NOTICE
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2026 IL App (5th) 250154-U

NO. 5-25-0154

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County.
	)	
v.	)	No. 23-CF-551
	)	
SHARQUEZ MURPHY,	)	Honorable
	)	Thomas E. Griffith Jr.,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Vaughan and Clarke concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to sustain the defendant's conviction for second degree murder where the jury could reasonably find that he actually but unreasonably believed deadly force was necessary and could reject his claim that the shooting was merely accidental or reckless. The circuit court did not commit reversible error in permitting the State's rebuttal demonstration, the defendant failed to establish ineffective assistance of counsel based on the exclusion of *Lynch* evidence or counsel's handling of closing argument, and the defendant failed to show clear or obvious sentencing error. Accordingly, we affirm the defendant's conviction and 18-year sentence.

¶ 2 I. BACKGROUND

¶ 3 On April 25, 2023, the State charged the defendant, Sharquez Murphy, by information with three counts of first degree murder arising from the April 9, 2023, shooting death of Christopher G. Osman (Osman). The charges alleged, under alternative theories, that the defendant personally

discharged a 9-millimeter handgun at Osman, causing his death. The matter proceeded to a jury trial in October 2024.

¶ 4 Before trial, the State filed a motion *in limine* seeking to prevent the defense from introducing evidence under *People v. Lynch*, 104 Ill. 2d 194 (1984), concerning Osman's prior violent conduct. When the circuit court asked defense counsel whether he objected to the motion, counsel responded, "No objection, Your Honor." The court granted the motion but advised counsel that it viewed such rulings as "fluid" and would reconsider the matter if circumstances changed during trial.

¶ 5 At trial, Shelby Anders testified that she and the defendant had been in an intermittent relationship and that the defendant was the father of her three oldest children. At the time of the shooting, Anders and her children were living with her mother, Crystal Osman, and her stepfather, Christopher Osman, at their home on North Church Street in Decatur. Crystal testified that the defendant and Osman did not particularly get along but generally tolerated one another.

¶ 6 During the evening of April 8 and the early morning of April 9, 2023, the defendant repeatedly contacted Anders. A later extraction of Anders's cellular telephone showed approximately 17 calls from the defendant during the period between approximately 11:30 p.m. on April 8 and 12:52 a.m. on April 9. The State also introduced text messages exchanged between Anders and the defendant. In one message, the defendant stated, "I'm going to shoot the lock."

¶ 7 The defendant eventually arrived at the Osman residence. According to the defendant, he wanted Anders to come outside so that he could talk to her. When Anders refused, the defendant told her that, if she did not come outside, he was going to "pop her tires." Anders, Crystal, and Osman eventually came outside. The defendant testified that Osman told him to leave and that the defendant initially responded that he was preparing to leave because Anders and Crystal were

going to give him a ride home. According to the defendant, Osman then told him, "You're over 18 now," and threatened to "beat my ass."

¶ 8 Anders gave a substantially similar account of the beginning of the confrontation. She testified that Osman went outside first and told the defendant that he needed to leave. Osman then told the defendant, "You're 18 now. I'll beat your ass if you don't want to leave." Osman and the defendant each raised his shirt. Osman stated that he did not need a gun to beat the defendant, and the defendant responded that he did not need a gun either.

¶ 9 Anders testified that Osman then struck the defendant in the face and that the defendant struck Osman in return. Immediately thereafter, Anders heard a gunshot and saw a flash coming from the defendant's direction toward Osman, who fell to the ground. On cross-examination, Anders emphasized that there had been only one punch by each man before the shot: "Chris punched him once. Quez punched him back. And then, there was a shot." She testified that the two men were in close proximity when the gun discharged and estimated that she was less than two feet away from them.

¶ 10 Anders further testified that the incident occurred in darkness and that there was no porch light illuminating the area. On redirect examination, she estimated that Osman and the defendant were within "arm reach" of one another. She testified that Osman's punch caused the defendant to stumble backward, but the defendant regained his footing, punched Osman, and the shot immediately followed.

¶ 11 Crystal did not observe the physical fight itself. She testified, however, that as she was turning toward the house she saw the flash from the gunshot. A neighbor, Alexis Cruz, testified that shortly before 1 a.m. she heard a "pop," which she recognized as a gunshot, followed by screaming from Crystal and Anders.

