

NOTICE

Decision filed 11/27/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120446-U

NO. 5-12-0446

IN THE

APPELLATE COURT OF ILLINOIS

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JOSEPHINE LOCKETT,

Defendant-Appellant.

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Appeal from the  
Circuit Court of  
St. Clair County.

No. 10-CF-712

Honorable  
Jan V. Fiss,  
Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.  
Justices Goldenhersh and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in dismissing the defendant's motion to reconsider her sentence, and where no meritorious claim on appeal can be presented, appointed counsel's motion to withdraw is granted.

¶ 2 The defendant, Josephine Lockett, appeals the circuit court's dismissal of her *pro se* motion to reconsider her sentence. The Office of the State Appellate Defender has been appointed to represent her. The State Appellate Defender has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). The defendant was given proper notice and was granted an extension of time to file briefs, objections, or any other documents supporting her appeal. She has not filed a response. We have considered the State Appellate Defender's motion to withdraw and the attached memorandum. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now

grant the State Appellate Defender's motion to withdraw as counsel, and we affirm the judgment of the circuit court of St. Clair County.

¶ 3

### BACKGROUND

¶ 4 The defendant was charged by indictment with involuntary manslaughter pursuant to section 9-3(a) of the Criminal Code of 1961 (the Code) (720 ILCS 5/9-3(a) (West 2010)). The indictment charged that pursuant to section 9-3(f) of the Code (720 ILCS 5/9-3(f) (West 2010)) the offense was a Class 2 felony because the victim was her husband, Louis Lockett, Sr. The indictment alleged that the defendant acted in a reckless manner when she hit the victim in the head with a .38-caliber revolver, causing the revolver to discharge a bullet, which then struck the victim in his chest and caused his death. The defendant pled not guilty to the charge.

¶ 5 At the jury trial, an audio recording of a 9-1-1 telephone call made by the defendant was played for the jury. In the recording, the defendant is heard telling the operator that her husband had been shot and that she had shot her husband. The audio recording was entered into evidence.

¶ 6 The State also entered into evidence a DVD, with audio, of an interview that an agent with the Illinois State Police conducted with the defendant on the night of the incident. The DVD was played for the jury. When asked to explain what had happened on the night of the incident, the defendant described having returned home after shopping, and the victim cursing and "fussing" at her for having been gone. He was seated at the table, and she was standing near the table. She felt that the victim lunged toward her and hit her. When the victim struck her and started to stand up, the defendant produced a small .38-caliber revolver from her pocket. She swung the gun, hit the victim in the head, and the gun fired. She did not know how or if she pulled the trigger. The defendant stated that she and the victim argued and fought about once a week during their 21-year marriage, but that they also took

care of each other through various ailments. At the conclusion of the interview, the defendant stated that she had not meant for the incident to happen. At that point in the video, the agent left the room for a few minutes. When he reentered, the defendant asked what happened to the victim, because the last time she saw the victim, he was lying on a stretcher. The agent told the defendant that the victim had died. Upon hearing this news, the defendant screamed and fell on the floor. She remained on the floor, crying, until her daughter came into the room and helped her get up.

¶ 7 The State entered another DVD into evidence, which showed a subsequent interview with the defendant. In this interview, the defendant shared the same information regarding the shopping trip and the victim's cursing and "fussing" upon her return home. She also shared that, while in the kitchen, the defendant jumped up from the kitchen table as if to hit her. She slapped the victim on the head with an open hand. He began to come at her again, so she pulled the gun from her pocket and swung her hand at his head, hitting him with the gun. It fired. She did not know if she pulled the trigger. After she hit him, he fell to the ground. She called 9-1-1 and tried to perform resuscitation according to the 9-1-1 operator's instructions. The defendant went on to state that she had never previously fired the gun. She stated that the victim had loaded it for her and had left empty chambers under and near the hammer so it would not fire accidentally if it were ever dropped.

¶ 8 One of the responding officers, Officer Christopher Parks of the East St. Louis police department, testified that when he arrived at the home, the defendant and two young girls were present, and the defendant was screaming, "I shot my husband!"

¶ 9 Denisha Lockett, the adopted daughter of the defendant and the victim, testified that on the day of the incident, she and her younger sister had gone shopping all day with the defendant. When they returned home that night, the victim and the defendant argued. The victim was sitting at the table and the defendant was standing nearby. The defendant and

the victim were wrestling around. She did not see the victim begin to stand up or see the defendant pull the gun from her pocket, but she did hear the gun go off. She saw the victim fall to the floor, and the defendant told her to go get her older sister. When Denisha returned, the defendant was attempting to resuscitate the victim.

¶ 10 The forensic pathologist who conducted the autopsy on the victim testified that the victim's death was the result of a gunshot wound to the chest.

¶ 11 By stipulation, the State submitted the results of the Illinois State Police firearms examiner. The results showed that the defendant's gun fired the bullets that were found on the scene.

¶ 12 During the conference on jury instructions, the State requested instructions defining the terms "reckless" and "family member," as well as instructions defining "self-defense" and "initial aggressor." Over defense counsel's objection, those instructions were given. The defendant requested that instructions defining "knowledge" and "intent" be given. The State objected, and the court granted the State's objection.

¶ 13 Following the jury trial, the defendant was found guilty of involuntary manslaughter of a family member. Defense counsel filed a motion for new trial arguing (1) that the court erred in (i) not giving the jury instructions defining "knowledge" and "intent," (ii) giving the State's jury instructions defining "reckless," "family member," and "initial aggressor," and (iii) not granting the defendant's motion for a directed verdict, and (2) that the length of time the jury deliberated was indicative of the fact that the State's jury instructions, coupled with the failure to give the defendant's jury instructions, misled the jury. The defendant also argued that the evidence was insufficient to prove her guilty beyond a reasonable doubt. The defendant's motion for new trial was denied, and the defendant was sentenced to three years of imprisonment plus two years of mandatory supervised release (MSR).

