

SIXTH DIVISION
JULY 26, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 10109
)	
NATHAN BURTIN,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's first-degree murder conviction should not be reduced to involuntary manslaughter because there is sufficient evidence that he acted intentionally and knowingly rather than recklessly.

¶ 2 Following a bench trial, defendant Nathan Burtin was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and sentenced to 48 years' imprisonment. On appeal, defendant contends that his conviction should be reduced from first-degree murder to involuntary manslaughter because the State failed to prove beyond a reasonable doubt that defendant had the

requisite mental state for murder, where defendant merely acted recklessly when he fought with the victim, Maurice Matthews, over a loaded weapon which discharged and subsequently killed Matthews. We affirm the judgment of the circuit court of Cook County.

¶ 3 Defendant was charged by indictment with 12 counts of first-degree murder, arising from the May 2, 2012, shooting of Matthews in an alley in the 1700 block of North Monitor Avenue in Chicago. The State went to trial on two of the counts, charging that defendant killed Matthews without lawful justification and (1) intended to kill or do great bodily harm to Matthews, or knew that his actions would cause Matthews' death (720 ILCS 5/9-1(a)(1) (West 2012)) and (2) knew that his actions created a strong probability of death or great bodily harm to Matthews (720 ILCS 5/9-1(a)(2) (West 2012)). In his Second Amended Answer to Discovery, defendant stated that he "may assert the affirmative defense of self defense."

¶ 4 At trial, Sandessa Atkins testified that she met defendant while both were working for Comcast and had a dating relationship with him for six months, which she ended in August 2011. At first she had a "friendly relationship" with defendant, consisting of phone contact, but in October 2011 defendant began exhibiting "weird behaviors" in his calls. Twice since the couple broke up, Atkins and her mother saw defendant at Atkins' car outside her then-residence on North Spaulding Avenue in Chicago. Both times after he was there, her car was found to be damaged. Atkins filed a police report for the first incident and called the police regarding the second incident.

¶ 5 In April 2012, Atkins had lived in a new apartment on North Monitor Avenue for approximately a month. She had a "cordial" relationship with defendant but "was still afraid of him." She testified that on April 29, 2012, she spoke with him by telephone, at which time

defendant sounded “suicidal” and mentioned Monitor Avenue. Atkins had never told him where she was then living and he had not visited her there. Defendant told her that he looked up her Comcast account and saw her new address. Atkins testified defendant called her “incessantly” and would often call her using another number if she did not answer.

¶ 6 On May 2, 2012, Atkins socialized with friends in a park after work. While she was there, defendant called her phone and one of her male friends answered. After she finished socializing, Atkins drove home and pulled into the alley behind her home in order to park in her garage. She was speaking by telephone with her boyfriend at that time. The garage door was locked, so Atkins knocked on the door and Matthews, her cousin, answered and opened the garage for her. Matthews was with a woman Atkins had never met before. Matthews moved his car from Atkins’ garage to a concrete slab directly across the alley from the garage. Atkins turned her car so she could reverse into the garage. She stopped to speak with Matthews, who was standing on the passenger’s side of her car, when she saw defendant driving toward her. Defendant passed her but, under a minute later, returned and pulled up “very close” to her car, with his driver’s window adjacent to hers.

¶ 7 When defendant stopped, Atkins looked at Matthews, and Matthews told defendant, “I’m with her, you need to leave.” Defendant told Matthews that Atkins “wouldn’t date someone like [him].” Matthews walked around the front of Atkins’ car and moved between both vehicles, turning his body in order to fit between the two cars. Atkins testified that defendant was “upset” and “loud,” and Matthews continued to tell him to leave. Matthews did not yell or threaten defendant in any way and did not have a weapon. Defendant then “stooped down, pulled out a gun,” and fired one shot.

¶ 8 After the shot, Matthews lunged for the gun, Atkins grabbed defendant's arm, and the three "struggled" for the weapon. Matthews took the gun from defendant, at which point defendant drove off quickly, hitting garbage cans on the way. Matthews pointed the gun at defendant's car but Atkins begged him not to shoot. Matthews dropped to the ground, and Atkins noticed he was shot in the side. When Matthews stopped breathing, Atkins began "pumping his chest." She saw a man she did not know walk up with a rag, take the gun, and place it in the garbage can next to her house. Atkins retrieved the gun, and placed it on the ground near her cousin.

¶ 9 On cross-examination, Atkins acknowledged she both called and received several phone calls from defendant on April 28, 2012, and spoke with him for varying lengths of time up to 100 minutes. She denied that defendant was ever at her house on Monitor, and that they hugged and kissed there. Atkins also denied that she spoke with him on May 2, 2012, and said she "absolutely [did] not" tell defendant she wanted to get together with him that night. Atkins did not recall whether she sent him four text messages that evening.