¶ 12 Emergency personnel responded, and Osman was transported for medical treatment. The police recovered a cartridge casing at the scene. The defendant had left before officers arrived. Police were unable to locate him at his known address during the early morning hours following the shooting

¶ 13 Shortly after leaving the scene, the defendant called 911. During that call, he reported that his cousin had shot his "baby mama's dad" and identified Kaylin Williams as the shooter. The defendant later admitted at trial that this accusation was false. He explained that he was panicking and that Williams's name came to mind because Williams had dropped him off earlier. Williams denied involvement when contacted by police and became upset when officers played the 911 recording in which he had been implicated.

¶ 14 The police located the defendant in the Springfield area on April 13, 2023. The defendant testified that he had left Decatur because he had received threats of retaliation through Facebook and was afraid that people were looking for him. Following his arrest, the defendant invoked his right to counsel when police sought to interview him.

¶ 15 Dr. Scott Denton, a forensic pathologist, performed Osman's autopsy. Dr. Denton testified that Osman sustained a single gunshot wound entering on the left side of his chin and traveling through structures in his neck and upper chest before the bullet came to rest in his right upper back. He described the bullet's path through the body as front to back, left to right, and slightly downward. Dr. Denton concluded that Osman died from the gunshot wound to his chin.

¶ 16 Dr. Denton testified that the wound did not display soot, stippling, or other evidence associated with what he termed a close-range gunshot. He explained that, with a typical handgun and ammunition, such evidence is generally present when the muzzle is within approximately 18 to 24 inches of the skin or clothing. Dr. Denton therefore could say that the muzzle appeared to

have been more than 18 to 24 inches from Osman when the weapon discharged, but he could not determine how much farther away it was.

¶ 17 Dr. Denton was specifically asked whether the bullet trajectory allowed him to determine Osman's position relative to the shooter when the shot was fired. He responded, "No. I was not there, so I don't know what the positions are." Dr. Denton explained that he could identify the points at which the bullet entered and stopped and draw a line between them, but if Osman's body position changed, that line changed with it. On cross-examination, Dr. Denton likewise agreed that he could not say whether the muzzle was projecting upward, downward, or straight ahead when the gun discharged because that determination depended upon Osman's body position.

¶ 18 The defendant testified in his own defense. He admitted that he went to the Osman residence to speak with Anders, threatened to damage her tires if she would not come outside, and had been drinking heavily. The defendant testified that he consumed approximately two pints of tequila and was intoxicated when the confrontation occurred

¶ 19 The defendant testified that after Osman threatened to beat him, Osman raised his shirt and stated that he did not need a gun. The defendant raised his own shirt and responded similarly. According to the defendant, Osman punched him first, the defendant punched back, and Osman then grabbed him and attempted to "slam" him to the ground. The defendant testified that, as he was falling, a handgun he had been carrying in the pocket of his hoodie began falling out. He reached for the firearm, and "[a]s I grabbed it, I don't know what caused it because it just went off."

¶ 20 The defendant further testified that when Osman raised his shirt, he saw a knife in a sheath. He acknowledged that he did not know whether Osman intended to use the knife but stated that he knew Osman wanted to fight him. The defendant explained that he attempted to catch the falling

firearm because he did not want Osman to see it, take it, and potentially use it against him. He stated that his intention was merely to return the firearm to his pocket. The defendant acknowledged that Osman had never threatened him with a firearm.

¶ 21 The defendant denied intentionally shooting Osman and testified that he did not know whether the gun discharged because he inadvertently touched the trigger or because it otherwise discharged when he grabbed it. He also testified that Osman's initial punch knocked off his eyeglasses. Without his glasses, the defendant described his vision as "all a blur." The defendant could not describe Osman's precise physical position at the instant of the shot, although he testified that Osman "could have been bent down" because Osman was attempting to slam him.

¶ 22 According to the defendant, after the gun discharged he saw Osman take several steps and fall. Anders told him that he had shot Osman. The defendant testified that he apologized and attempted to help Osman, including trying to get him to a vehicle, but Crystal struck at him and repeatedly told him to get away. The defendant then searched for his glasses. Anders located them, handed them to him, and told him to leave. The defendant testified that he ran because he was frightened and in shock.

