NOTICE
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2011 IL App (4th) 090936-U

Filed 7/15/11

NO. 4-09-0936

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RANDALL C. HUFFSTUTLER,	)	No. 08CF84
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err (1) in refusing defendant's reckless-conduct jury instruction because (a) a death occurred and (b) the jury could not have rationally acquitted defendant of involuntary manslaughter before convicting him of reckless conduct and (2) in sentencing defendant to the maximum five-year term of imprisonment for involuntary manslaughter where the sentence was (a) within the permissible sentencing range and (b) neither grossly at variance with the purpose of the law nor disproportionate to the nature of defendant's offense.

¶ 2 In January 2008, the State charged defendant, Randall C. Huffstutler, with first degree murder (720 ILCS 5/9–1(a)(2) (West 2008)). In September 2009, a jury convicted him of involuntary manslaughter (720 ILCS 5/9–3(a) (West 2008)). In December 2009, the trial court sentenced him to five years' imprisonment.

¶ 3 Defendant appeals, arguing the trial court erred in (1) failing to instruct the jury on the offense of reckless conduct and (2) imposing an excessive five-year prison sentence on him.

We affirm.

¶ 4 I. BACKGROUND

¶ 5 On January 11, 2008, defendant and the victim, Ronnie Randolph, began drinking beer and shots of alcohol at approximately 3:30 p.m. They continued drinking at various bars for approximately six hours. Defendant testified he was craving crack cocaine so he and Randolph left the bar to get money to buy drugs.

¶ 6 Susan Steenbergen, Randolph's friend, testified she was at a bar at approximately 9 p.m. on January 11, 2008. She testified defendant and Randolph were also at the bar drinking beer. She and her boyfriend, Joseph Cannon, sat with defendant and Randolph and drank beer for what she guessed was an hour. Steenbergen testified she heard defendant and Randolph arguing because defendant was ready to leave the bar but Randolph was not. Randolph wanted to stay and finish his beer, but defendant insisted on leaving. She testified defendant appeared aggravated and was anxious to leave.

¶ 7 Defendant testified he and Randolph returned to defendant's residence around 9:30 p.m. Defendant's grandmother, with whom he resided, was not home at the time. Defendant showed Randolph an unloaded gun. Defendant testified Randolph asked to see the gun and the ammunition clip, both of which defendant handed him. Defendant testified he told Randolph he was going into his grandmother's room to get some money from the safe. Defendant thought he had about $300 of his own money in the safe. When defendant went into the bedroom, Randolph went into the kitchen.

¶ 8 Following an unsuccessful attempt to gain entry to the safe, defendant went into the kitchen to ask Randolph for help. Randolph loaded the clip into the gun and went to help

defendant attempt to open the safe. Defendant held the gun while Randolph unsuccessfully attempted to open the safe with the combination provided to him by defendant. According to defendant's testimony, Randolph got up and took back the gun. While defendant was again attempting to open the safe, Randolph was standing next to him playing with the gun. Defendant testified Randolph "was putting [the gun] up to his mouth." Defendant testified Randolph was making him nervous so he asked Randolph for the gun. Randolph told defendant to "come get it." According to defendant's testimony, Randolph placed the gun in his mouth as defendant tried to grab it. Defendant testified Randolph "said for me to come get the gun. So I reached up to get the gun[,] and it went off." Defendant ran next door for help but did not call an ambulance or check to see if Randolph was alive.

¶ 9 Angie Coile, the wife of Daniel Coile, a sergeant with the Champaign County sheriff's office, testified defendant came to their house at approximately 10 p.m. Defendant told her he needed her husband's help because he had "shot someone."

¶ 10 Sergeant Daniel Coile testified defendant told him he needed help because he had just shot someone and did not know what to do. When Coile asked defendant whom he had shot, defendant replied he had shot his best friend, Ronnie Randolph. According to Coile's testimony defendant told him he showed Randolph the gun and Randolph "took the gun from him, put the magazine in it[,] and cocked it." Defendant told Randolph to give him back the gun, but Randolph refused. Defendant then grabbed for the gun, they struggled, the gun discharged and shot Randolph in the head. Coile testified defendant told him it was an accident.

¶ 11 When Jimmy D. Reynolds, a police officer for the Village of Fisher, arrived at the scene, he discovered Randolph's body on the floor. Reynolds testified he checked Randolph's

neck for a pulse but did not detect one. Reynolds testified when he first saw Randolph's body he observed both of Randolph's hands inside his coat pockets. Reynolds testified he found a silver semiautomatic handgun on the bed next to Randolph's body.

¶ 12 John Denton, a forensic pathologist for the McLean County Coroner's Office, testified he conducted an autopsy on Randolph's body on January 12, 2009, and determined the cause of death was "a gunshot wound of the mouth." Denton testified the gun was inside Randolph's mouth with the muzzle of the barrel past Randolph's teeth and close to the back of his throat when it went off. While defendant denied pulling the trigger, he testified he grabbed the gun with his finger on the trigger and his hand on the grip of the gun.