¶ 10 Dawn Jones testified that she was with Matthews in the garage on May 2, 2012. After they had sex, she heard a "girl," whom she later learned was Matthews' cousin, walking toward the garage door. She did not know the cousin. The cousin wanted to park in the garage. The cousin waited outside in her car while the couple got dressed and Matthews pulled out of the garage. He parked his car across the alley, facing away from the alley. Jones stayed in Matthews' car with the windows down while Matthews went back to the garage. Jones heard a car pull up with loud music playing. She turned around and saw a black car parked next to the cousin's car, with the drivers' sides together. Jones heard a conversation, and then a gunshot. She turned

around and saw Matthews stumbling back. He was in the space between the cars; she did not see anything in his hands. Jones saw the black car pulling away and “closing his door at the same time.” She identified defendant in a lineup and in court as the driver. Jones testified she had not heard Matthews yelling or arguing at defendant, and had not seen a weapon on Matthews that day. On cross-examination, Jones stated she did not see what happened between the cars, any doors opening, or the shooting because she was not looking in that direction. After the shooting, she did see a man put a gun in a garbage can and a woman return the gun to the scene.

¶ 11 Atkins’ mother, Yolanda Atkins, testified that, on February 28, 2012, she was near the apartment where she lived with Atkins on North Spaulding Avenue when she saw defendant bent over Atkins’ car, “punching the tire” with a “silver instrument.” After she addressed defendant, he “scurr[ied]” away from the car and drove off in his black car. She went inside and called the police.

¶ 12 Maywood patrol officer Donna Lewis testified that after midnight on May 3, 2012, she received a flash message regarding a suspect involved in a shooting in Chicago with an address for a vehicle registered in Maywood. As she was driving westbound, she saw the vehicle, curbed it, and placed defendant into custody.

¶ 13 Detective Gregory Jacobson testified that in the early morning hours of May 3, 2012, he learned that a suspect in a shooting on North Monitor Street was in custody in Maywood. Jacobson responded to Maywood, where he saw defendant in the rear of a Maywood squad car. Jacobson conducted a custodial search of defendant. In defendant’s wallet, Jacobson found a folded piece of paper with the address of Atkins’ apartment on Monitor written on it, including

the zip code. This piece of paper was admitted into evidence. Jacobson transported defendant to Area North Detective Division, where Jones identified him in a lineup.

¶ 14 Chicago police Sergeant Thomas Pierce processed the crime scene. Pierce marked and photographed evidence, including a loaded Glock model 17 9-millimeter semiautomatic pistol found on the pavement. Fifteen live cartridges and one fired cartridge casing were also recovered. Pierce also conducted a gunshot residue test of the webbing of both Atkins' and the victim's hands.

¶ 15 The parties stipulated that if called to testify, Scott Rochowicz, a forensic scientist in the trace evidence section of the Illinois State Police Crime Laboratory, would testify that he tested GSR kits taken from defendant, Atkins, and Matthews. It was his opinion that defendant "discharged a firearm, contacted a primer gunshot residue particle related item, or had his right hand in the environment of a discharged firearm." Additionally, it was his opinion that Atkins "discharged a firearm, contacted a primer gunshot residue particle-related item or had both hands in the environment of a discharged firearm" and that Matthews "discharged a firearm, contacted a primer gunshot residue particle-related item, or that he had his left hand in the environment of a discharged firearm."

¶ 16 The parties also stipulated that if called to testify, forensic scientists would testify that the testing of the Glock 9-millimeter semi-automatic pistol and the fired cartridge casing showed the casing came from the pistol. A buccal standard from defendant showed defendant's DNA profile was on the pistol.

¶ 17 Lastly, the parties stipulated that if called to testify, a custodian of records for Sprint/Nextel Corporation would identify phone records for Sandessa Atkins' cell phone May 2,

2012, and a custodian of records for AT&T would identify phone records for defendant for April 27, 2012, through May 2, 2012, including data coverage, both of which were admitted into evidence. These phone records show that in the morning of May 2, 2012, defendant called Atkins twice and sent her one text message between 10:14 a.m. and 10:43 a.m. Atkins called him back at 10:44 a.m., and sent him a text message. That night, defendant called Atkins 13 times and sent her 5 text messages between 8:50 p.m. and 11:59 p.m. Atkins texted him twice that night at 9:32 p.m. and 9:34 p.m.