¶ 23 On cross-examination, the defendant acknowledged that he did not go to the police after leaving the scene and before his arrest. When asked whether he was interested in telling the police his version of events, the defendant responded that he knew he would eventually have to explain that he had shot Osman but "didn't intend to do anything." On redirect examination, the defendant maintained that he did not fire the gun as an intentional act of self-defense but intentionally attempted to catch the weapon because he did not want Osman to gain possession of it.

¶ 24 During the jury-instruction conference, the circuit court agreed to instruct the jury on first degree murder, self-defense, second degree murder based upon an unreasonable belief in the need

for self-defense, and involuntary manslaughter. The jury therefore received verdict forms permitting it to find the defendant not guilty or guilty of first degree murder, second degree murder, or involuntary manslaughter.

¶ 25 During closing argument, defense counsel principally argued that the State had failed to prove that the defendant intentionally or knowingly fired the weapon. Counsel maintained that the discharge was accidental and that the defendant reached for the weapon only because it was falling from his pocket. Counsel further argued that, if the jury rejected the defendant's accident theory and concluded that he intentionally fired the weapon, it should then consider whether the defendant acted in self-defense or under an unreasonable belief that deadly force was necessary.

¶ 26 In rebuttal, the prosecutor attacked the defendant's credibility and argued that his account of the shooting was inconsistent with the autopsy evidence. The prosecutor stated that the autopsy "excludes the defendant's story as a possibility." The prosecutor then asked another assistant state's attorney to participate in a physical demonstration based upon the defendant's description of Osman attempting to slam him while the defendant was falling. Defense counsel objected to the "physical demonstration." The circuit court overruled the objection, stating that physical demonstrations were permitted, but cautioned the State not to "overly do it."

¶ 27 During the demonstration, the prosecutor compared the positioning of the two prosecutors with the trajectory depicted in the autopsy evidence. She asked the jury, "Where is my finger pointing? Where is it hitting? Up." The prosecutor then referred to the wound trajectory and argued: "Straight on shot, probably while he's bending down. *** It's the only way you're getting it." She continued that the defendant "wasn't falling" and "hadn't just been slammed," and asserted that the angle of entry demonstrated that the defendant had "completely made up that story."

¶ 28 On October 23, 2024, the jury found the defendant guilty of second degree murder. The defendant subsequently filed a motion for acquittal challenging, among other things, the sufficiency of the evidence and the State's rebuttal demonstration. He emphasized that Dr. Denton had expressly declined to determine the relative positions of the defendant and Osman when the firearm discharged.

¶ 29 At the hearing on the posttrial motion, the prosecutor acknowledged that Dr. Denton could not say precisely how the men were positioned but argued that the demonstration represented permissible argument based upon the known trajectory of the bullet. The circuit court denied the motion, characterizing the State's positioning argument as "novel," finding that it was not a misstatement of Dr. Denton's testimony and represented an attempt by the State to demonstrate its theory of the shooting. The court stated that, although the defendant "may not have received a perfect trial," he "certainly received a very fair trial."

¶ 30 The matter proceeded to sentencing. The presentence investigation report was presented, and Crystal submitted a written victim-impact statement. In mitigation, the defendant called his sisters, Briana Turner and April Turner. Briana testified that the defendant was a loving father who financially supported and helped raise his children before his incarceration. She also testified that the defendant had struggled with alcohol and marijuana use since his teenage years and had unsuccessfully attempted to address those issues. April similarly described the defendant as a good brother and uncle who provided assistance to his family and supported his children.

¶ 31 The defendant did not make a statement in allocution. The State requested the maximum 20-year sentence, emphasizing the defendant's criminal history and the circumstances leading to Osman's death. Defense counsel requested an eight-year prison sentence, citing the defendant's age, family support, substance-abuse issues, and rehabilitative potential.

¶ 32 In imposing sentence, the circuit court noted that the defendant was 23 years old but had, in the court's view, a "very poor criminal history," including prior aggravated battery offenses and an aggravated DUI conviction. The court stated that it "certainly did not believe this situation was any type of accident." It further observed that the defendant had dropped out of school in the eighth grade, that the court did not see "any type of history in terms of steady employment with health insurance and so on," and that substance-abuse issues had contributed to the circumstances of the offense. The court characterized the shooting as a "senseless, senseless act of gun violence."

