what [he] had to do to protect his wife.”

¶ 17 Following a break in the interview, defendant stated that not everything he previously told the detectives was true. Defendant admitted that he was at home the entire evening. He explained that he and his wife invited Milliman over in response to an advertisement the couple placed on Craigslist. The purpose of the advertisement was to find someone to have sex with his wife in exchange for money. Defendant testified that because “people don’t like coming over if the husband is around,” he stays in another room and the client does not know he is in the house. Defendant was not aware what happened between Milliman and his wife prior to the shooting. Defendant stated that he responded when he heard his wife scream. When defendant approached, he observed Milliman “all over” his wife. Milliman’s hands “were on the freaking door, not letting her move, not letting her do anything.” Defendant stated that he told Milliman to “[g]et the f*** off [his] wife,” but Milliman did not respond. Defendant added that he gave Milliman “fair notice” and announced that he had a gun, but Milliman would not move or leave. Defendant stated that he had the gun on Milliman’s back as he tried to pull him off his wife. He acknowledged, however, that when he “pulled the trigger,” Milliman was not physically interacting with his wife. Defendant stated that after the shooting, his wife was “freaking out.” He suggested that they stage a break in. To that end, defendant punched out the glass in one door, tore the computer out of the wall, and tipped over the dryer on the back porch. He then got into his vehicle, drove down the street, and called 911. Defendant admitted that he did not mention the shooting to the 911 dispatcher.

¶ 18 Defendant told the detectives that his actions were “justified.” He explained that “[his] wife’s life was in jeopardy,” that he “made a judgment call,” that he shot the man because the man was hurting his wife, and he “did what [he] had to do” to defend her. He later stated that he “didn’t mean to shoot” but that he was “defending his wife.” Defendant also reiterated that the

shooting was “justified” because Milliman was attacking his wife. Defendant admitted that the gun was in the house the entire time and acknowledged that he ripped the computer “out of the wall” after he shot the man. He stated that he acted in this manner because he was embarrassed about how he treats his wife. Defendant denied wanting to shoot Milliman again after discovering he was still breathing. Moreover, he told the detectives that although his wife suggested taking the body somewhere else before calling the police, he declined to do so.

¶ 19 Smith testified that she and defendant had been married for about one year as of May 28, 2011. Smith and defendant resided in a farmhouse at 4320 Doty Road. Smith testified that at the time of the shooting she was two months pregnant. Smith described her relationship with defendant as “poor,” noting that the couple fought often. Smith further testified that she and defendant were into “swinging” and that she had been “sleeping with men for money.” Smith estimated that she had slept with 50 men during the six month period prior to May 28, 2011. Smith testified that she and defendant advertised her services through postings on sites such as Craigslist. According to Smith, defendant was typically the one posting the advertisements, interacting with potential clients, and scheduling contacts. Prospective clients would contact defendant through an e-mail account at “Tksmith8284.” Smith acknowledged that defendant posted an advertisement with her picture on May 28, 2011.

¶ 20 Smith testified that on the evening of May 28, 2011, she and defendant had planned to attend a bonfire at a friend’s house. The couple intended to leave between 10:30 and 11 p.m. While waiting, Smith took a shower and had “a few drinks.” Smith felt that she was under the influence of alcohol, but stated that she did not have any trouble standing or talking. During this time, defendant was sitting at the computer.

¶ 21 Smith testified that at about 10 p.m., the doorbell rang. Smith asked defendant why

someone was at the house. Defendant responded that he did not know that anybody would actually show up. He instructed Smith to “just get it done” so they could go out. Smith answered the door in a shirt and underwear. The man at the door asked Smith whether he was at the right place. Smith responded in the affirmative and escorted the man to a room at the back of the house. The man took off his pants while Smith removed her underwear. Smith then “proceeded to try to have sex” with the man. After a short time, Smith stopped, explaining that she did not feel comfortable and she “didn’t want to continue doing what [she had been] doing anymore.” By that, Smith explained that she did not want to continue sleeping with men for money because she was pregnant.