¶ 14 The defendant then wrote a letter to the circuit court. The circuit court characterized

the letter as a *pro se* motion to reduce the sentence. In the letter, the defendant asked the court to reduce her sentence such that she could serve the remainder of it at home, with electronic monitoring, because she had cancer and was not able to receive adequate medical care in prison. The court held a hearing on the motion, wherein the court appointed an attorney for the defendant. At a continued hearing on the motion, counsel argued that the defendant's sentence should be reduced such that she could be released from prison and serve the remainder of her sentence at home. The basis for this argument was the defendant's health. The court denied the motion. From that denial, the defendant appeals.

¶ 15

#### ANALYSIS

¶ 16 In its motion to withdraw as counsel on appeal, appointed counsel identifies three potential issues: (1) whether the defendant was proven guilty beyond a reasonable doubt, (2) whether the court erred in determining which instructions to give to the jury, and (3) whether the sentence constituted an abuse of discretion. We address each issue in turn.

¶ 17

#### Reasonable Doubt

¶ 18 In the motion for new trial, the defendant argued that the evidence was insufficient to establish her guilt beyond a reasonable doubt. The State must prove every element of the offense beyond a reasonable doubt. *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 27. On review, this court examines the evidence in the light most favorable to the State and will affirm the defendant's conviction if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Utsinger*, 2013 IL App (3d) 110536, ¶ 24. To prove involuntary manslaughter of a family member, the State has to prove that the defendant unintentionally killed an individual who was a family member without lawful justification by recklessly performing an act likely to cause death or great bodily harm. 720 ILCS 5/9-3(f) (West 2010). The evidence at trial, as well as the defendant's own admissions during the interviews, showed that the victim was the

defendant's husband. The testimony of the forensic pathologist showed that the victim died of a gunshot wound to the chest. During the interviews, which the jury saw on the DVDs, the defendant admitted that she pulled the gun from her pocket and hit the victim on the head, thereby releasing a bullet from the gun and shooting the victim in the chest. The officer who responded to the scene testified that the defendant was screaming that she had just shot her husband. Thus, the State clearly proved that the defendant killed her husband. With respect to whether she did so recklessly, brandishing a loaded firearm in the presence of others has been found to be reckless behavior. See *People v. Hoover*, 250 Ill. App. 3d 338, 351 (1993). Clearly, hitting the victim with a loaded gun was a reckless act.

¶ 19 Through the defendant's own admissions as well as through evidence presented at trial, the State proved the defendant guilty of the offense of involuntary manslaughter of a family member beyond a reasonable doubt.

¶ 20 Jury Instructions

¶ 21 The defendant also argued in her motion for new trial that the circuit court erred when it denied her requested jury instructions and erred when it gave certain instructions requested by the State.

¶ 22 We review the decision of whether to give a jury instruction for abuse of discretion. *People v. Jones*, 219 Ill. 2d 1, 31 (2006). The question we must consider is "whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). There must be some evidence in the record to justify giving a jury instruction. *People v. Snowden*, 2011 IL App (1st) 092117, ¶ 80. Instructions that are not supported by the law or the evidence should not be given. *People v. Rogers*, 2012 IL App (1st) 102031, ¶ 61.

¶ 23 Here, the State requested instructions defining the terms "reckless" and "family member." These were relevant instructions because "reckless" is the requisite mental state

for the crime of involuntary manslaughter, and "family member" enhanced the seriousness of the offense pursuant to section 9-3(f) of the Code (720 ILCS 5/9-3(f) (West 2010)). The State also requested an instruction on the initial aggressor's use of force and on self-defense. The defendant had stated that she felt the victim begin to lunge toward her before she took her gun from her pocket and hit him in the head. In the subsequent interview, the defendant stated that she slapped the victim before he had touched her. There was evidence, therefore, that made these instructions relevant.

¶ 24 The defendant's requested instructions, however, were not relevant. Defense counsel requested that the definition of "knowledge" and "intent" be given. However, as noted above, the requisite mental state for involuntary manslaughter is recklessness. Thus, the circuit court did not abuse its discretion when it gave the State's requested jury instructions and refused to give the defendant's requested jury instructions.

¶ 25 Sentence/Abuse of Discretion

¶ 26 In her motion to reduce sentence, the defendant argued that her sentence was excessive given her medical condition. The circuit court has broad discretion when sentencing a defendant, and its decision will not be reversed absent an abuse of that discretion. *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). The circuit court must balance the seriousness of the offense with the rehabilitative potential of the defendant. *Id.* The circuit court is in the best position to make an appropriate determination regarding the defendant's sentence. *Id.*

¶ 27 Involuntary manslaughter of a family member is a Class 2 felony with a sentencing range of 3 years to 14 years. 720 ILCS 5/9-3(f) (West 2010). The circuit court sentenced the defendant to three years of imprisonment and two years of MSR, the minimum sentence of imprisonment. It appropriately balanced the seriousness of the offense—the defendant brandished the weapon and shot the victim while two small girls were present—and the

defendant's rehabilitative potential—this was the first major offense for the defendant. The circuit court did not abuse its discretion when it sentenced the defendant to three years' imprisonment.

¶ 28

#### CONCLUSION

¶ 29 For the foregoing reasons, appointed counsel's motion to withdraw is granted, and the judgment of the circuit court of St. Clair County is affirmed.

¶ 30 Motion granted; judgment affirmed.