¶ 33 The circuit court also stated: "I would almost also note that I have not heard anything to this point in terms of any level of acceptance of responsibility for what occurred in this case." After considering the facts of the case, the factors in aggravation and mitigation, and the presentence investigation report, the court found that probation would deprecate the seriousness of the defendant's conduct and that a sentence in the higher portion of the statutory range was appropriate. The court sentenced the defendant to 18 years' imprisonment, followed by one year of mandatory supervised release, and recommended substance-abuse treatment while in the Department of Corrections.

¶ 34 The defendant filed a motion to reconsider sentence, arguing generally that the sentence failed to account adequately for his criminal and personal history and the mitigating evidence. The circuit court denied the motion. In doing so, the court again relied upon the circumstances of the offense, the aggravating and mitigating factors, and the defendant's prior history of violence. Although acknowledging that the 18-year sentence was only two years below the statutory maximum, the court concluded that the sentence was "entirely appropriate."

¶ 35 II. ANALYSIS

¶ 36 I. Sufficiency of the Evidence

¶ 37 The defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of second degree murder. He argues that the evidence established that his belief in the need to defend himself from Osman was objectively reasonable and, therefore, that the State failed to disprove perfect self-defense. Alternatively, the defendant asks this court to reduce his conviction to involuntary manslaughter because, according to him, the evidence established at most that he acted recklessly when he attempted to catch the loaded handgun as it fell from his hoodie pocket.

¶ 38 When reviewing a challenge to the sufficiency of the evidence, this court does not retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, we determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Id.*; *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We draw all reasonable inferences from the evidence in favor of the State and will not substitute our judgment for that of the trier of fact concerning the weight of the evidence or the credibility of the witnesses. *People v. Hardman*, 2017 IL 121453, ¶ 37; *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Jones*, 2023 IL 127810, ¶ 28.

¶ 39 Second degree murder is not a lesser included offense of first degree murder but, instead, a lesser mitigated offense. *People v. Jeffries*, 164 Ill. 2d 104, 122 (1995). To reach a verdict of second degree murder based upon an unreasonable belief in the need for self-defense, the trier of fact must first determine that the State proved the elements of first degree murder beyond a reasonable doubt. See *People v. Staake*, 2016 IL App (4th) 140638, ¶ 63, *aff'd*, 2017 IL 121755.

Once the State proves first degree murder, the defendant bears the burden of proving by a preponderance of the evidence that, at the time of the killing, he believed circumstances existed that justified the use of deadly force but that his belief was unreasonable. See *People v. Manning*, 2018 IL 122081, ¶¶ 16-23.

¶ 40 A claim of self-defense requires some evidence that (1) force was threatened against the defendant, (2) the defendant was not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the defendant actually believed a danger existed that required the use of the force employed, and (6) that belief was objectively reasonable. *Jeffries*, 164 Ill. 2d at 127-28. If the State negates any one of those elements beyond a reasonable doubt, the claim of perfect self-defense fails. *Id.* at 128.

¶ 41 Here, the jury's verdict is significant. The jury was instructed on first degree murder, self-defense, second degree murder, and involuntary manslaughter. By returning a verdict of second degree murder, the jury necessarily found that the State proved the elements of first degree murder beyond a reasonable doubt, including the requisite mental state, but also found that the defendant proved that he actually believed circumstances existed that justified his use of deadly force. What the jury rejected was the objective reasonableness of that belief. The verdict therefore demonstrates that the jury did not wholly reject the defendant's account of the confrontation; rather, it accepted his claimed perception of danger while concluding that the degree of force he believed necessary was unreasonable. See *Manning*, 2018 IL 122081, ¶¶ 16-23.

¶ 42 Viewed in the light most favorable to the State, the evidence supports that determination. The defendant went to the Osman residence after Anders repeatedly declined to meet with him. He admitted threatening to damage her tires if she did not come outside. He was carrying a loaded handgun concealed in his hoodie pocket, despite raising his shirt during the confrontation and

telling Osman that he did not need a gun. The defendant further admitted that he had consumed approximately two pints of tequila and was intoxicated. Although Osman threw the first punch, the encounter, according to Anders, consisted of Osman striking the defendant once, the defendant striking Osman once in return, and the gunshot immediately following. Anders described the men as within arm's reach of one another.