¶ 22 After Smith stopped, the man got dressed without saying a word. Smith also got dressed. Smith then walked to the front room of the house, where the man appeared a minute later. The man followed Smith to the front door and asked to use the bathroom, which was located off the foyer. Smith testified that although the man appeared “[a]ggravated, angry, [and] frustrated” when he entered the front room, he did not complain or argue about what had occurred and he did not do anything to make her believe that he was a threat. Smith testified that upon leaving the bathroom, the man handed her money “to continue *** what [she] had left and he wanted to finish.” Smith returned the money and asked the man to leave. At the time of the conversation, Smith had the front door open and she was standing in the door frame. According to Smith, the man then grabbed her left arm and tried to pull her back into the house. Smith stated that the man grabbed her with enough force to pull her a few steps forward. Smith tried to push the man away. In response, the man slapped Smith’s face with the back of his hand. Smith testified that the slap “wasn’t very hard at all.” She asked the man to get his hands off her. At that point, she saw defendant come around the corner. Defendant told the man to take his hands off Smith. The

gun then discharged, and the man fell to the ground. Smith testified that when the gun went off, she was standing at the front door, facing towards the interior of the house, while the man was standing in front of the bathroom door facing the outside. Smith testified that defendant did not wait to determine if the man was going to comply with his request before the gun discharged. Smith further testified that there was no attempt to resolve the situation without violence.

¶ 23 Smith testified that after the gun discharged, defendant did not attempt to render any first aid. Instead, he knelt down, told her that the gun “just went off,” and stated that he did not mean to shoot. Defendant then asked Smith to retrieve the man’s phone out of his truck. After retrieving the phone, Smith did not re-enter the house. Defendant, however, went inside, after which, Smith heard “things smashing, windows breaking, things being thrown.” Smith also testified that prior to the arrival of the police, defendant asked her to make it look like someone broke into the home while they were away. Smith noted that defendant’s truck was running in the front yard when the police arrived, but it had not been running at the time of the shooting.

¶ 24 Smith testified that she was not entirely truthful to the police when they interviewed her. She stated that she was scared of the consequences that would follow, including the possibility of jail. Smith noted that she was charged with four felonies as a result of the shooting, three of which remained pending at the time of her testimony. Smith testified that the State offered her a negotiated plea whereby she would plead guilty to one of the felonies in exchange for a sentence to be imposed by a judge. Smith had yet to decide whether to accept the State’s offer. She stated that no other offers have been made in exchange for her testimony except that she was granted “use immunity” for her testimony, which meant that the State was “essentially forcing [her] to testify.”

¶ 25 On cross-examination, Smith acknowledged telling police during her interview that

Milliman had been “quite aggressive” when he entered the house. She also admitted that she told police that Milliman slapped her twice on the night of the shooting.

¶ 26 Following Smith’s testimony, the State rested. Defendant moved for a directed verdict, which the trial court denied. The defense then rested. When the court reconvened the next day, the court noted, for the record, that it held an informal jury-instruction conference the previous day. The parties then discussed the jury instructions on the record.

¶ 27 Relevant here, defendant proposed a series of instructions on the offense of involuntary manslaughter. Defense counsel argued that the instructions were appropriate because defendant did not intend to shoot as evidenced by defendant’s custodial interview in which he stated that the gun “just went off.” Defense counsel also asserted that Smith’s testimony supported defendant’s claim that the gun “just went off.” The State responded that the proposed instructions on involuntary manslaughter were inconsistent with defendant’s theory that he was defending his wife. The State argued that defendant “can’t have it both ways” in that defendant’s actions were either intentional or they were reckless. The court pointed out that the defense of self defense does not, *per se*, prohibit instructing the jury on involuntary manslaughter if the evidence presented would justify it. Nevertheless, the court determined that defendant repeatedly stated in his interview with the police that his acts were “justified.” As a result, the court denied defendant’s request to instruct the jury on involuntary manslaughter. In addition to first-degree murder, however, the jury was also instructed on the use of force in defense of a person and second-degree murder.

¶ 28 Following closing arguments, the case was tendered to the jury. After about five-and-a-half hours of deliberations, the jury returned a verdict of guilty of first-degree murder. The jury also signed a special interrogatory finding that defendant personally discharged a firearm that

caused Milliman's death. On March 26, 2013, defendant filed a motion for a new trial. In his motion, defendant argued, *inter alia*, that the trial court erred in rejecting his tendered jury instructions regarding involuntary manslaughter. On April 30, 2013, defendant supplemented his motion for a new trial with a motion for judgment notwithstanding the verdict. On May 6, 2013, following a hearing, the trial court denied both of defendant's post-trial motions.