¶ 18 Defendant testified that his relationship with Atkins ended in December 2011 “mutually,” after he found text messages on her phone from another man indicating she was having another relationship. He and Atkins continued to have a cordial relationship and often spoke on the phone and texted with one another. In April, their relationship “kind of got a little more into rekindling” what they had before. Atkins told him her address on Monitor, where he visited her once before May 2, 2012. On April 28, 2012, they took turns calling each other, talking for hours trying to “feel each other” out about their relationship.

¶ 19 On May 2, 2012, Atkins called defendant during the day and they exchanged text messages, making a “possible plan” to meet that night. Defendant called her that evening, and denied that anyone other than Atkins ever answered her phone. Atkins was to text him when she arrived home. She did text him around 11 p.m., and defendant then drove to her home on Monitor. He had written down her address when she gave it to him in April and had it in his wallet. Defendant had a loaded firearm with him. He had carried the firearm “every day” since early 2011, after someone broke into his mother’s house.

¶ 20 When defendant arrived at Atkins' building, he looked for parking on Monitor but did not see any so he circled the block and went through the alley, where he saw Atkins in her car on the phone. He nodded at her and went back around the block still looking for parking. He came back through the alley and pulled up next to Atkins' car intending to ask her where to park. She was still on the phone. Defendant then saw a man he did not know walking by the passenger side of Atkins' car. Defendant testified that his car was an arm's reach away from Atkins' car. The man told defendant he should leave, and that Atkins was his girlfriend. Defendant told the man that he was not Atkins' "type" because he was "fat," among other sarcastic and insulting comments, which caused the man to become angry and begin insulting him as well. The men began arguing back and forth.

¶ 21 During the "confrontation," defendant put his car in park, opened his door, and got out. The man, subsequently identified as Matthews, said he was "going to take [defendant] out of [his] car" and walked around the front of Atkins' car. Defendant could not hear exactly what Matthews was saying but, from the look on Matthews' face, thought Matthews intended to harm him. Matthews' hands were down by his sides and it looked like he was holding something. Defendant kneeled into his open door and pulled out his gun in order to protect himself and Atkins. He was "scared." He did not know who Matthews was, but the man's eyes and movement showed he intended to harm defendant, who did not want to leave Atkins in a "vulnerable position." Defendant wanted to stop Matthews from coming any further. He did not intend to shoot him.

¶ 22 Defendant was pulling the gun up but not pointing it at Matthews when Atkins screamed "no" and grabbed his arm. Matthews was then "upon" him and grabbed the gun. The gun began

shaking up and down and went off, but defendant was “not quite sure who” was shaking the gun. Defendant let go of the gun, got back into his car, and drove away because he had no intention of “putting [him]self in danger.” He looked back and saw Atkins telling him to “just go.” He called her from the car and learned the man was her cousin. Defendant was arrested shortly thereafter in Maywood on his way home. Defendant admitted that, when he spoke with detectives at the police station, he lied when he told them he was with someone else at the time of the shooting and not at the scene.

¶ 23 During cross-examination, defendant denied intentionally shooting Matthews and stated that, “to [his] recollection,” he did not fire the gun. He acknowledged the gun was loaded with 16 or 17 live rounds and that, when he picked it up, he pulled the slide and chambered a round. Defendant knew that doing so put the gun “in a firing position,” but did so only “to scare the guy.” Defendant was already out of his car when Matthews was approaching him. He could not see Matthews’ hands, but thought something was in his hands. Matthews did not say he had a gun but was “rushing” at defendant, coming toward him in an “aggressive” manner, and defendant was “afraid.” Defendant pointed the gun at Matthews and was raising it when Atkins grabbed his forearm. Defendant acknowledged he was concerned for Atkins’ safety but dropped the gun and left her behind at the scene.

¶ 24 Defendant acknowledged the phone records showed that on May 2, 2012, the last text message from Atkins was at 9:34 p.m., and he texted her several more times the rest of the night. He also acknowledged that, after he left work at Comcast for the day, he “could have” called Atkins many times due to her not answering the telephone. Defendant denied using a third party telephone number to cancel his number when he called Atkins. When questioned about the

statement he gave at the police station, defendant claimed that he was not allowed to use the bathroom, and did not recall whether he was asked if he wanted anything to eat or drink. He admitted that he told the police he did not go to Atkins' house that night, had never been to her house, and did not know her address. On redirect, defendant denied he looked up Atkins' address on her Comcast account, and said that Atkins gave him the piece of paper with her address on it, which was in his wallet when he was arrested.