¶ 43 The jury was not required to accept the defendant's additional testimony that Osman then grabbed him, attempted to slam him to the ground, and caused the firearm to begin falling from the defendant's hoodie pocket. Anders, who was standing nearby, described no such intervening event between the defendant's punch and the gunshot. According to her testimony, there was simply one punch from Osman, one punch from the defendant, and then the shot. The discrepancy concerned the precise moments immediately preceding the discharge of the firearm and was therefore particularly relevant to the defendant's claim that he believed deadly force was necessary. The resolution of that discrepancy belonged to the jury. See *Jackson*, 232 Ill. 2d at 280-81.

¶ 44 The defendant emphasizes that Osman had a knife. However, the defendant testified that the knife remained in a sheath, that he did not know whether Osman intended to use it, and that Osman never threatened him with a firearm. The defendant stated that he attempted to catch his own handgun because he feared Osman might see it, seize it, and use it against him. The jury could reasonably determine that the defendant genuinely harbored that concern while nevertheless finding objectively unreasonable his belief that the circumstances justified deadly force. A defendant's subjective fear does not establish perfect self-defense unless the resort to deadly force was objectively reasonable and commensurate with the threatened force. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶¶ 52, 61.

¶ 45 Nor does the jury's second degree murder verdict become unreasonable simply because Osman initiated the physical fight. The relevant inquiry is not limited to who threw the first punch. The use of deadly force is justified only when the defendant reasonably believes such force is necessary to prevent imminent death or great bodily harm, or the commission of a forcible felony. See *id*. ¶ 73. The evidence permitted the jury to find that a fistfight in which Osman struck the defendant once, followed by the defendant striking back, did not objectively justify the use of deadly force even though the defendant himself believed otherwise.

¶ 46 We therefore reject the defendant's contention that no reasonable jury could have found his belief objectively unreasonable. His argument essentially asks this court to reweigh his testimony concerning the danger he perceived and substitute our assessment of the confrontation for the jury's. That is not our function. The jury heard the defendant, Anders, and the other witnesses; observed their demeanor; and was instructed on both perfect and imperfect self-defense. The resulting second degree murder verdict was supported by the evidence.

¶ 47 We likewise reject the defendant's alternative request to reduce his conviction to involuntary manslaughter. The principal distinction between murder and involuntary manslaughter is the defendant's mental state. A person commits involuntary manslaughter when he unintentionally causes death by recklessly performing an act likely to cause death or great bodily harm. See 720 ILCS 5/9-3(a); *People v. Doolan*, 2016 IL App (1st) 141780, ¶ 51. Although a defendant may act recklessly while performing a deliberate act, "a voluntary and willful act having the natural tendency to cause death or great bodily harm" constitutes evidence of an intentional act rather than recklessness. (Internal quotation marks omitted.) *Id.*

¶ 48 The defendant maintains that the reckless act was not intentionally shooting Osman, but carrying a loaded firearm and grabbing it as it fell from his hoodie pocket. That argument depends

upon accepting the defendant's description of how the weapon discharged, which the jury was not required to do. No witness saw the gun falling from the defendant's pocket. Anders testified that after the defendant struck Osman, a gunshot immediately followed. The defendant himself could not explain how the firearm discharged and testified that he did not know whether he inadvertently pulled the trigger or whether the weapon somehow fired spontaneously.

¶ 49 The defendant relies heavily upon *People v. Jones*, 404 Ill. App. 3d 734 (2010), in which the reviewing court reduced a murder conviction to involuntary manslaughter. *Jones*, however, involved materially different conduct. There, the victim died from asphyxiation after the defendant applied pressure with his foot near the victim's neck and chest, and the reviewing court found nothing in the record suggesting that the defendant would have understood the amount of pressure necessary to cause asphyxiation. *Id.* at 747.

¶ 50 *Doolan* distinguished *Jones* on precisely that basis, explaining that *Jones* presented a situation in which the defendant could not necessarily have known that his conduct would result in death. *Doolan*, 2016 IL App (1st) 141780, ¶ 53. Here, by contrast, the instrumentality was a loaded handgun, and Osman sustained a single gunshot wound entering his chin and traveling through his neck and upper chest. A rational jury could infer from those circumstances that the defendant acted intentionally or knowingly rather than merely recklessly. We will not replace the jury's permissible inference with the defendant's preferred inference merely because the evidence could support competing interpretations.

¶ 51 We recognize that the State used the word "recklessly" at points during closing argument when explaining the lesser offense of involuntary manslaughter. Those statements did not amount to a concession that the defendant possessed only a reckless mental state. The jury—not counsel—was responsible for determining the defendant's mental state from the evidence and the

instructions it received. The jury was expressly given an involuntary manslaughter verdict form and declined it.