¶ 13 Carolyn Kersting, a firearms examiner for the Illinois State Police, testified the gun did not have a "hair trigger" and was not likely to accidently fire.

¶ 14 During the jury instruction conference, defendant tendered an instruction on the offense of reckless conduct, which the trial court denied. Instead, the court found the proper lesser included offense to be involuntary manslaughter. Thereafter, the jury was instructed on first degree murder and involuntary manslaughter.

¶ 15 On September 18, 2009, the jury convicted defendant of involuntary manslaughter.

¶ 16 On October 16, 2009, defendant filed a posttrial motion arguing, *inter alia*, the trial court erred in denying his reckless-conduct jury instruction.

¶ 17 On December 3, 2009, the trial court denied defendant's posttrial motion and sentenced defendant as stated.

¶ 18 On December 7, 2009, defendant filed a motion to reconsider sentence, which the

trial court denied.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues the trial court erred in (1) refusing his reckless-conduct jury instruction and (2) imposing an excessive five-year prison sentence on him.

¶ 22 The State argues an instruction on reckless conduct was unnecessary because the jury could not have rationally acquitted defendant of involuntary manslaughter before convicting him of reckless conduct.

¶ 23 A. Jury Instruction

¶ 24 Defendant argues the trial court abused its discretion by refusing to instruct the jury on the offense of reckless conduct. We disagree.

¶ 25 The decision to allow a jury instruction is within the province of a trial court and will not be disturbed absent an abuse of the trial court's discretion. *People v. Tijerina*, 381 Ill. App. 3d 1024, 1030, 886 N.E.2d 1090, 1097 (2008). Where some credible evidence exists to support an instruction for a lesser offense, the trial court abuses its discretion when it fails to give that instruction. *Tijerina*, 381 Ill. App. 3d at 1030, 886 N.E.2d at 1097.

¶ 26 A trial court's refusal to give a jury instruction does not require reversal where the evidence is such the jury could not reasonably have acquitted the defendant. *People v. Jones*, 81 Ill. 2d 1, 9, 405 N.E.2d 343, 346 (1979); see also *People v. McClellan*, 232 Ill. App. 3d 990, 1008, 600 N.E.2d 407, 420-21 (1992) (finding the trial court's denial of a theft instruction in an armed-robbery case did not prejudice defendant because such instruction would not have affected the outcome); *People v. Patel*, 366 Ill. App. 3d 255, 277, 851 N.E.2d 747, 766 (2006) (evidence

regarding the greater offense was so strong any failure to instruct on the lesser offense was not prejudicial).

¶ 27 In this case, the trial court refused defendant's reckless-conduct instruction. Specifically, the court found based on *People v. Pumphrey*, 115 Ill. App. 3d 1031, 451 N.E.2d 961 (1983), and *People v. Mikel*, 73 Ill. App. 3d 16, 391 N.E.2d 558 (1975), in cases where death occurs, an instruction on reckless conduct is improper. Instead, the court found the proper lesser included offense of the charged offense (first degree murder) to be involuntary manslaughter. The court instructed the jury on both first degree murder and involuntary manslaughter and the jury convicted defendant of involuntary manslaughter.

¶ 28 In *Pumphrey*, the defendant shoved a loaded shotgun into the side of the victim. The defendant testified he was attempting to scare him with the gun. *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963. However, the gun discharged, killing the victim. *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963. The State charged the defendant with two counts of murder and one count of voluntary manslaughter. *Pumphrey*, 115 Ill. App. 3d at 1032, 451 N.E.2d at 962. Defendant tendered jury instructions on (1) involuntary manslaughter, arguing it was a lesser included offense of the charged offense (voluntary manslaughter) and (2) reckless conduct, arguing it was a lesser included offense of involuntary manslaughter. *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963. The trial court gave the involuntary-manslaughter instruction but not the reckless-conduct instruction. *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963. The jury convicted the defendant of involuntary manslaughter. *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963.

¶ 29 On appeal, the defendant argued the trial court erred by refusing to give the

reckless-conduct instruction. *Pumphrey*, 115 Ill. App. 3d at 1032, 451 N.E.2d at 963. The appellate court affirmed the trial court, finding "[i]n cases where death occurs, an instruction on reckless conduct is simply improper." *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963. The court reasoned "[r]eckless conduct is directed towards the infliction of bodily harm while involuntary manslaughter is concerned with the death of the victim." *Pumphrey*, 115 Ill. App. 3d at 1033, 451 N.E.2d at 963 (citing *Mikel*, 73 Ill. App. 3d at 20-21, 391 N.E.2d at 562 (Fourth District finding "[i]f a person's conduct causes the death of another, reckless conduct is not an appropriate charge.")).