¶ 29 Defendant's sentencing hearing was held on May 22, 2013. Following the hearing the trial court sentenced defendant to a term of 50 years' imprisonment, consisting of a 25-year sentence for first-degree murder (730 ILCS 5/5-4.5-20(a) (West 2010)) plus an add-on of 25 years based on the jury's finding that defendant personally discharged a firearm that caused Milliman's death (see 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). Following the denial of his motion to reconsider sentence, defendant filed a notice of appeal.

¶ 30

II. ANALYSIS

¶ 31 Defendant's sole contention on appeal is that the trial court erred in refusing to instruct the jury on involuntary manslaughter. The principal difference between first-degree murder and involuntary manslaughter is the mental state that accompanies the conduct resulting in the victim's death. *People v. DiVincenzo*, 183 Ill. 2d 239, 249 (1998). As charged in this case, a person commits first-degree murder if he kills another without lawful justification and, in performing the acts which cause the death, he knows that the acts created a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a)(2) (West 2010). A person commits involuntary manslaughter if he unintentionally kills someone without lawful justification, the acts that caused the death (whether lawful or unlawful) were likely to cause death or great bodily harm, and the individual performed those acts recklessly. 720 ILCS 5/9-3(a) (West 2010). Thus, the mental state for involuntary manslaughter is recklessness whereas the mental state for first-degree

murder is knowledge.

¶ 32 A person has “knowledge” where he or she is consciously aware that his or her conduct is practically certain to cause a particular result. 720 ILCS 5/4-5(b) (West 2010). “Recklessness,” in contrast, is defined as a conscious disregard of the substantial and unjustifiable risk that a result will follow a person’s actions “and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2010). As stated by our supreme court, a person acts recklessly when he is aware that his acts might result in death or great bodily harm, although the result is not substantially certain to occur. *DiVincenzo*, 183 Ill. 2d at 250. Reckless conduct involves a lesser degree of risk than conduct that creates a strong probability of death or great bodily harm. *DiVincenzo*, 183 Ill. 2d at 250.

¶ 33 Whether an involuntary manslaughter instruction is warranted depends on the facts and circumstances of each case. *DiVincenzo*, 183 Ill. 2d at 251. A defendant is entitled to an involuntary manslaughter instruction if there is “slight evidence” to support his theory of the case. *People v. Trotter*, 178 Ill. App. 3d 292, 298 (1988); see also *DiVincenzo*, 183 Ill. 2d at 249 (noting that an instruction on a lesser offense is justified if there is “some evidence” to support giving the instruction); *People v. Jones*, 175 Ill. 2d 126, 132 (1997) (“Very slight evidence upon a given theory of a case will justify the giving of an instruction.”). However, no such instruction should be given if there is no evidence that would reduce the murder charge to manslaughter. *Trotter*, 178 Ill. App. 3d at 298. Although not dispositive, our supreme court has noted that the following factors may suggest whether a defendant acted recklessly and whether an involuntary manslaughter instruction is appropriate: (1) the disparity in size and strength between the defendant and the victim; (2) the brutality and duration of the altercation; (3) the severity of the

victim's injuries; and (4) whether a defendant used his bare fists or a weapon such as a gun or a knife. *DiVincenzo*, 183 Ill. 2d at 250-51. In addition, an involuntary manslaughter instruction is generally not warranted where the nature of the killing, shown by either multiple wounds or the victim's defenselessness, shows that the defendant did not act recklessly. *DiVincenzo*, 183 Ill. 2d at 251. The decision to give a particular jury instruction rests within the sound discretion of the trial court. *People v. Jones*, 219 Ill. 2d 1, 31 (2006). Where there is evidentiary support for an involuntary manslaughter instruction, the failure to give the instruction constitutes an abuse of discretion. *DiVincenzo*, 183 Ill. 2d at 249.