¶ 52 Accordingly, viewing the evidence in the light most favorable to the State, we conclude that a rational jury could find the defendant guilty of second degree murder beyond a reasonable doubt. We decline to disturb that verdict or reduce the conviction to involuntary manslaughter.

¶ 53 II. Prosecutorial Argument

¶ 54 The defendant next contends that he was denied a fair trial by several portions of the State's closing and rebuttal arguments. He principally challenges the prosecutors' physical demonstration of the shooting during rebuttal, arguing that the demonstration supplied a factual conclusion that Dr. Denton expressly declined to give. He additionally challenges the prosecutor's remarks concerning the firearm and the defendant's conduct after the shooting, including the statement that the defendant did not go to police before he was located in Springfield.

¶ 55 Closing argument provides counsel an opportunity to review the evidence, explain the applicable law, and argue why the evidence supports a particular verdict. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Prosecutors are afforded wide latitude and may comment upon the evidence and draw any fair and reasonable inference arising from it, even when the inference reflects negatively upon the defendant. *People v. Runge*, 234 Ill. 2d 68, 142 (2009); *People v. Jackson*, 2020 IL 124112, ¶ 82. A circuit court's ruling on an objection to closing argument is reviewed for an abuse of discretion. *People v. Blue*, 189 Ill. 2d 99, 128 (2000).

¶ 56 We first address the physical demonstration. During rebuttal, the prosecutor sought to recreate the defendant's description that Osman was attempting to slam him while the defendant was falling and attempting to catch the firearm. Defense counsel objected to the demonstration, and the circuit court overruled the objection but directed the prosecutor not to "overly do it." The

prosecutor then used another assistant state's attorney to illustrate the parties' possible positioning and compared that position to Dr. Denton's testimony concerning the path of the bullet. She argued that the defendant was not falling when the gun discharged and that the trajectory demonstrated that he had fabricated his account. The defendant argues that this amounted to the State testifying as its own expert.

¶ 57 We agree with the defendant to a limited extent that the prosecutor's argument went beyond Dr. Denton's actual opinion when she suggested that the positioning demonstrated was the "only way" the shooting could have occurred. Dr. Denton repeatedly declined to determine the respective positions of the shooter and Osman. He explained that the bullet traveled front to back, left to right, and slightly downward through Osman's body, but emphasized that movement of Osman's body would also alter the trajectory line relative to the shooter. On cross-examination, Dr. Denton expressly agreed that he could not say whether the muzzle was directed upward, downward, or straight ahead because that depended upon Osman's body position.

¶ 58 That does not mean, however, that the State was prohibited from visually illustrating its theory of the evidence. Demonstrations during closing argument are not categorically improper. In *People v. Dowds*, 253 Ill. App. 3d 955, 957-58 (1993), the court upheld a prosecutor's use of admitted evidence in a physical demonstration because the demonstration merely illustrated information already before the jury. Similarly, the unpublished order in *People v. Carter*, 2024 IL App (1st) 231053-U, ¶¶ 35-40, recognizes that a closing-argument demonstration must be based upon evidence presented at trial and should assist the jury in understanding that evidence rather than merely create dramatic effect. Because *Carter* was filed under Rule 23, we consider it only for its persuasive value.

¶ 59 Unlike a demonstration introducing an object or factual premise never admitted at trial, the challenged demonstration here drew upon evidence the jury had already heard: the defendant's testimony that Osman was attempting to slam him, his testimony concerning the falling firearm, Anders's description of the fight, Dr. Denton's testimony concerning the bullet's path, and the autopsy photographs. The prosecutor was entitled to argue that those pieces of evidence undermined the defendant's credibility. The circuit court therefore did not abuse its discretion merely by permitting a physical illustration of the State's theory.

¶ 60 We are less persuaded by the prosecutor's assertion that her proposed positioning represented the "only" manner in which the trajectory could have occurred. Dr. Denton did not give that opinion, and his testimony expressly left the parties' relative positions unresolved. We need not decide, however, whether that isolated characterization exceeded the permissible scope of rebuttal because any error did not warrant reversal. The jury had heard Dr. Denton's testimony directly, including his repeated qualification that he could not reconstruct the parties' exact positions. The jury was also instructed that closing arguments were not evidence and that statements unsupported by the evidence should be disregarded.