¶ 30 In this case, Randolph died as a result of acts by defendant likely to cause Randolph's death. Defendant testified he gave Randolph the gun and ammunition and knew Randolph had loaded the gun. According to defendant's testimony, Randolph put the gun in his mouth, defendant grabbed the gun, and the gun went off and killed Randolph. Defendant testified when he grabbed the gun, his finger was on the trigger and his hand was on the grip. While defendant denied pulling the trigger, Randolph's body was found by police *with his hands in his pockets*. Further, the forensic pathologist testified the gun discharged while it was inside Randolph's mouth, close to the back of his throat, with the muzzle of the barrel past his teeth.

¶ 31 A person commits the offense of involuntary manslaughter when he unintentionally *causes the death* of an individual by acts that are performed recklessly and are likely to cause death or great bodily harm to another. 720 ILCS 5/9–3(a) (West 2008). A person commits the offense of reckless conduct when he performs recklessly the acts that *cause great bodily harm* or permanent disability or disfigurement to another. 720 ILCS 5/12–5(a-5) (West 2008). The sum of defendant's reckless actions in this case was not bodily harm. Instead, as in

Pumphrey, a death occurred. Because a death occurred, the jury could not have rationally acquitted defendant of involuntary manslaughter while at the same time convicting him of the offense of reckless conduct. Thus, a reckless-conduct instruction was inappropriate and the trial court did not abuse its discretion in refusing to give it.

¶ 32 B. Defendant's Sentence

¶ 33 Defendant argues his five-year sentence was excessive in light of his relatively minor criminal history. Specifically, defendant contends the trial court abused its discretion by imposing the maximum sentence for his offense. We disagree.

¶ 34 Trial courts have broad discretion in making sentencing decisions, and those decisions are afforded great discretion. *People v. Rogers*, 364 Ill. App. 3d 229, 247, 846 N.E.2d 184, 199 (2006). The trial court's judgment will not be disturbed absent an abuse of that discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74, 659 N.E.2d 1306, 1308 (1995). A sentence within statutory limits will be deemed an abuse of discretion only if it is "grossly at variance with the spirit and purpose of the law, or where it is manifestly disproportionate to the nature of the offense." *Rogers*, 364 Ill. App. 3d at 247, 846 N.E.2d at 199.

¶ 35 Involuntary manslaughter is a Class 3 felony. 720 ILCS 5/9–3(a), (d)(1) (West 2008). A sentence of imprisonment for a Class 3 felony shall be for a term not less than two and not more than five years. 730 ILCS 5/5–8–1(a)(6) (West 2008). Thus, defendant was eligible for the statutory maximum of five years in prison for the conviction. We will not disturb a sentence within the permissible range absent an abuse of discretion.

¶ 36 Defendant maintains the trial court failed to adequately consider his rehabilitative potential. Although the sentencing court is required to consider defendant's rehabilitative

potential, that factor is not entitled to greater weight than the seriousness of the offense. *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). In this case, the court specifically commented on defendant's rehabilitative potential at defendant's sentencing hearing, stating the following:

> "I have come to regrettably determine that [defendant] outside an institutional setting is very unlikely to be rehabilitated by a drug treatment program and is in all likelihood going to return to that conduct which he has exhibited over the course of the last 20 years; addiction followed by some sort of ugly episode or episodes and then some treatment and then perhaps a period of sobriety followed by relapse and the whole cycle starts over again."

Further, the court recognized defendant's desire to be rehabilitated by treatment and counseling. However, the court also noted that since the offense was committed defendant had not taken any steps to begin treatment.

¶ 37 Defendant also contends the trial court did not give sufficient weight to the factors in mitigation. However, when mitigating factors are presented to the trial court, there is a presumption it considered them. *People v. Payne*, 294 Ill. App. 3d 254, 260, 689 N.E.2d 631, 635 (1998). Moreover, existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed. *Payne*, 294 Ill App. 3d at 260, 689 N.E.2d at 635.

¶ 38 In mitigation, the trial court cited defendant's strong family support system and recognized imprisonment would place a hardship on his elderly grandmother. The court specifically commented "apparently when not intoxicated or not under the influence of drugs[,

defendant] can be a loving family member." The court also noted defendant had completed high school and was employed for extended periods of time.

¶ 39 In aggravation, the trial court cited defendant's prior criminal convictions. Defendant's presentence investigation report showed he had been convicted of DUI (1990, 1994), illegal transportation of alcohol (1991), resisting a peace officer (1992), domestic battery (1995), and battery (2001). The court characterized defendant's offenses as relatively minor and noted almost all of them involved drugs or alcohol. However, the court also noted the role drugs and alcohol played in the instant offense.

¶ 40 After considering the aggravating and mitigating factors, the trial court fashioned a five-year sentence, which is within the statutory sentencing range for the offense. This sentence is neither grossly at variance with the purpose of the law nor disproportionate to the nature of the offense. Thus, the court's sentence did not constitute an abuse of discretion.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its statutory assessment of $50 against defendant as costs of this appeal.

¶ 43 Affirmed.