¶ 25 When the court questioned defendant directly about whether he did not "recall" versus did not "know" if he pulled the trigger, defendant answered, "it's obvious the trigger was pulled and someone lost their life, but I don't remember if it was pulled by myself, no."

¶ 26 Two reputation witnesses who both worked for Comcast and knew defendant through work testified, but neither specifically knew whether he had a reputation for truthfulness or peacefulness.

¶ 27 Detective Jacobson was recalled in rebuttal. Defendant told Jacobson he had never been to Atkins' house before. Jacobson never threatened defendant. He allowed him to use the bathroom, and offered him something to eat and drink. The activities in the interview room were recorded, and the recordings were admitted into evidence.

¶ 28 In closing, defense counsel argued self defense and lack of intent. The trial court found defendant guilty of both counts of first-degree murder. After reviewing the testimony and physical evidence, it made credibility assessments, finding Atkins' testimony to be "clear, pointed, and very credible" and corroborated by Yolanda Atkins, Dawn Jones, the physical evidence, and, in some circumstances, defendant. The court found defendant not credible, with some of his testimony "border[ing] on the absurd." The court found defendant and Atkins

formerly had a romantic relationship, which defendant wanted to rekindle but Atkins did not. The court found defendant's stated reason for carrying a loaded handgun in his car "ludicrous," and his testimony that Matthews had something in his hands even though he could not see Matthews' hands "truly incredible."

¶ 29 The court noted that defendant testified he did not initially drive away from Matthews because he wanted to protect Atkins; yet, after the shot was fired, he left Atkins behind in the alley with a loaded gun and the person from whom he claimed he was trying to protect her. The court stated defendant's chivalry was apparently "fickle and fleeting" and "my assessment is that it is just a lie." The court stated that, although defendant claimed he had no intention of firing the gun when he took it from the car, he chambered a round, knowing the gun would not fire otherwise, and thus "[h]is action belies his intentions." It found defendant had no credibility, and no mitigating factors existed to reduce the offenses from first-degree murder to second-degree murder.

¶ 30 The court subsequently denied defendant's motion for reconsideration, reiterating its finding that the State proved beyond a reasonable doubt that defendant intentionally and knowingly shot and killed Matthews, and that the evidence and the law did not support a second-degree murder finding. The court merged the two counts and sentenced defendant to 23 years' imprisonment on the intentional/knowing murder count (720 ILCS 5/9-1(a)(1) (West 2012)) with a firearm enhancement of an additional 25 years, for a total of 48 years' imprisonment.

¶ 31 Defendant argues on appeal that this court should reduce his conviction for first-degree murder to involuntary manslaughter because the evidence showed that he merely acted recklessly in pointing a loaded weapon at Matthews to scare him, which fired when three people struggled

over the weapon. Defendant requests that we reduce his conviction to involuntary manslaughter, and remand the cause for a new sentencing hearing.

¶ 32 The standard of review in challenging the sufficiency of the evidence is “whether, viewing the evidence in the light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” *People v. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trial judge, as trier of fact, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the evidence or substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *Id.*

¶ 33 In order to prove defendant guilty of first-degree murder as charged, the State needed to establish that defendant killed Matthews without lawful justification and he either (1) intended to kill or do great bodily harm to Matthews, or knew that his actions would cause Matthews’ death (720 ILCS 5/9-1(a)(1) (West 2012)); or (2) knew that his actions created a strong probability of death or great bodily harm to Matthews (720 ILCS 5/9-1(a)(2) (West 2012)). Conversely, the court would have been required to mitigate defendant’s charge to involuntary manslaughter if the evidence supported that defendant acted recklessly, and his actions unintentionally caused Matthews’ death. 720 ILCS 5/9-3(a) (West 2012).

¶ 34 The basic difference between first-degree murder and involuntary manslaughter is the mental state accompanying the conduct which results in the victim’s death. *People v. Leach*, 405 Ill. App. 3d 297, 312 (1st Dist. 2010). The state of mind for murder is intent or knowledge, and for involuntary manslaughter is recklessness. “A person intends, or acts intentionally or with

intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.” 720 ILCS 5/4-4 (West 2012). A person acts knowingly where he is “consciously aware” that his conduct is practically certain to cause a particular result. *People v. Castillo*, 2018 IL App (1st) 153147, ¶ 26; 720 ILCS 5/4-5(a), (b) (West 2012). A defendant’s knowledge is generally established by circumstantial evidence rather than direct proof. *Id.*

¶ 35 In contrast, a person acts recklessly where 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 that a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2012). Involuntary manslaughter requires a “less culpable mental state” than first-degree murder. *Castillo*, 2018 IL App (1st) 153147, ¶ 28. “Whether the defendant is guilty of first-degree murder or involuntary manslaughter is a question for the trier of fact.” *Id.*