¶ 34 Defendant contends that he was entitled to a jury instruction on involuntary manslaughter because the State presented direct evidence that he acted recklessly. In support of this claim, defendant relies on statements he made during the custodial interview conducted shortly after the shooting. According to defendant, during the interview, he “describes the reckless action he took after Milliman abused and scuffled with his wife.” Defendant asserts that during the interview he told the detectives that the gun “just went off,” that he did not intend to shoot Milliman, and that shooting someone is “not something [he] would ‘ever....do.’ ” Defendant further notes that he told the detectives that he wanted to scare Milliman to prevent him from harming his wife, but that he would “never intentionally shoot somebody.” Defendant also contends that, even in the absence of any direct evidence that he acted recklessly, the circumstantial evidence presented at his trial supported an involuntary manslaughter instruction. In support of this claim, defendant cites the *DiVincenzo* factors, emphasizing that there was a disparity in size between him and Milliman and that only a single gunshot was fired. The State responds that the trial court properly denied defendant's request for an involuntary manslaughter instruction because the circumstances surrounding the shooting, coupled with defendant's repeated statements to the

police that his acts were “justified,” do not show that he acted with a reckless state of mind.

¶ 35 We agree with defendant that the jury should have been instructed on involuntary manslaughter as there was some evidence to support instructing the jury on that theory. Significantly, the record contains evidence from defendant’s interview with the police that he did not intend to shoot Milliman. During the interview, defendant related that, upon hearing his wife scream, he observed Milliman “all over” his wife and warned him to leave her alone. Milliman did not respond, so defendant announced that he had a gun. Again, Milliman did not react to defendant’s warning, so defendant approached Milliman and positioned the gun against Milliman’s back as he tried to remove Milliman from his wife. Defendant’s finger then “hit the trigger and [the gun] went off.” Defendant told police that although he wanted to scare Milliman, he would never intentionally shoot someone. The record also contains testimony from defendant’s wife that, immediately after the gun discharged, defendant told her that the gun “just went off” and that he did not mean to shoot. This evidence, if believed by the jury, could reasonably be considered to constitute reckless conduct resulting in Milliman’s death. Accordingly, we hold that the trial court abused its discretion in rejecting defendant’s request for an instruction on involuntary manslaughter.

¶ 36 The State notes that Illinois courts have held that when a defendant intends to fire a gun, points it in the general direction of the victim, and shoots, his conduct will not be considered merely reckless, and will not support an involuntary manslaughter instruction, even if he has made statements that he did not intend to kill anyone. See *People v. Cannon*, 42 Ill. 2d 162, 166 (1971); *People v. Jackson*, 372 Ill. App. 3d 605, 613-14 (2007). As noted above, however, this case is distinguishable because, in this case, there was evidence that defendant did *not* intend to discharge the gun. Cf. *Cannon*, 42 Ill. 2d at 166 (holding that the defendant’s testimony that he

did not intend to kill anyone was insufficient to support an involuntary manslaughter instruction where the defendant intended to fire the gun and he pointed the weapon in the victim's general direction); *Jackson*, 372 Ill. App. 3d at 614 (holding that involuntary-manslaughter was properly rejected where the defendant intentionally fired the weapon several times, in the general direction of the victim, striking the victim more than once).

¶ 37 Prior to concluding, we recognize that there is sufficient evidence in this case for a jury to conclude that other evidence presented at the trial, including remarks defendant made during the custodial interview that his actions were “justified,” could conceivably be construed to support a finding that defendant acted knowingly and thereby support a first-degree murder conviction. However, because there is also at least some evidence that defendant acted recklessly, the jury should have had the option to find him guilty of involuntary manslaughter. See *People v. Whitters*, 146 Ill. 2d 437, 441 (1992) (holding that a determination as to whether the defendant's conduct constituted recklessness was a factual inquiry for the jury). Thus, we reverse defendant's conviction of first-degree murder and remand for a new trial. Because we are reversing and remanding for a new trial, we must also address the question of whether the evidence admitted at trial was sufficient to prove that defendant was guilty beyond a reasonable doubt. See *People v. Ward*, 2011 IL 108690, ¶ 50. When we consider all of the evidence presented at trial, we find that the State presented sufficient evidence of defendant's guilt such that a remand will not violate defendant's constitutional right against double jeopardy. See *People v. Taylor*, 76 Ill. 2d 289, 309-10 (1979). We emphasize, however, that this conclusion does not imply a determination of defendant's guilt or innocence that would be binding on retrial.

¶ 38

III. CONCLUSION

¶ 39 For the reasons set forth above, we reverse the judgment of the circuit court of McHenry County and remand the cause for a new trial.

¶ 40 Reversed; cause remanded for a new trial.