¶ 36 Here, viewing the evidence in a light most favorable to the State, a rational trier of fact could find, beyond a reasonable doubt, that defendant intended to kill or do great bodily harm to Matthews or knew that his actions would cause Matthews’ death, or that he knew his acts created a strong probability of death or great bodily harm to Matthews. The evidence shows defendant wanted to rekindle his relationship with Atkins, and harassed Atkins by telephone. Atkins was afraid of defendant, did not want to rekindle their relationship, and did not tell him when and where she moved. Defendant looked up her new address at work. After a man answered Atkins’ phone that evening, defendant went to Atkins’ new home with a loaded firearm. When Matthews told defendant he was “with” Atkins and defendant should leave, defendant chambered a bullet

knowing it put the firearm in a firing position and shot the unarmed Matthews. Immediately after Matthews was shot, defendant drove away from Atkins' house to Maywood where he was arrested. Additionally, when questioned by the police, defendant lied about his whereabouts that night and claimed to have never been to Atkins' house before.

¶ 37 Defendant's intent to kill can be inferred from his act of firing the bullet at Matthews (see *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011) (“ ‘ [t]he intent to murder can be inferred from the act of firing a gun at a person because the natural tendency of such an act is to destroy another's life.’ ”) (quoting *People v. Smith*, 258 Ill. App. 3d 1003, 1027 (1994))), and from the circumstances leading up to the shooting. Alternatively, a trier of fact could reasonably conclude that defendant knew his shooting at Matthews was practically certain to result in the death or great bodily harm of another. See *Garcia*, 407 Ill. App. 3d at 202. When defendant chambered the bullet, pointed his gun at Matthews, and deliberately fired, his conduct was not reckless.

¶ 38 Defendant argues the gun went off accidentally when he, Matthews, and Atkins struggled over it. The only evidence that the gun accidentally fired due to a struggle came from defendant, and the trial court ruled that defendant's testimony was not credible and, in some instances, “border[ed] on the absurd.” In its role as trier of fact, the trial court examined defendant's testimony, including inconsistencies with his prior statement, in order to determine his credibility, and rejected his testimony as incredible. In contrast, the court found Atkins “very credible.” It credited Atkins' version of events (defendant shot at the unarmed Matthews before the struggle) over defendant's version (the gun accidentally discharged during the struggle). We defer to these credibility determinations. *Brown*, 2013 IL 114196, ¶ 48.

¶ 39 Defendant also argues that, because gunpowder residue was found on Atkins' and Matthews' hands, the evidence supports his testimony that the gun discharged accidentally due to a struggle. The parties stipulated at trial to Rochowicz's testimony that, in his opinion, Atkins and Matthews "discharged a firearm, contacted a primer gunshot residue particle-related item or had [Matthews' left hand and both Atkins' hands] in the environment of a discharged firearm." Defendant argues the only explanation is that Atkins, Matthews, and defendant all had their hands on or near the gun before it discharged, which supports his argument that they struggled for the weapon, causing Matthews to be accidentally shot.

¶ 40 However, Atkins testified both she and Matthews touched the gun soon after defendant discharged it, when Matthews got the gun away from defendant and pointed it at him and Atkins later retrieved the gun from the garbage. While defendant's explanation of the gunshot residue is possible and conveniently supports his theory, it is not the only plausible interpretation for the presence of gunshot residue on Matthews and Atkins. *People v. Newton*, 2018 IL 122958, ¶ 27 ("The inference to be drawn [from the evidence] need not be the only conclusion logically to be drawn; it suffices that the suggested inference may be reasonably drawn therefrom' ") (quoting Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 401.1, at 147 (9th ed. 2009)).

¶ 41 Intent is rarely established by direct evidence, but may be inferred from conduct and the surrounding circumstances. *People v. Peterson*, 2017 IL 120331, ¶ 43. In this case, the trial court drew inferences from the credible testimony and physical evidence, and came to the conclusion that defendant acted intentionally and knowingly in shooting Matthews. We will not substitute

our judgment for that of the trial court concerning its findings regarding defendant's credibility, and the reasonable inferences to be drawn from the facts. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 42 Taking the evidence in a light most favorable to the State, we find that a rational trier of fact could have found that defendant acted intentionally and knowingly, rather than recklessly, and therefore was guilty of first-degree murder. Under the circumstances, defendant's conviction for first-degree murder is not so unreasonable or improbable as to create a reasonable doubt of his guilt. Accordingly, we affirm the trial court's judgment.

¶ 43 Affirmed.