¶ 61 Moreover, the jury's verdict itself undermines the defendant's contention that the demonstration caused it simply to adopt the State's theory wholesale. The State sought a first degree murder conviction. The jury instead returned a verdict of second degree murder, finding the mitigating circumstance of an unreasonable belief in the need for self-defense. Thus, the verdict reflects a discriminating assessment of the evidence rather than an uncritical acceptance of the prosecutor's portrayal of the shooting.

¶ 62 The defendant's remaining challenges to the prosecutor's remarks were not preserved by both a contemporaneous objection and inclusion in the posttrial motion. See *People v. Enoch*, 122

Ill. 2d 176, 186 (1988). He therefore invokes first-prong plain error and ineffective assistance of counsel. The first step in plain-error analysis is to determine whether a clear or obvious error occurred. See *People v. McDonald*, 2016 IL 118882, ¶ 48. Under the first prong, the defendant must additionally demonstrate that the evidence was so closely balanced that the error itself threatened to tip the scales of justice. *Id.*

¶ 63 The prosecutor's comments concerning the firearm do not satisfy that threshold. The defendant himself testified that he carried the loaded handgun in his hoodie pocket, that the firearm discharged while he was attempting to grab it, and that he did not know whether he inadvertently contacted the trigger. The State was entitled to argue reasonable inferences concerning how a loaded handgun came to discharge under those circumstances. Although the prosecutor's characterization of the gun as having a "hair trigger" was argumentative rather than evidentiary, the challenged remarks, considered in context, did not introduce a new substantive fact so prejudicial as to constitute clear or obvious reversible error.

¶ 64 We reach the same conclusion concerning the prosecutor's reference to the defendant's failure to go to police before his arrest. The record established that the defendant fled the scene, falsely identified Williams as the shooter during his 911 call, left Decatur, and remained in Springfield until police located him several days later. The defendant himself testified regarding those actions and offered explanations for them. The prosecutor could therefore comment upon the defendant's flight and post-offense conduct as bearing upon consciousness of guilt. See *People v. McDonald*, 168 Ill. 2d 420, 448 (1995).

¶ 65 The record also contains testimony that, following his arrest, the defendant invoked his right to counsel. The prosecutor did not refer to that invocation during the challenged portion of closing argument. Her argument focused upon the defendant's conduct before he was located and

arrested. We therefore reject the defendant's contention that the State improperly used his exercise of the right to counsel as substantive evidence of guilt.

¶ 66 Accordingly, the defendant has not demonstrated reversible prosecutorial misconduct. To the extent any isolated statement exceeded the appropriate bounds of argument, the evidence was not so closely balanced that the remark threatened to tip the scales against him. The jury heard sharply competing accounts, was instructed concerning multiple possible verdicts, and returned the intermediate verdict of second degree murder. The defendant therefore cannot obtain relief under the plain-error doctrine.

¶ 67 III. Ineffective Assistance of Counsel

¶ 68 The defendant next argues that trial counsel rendered ineffective assistance by failing to object to several portions of the prosecutor's argument and, more significantly, by affirmatively stating that he had no objection to the State's motion *in limine* excluding evidence of Osman's prior battery convictions under *Lynch*, 104 Ill. 2d 194.

¶ 69 To prevail upon a claim of ineffective assistance, a defendant must establish both that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Failure to establish either component defeats the claim. See *People v. Johnson*, 2021 IL 126291, ¶ 53. Because we conclude that the defendant cannot establish prejudice, we need not decide whether counsel's performance was deficient.

¶ 70 Under *Lynch*, when self-defense is properly raised, evidence of the victim's aggressive and violent character may be admitted for two distinct purposes. First, where the defendant knew of the victim's violent tendencies, the evidence may explain how that knowledge affected the defendant's perception of and reaction to the victim's conduct. Second, regardless of the

defendant's knowledge, evidence of the victim's violent character may support the defendant's version of events where conflicting accounts exist concerning what occurred. *Lynch*, 104 Ill. 2d at 199-201; *People v. Figueroa*, 381 Ill. App. 3d 828, 841-42 (2008).

¶ 71 Nothing in the record demonstrates that the defendant knew of Osman's prior battery convictions before the shooting. Thus, those convictions could not have affected the defendant's perception of Osman under the first *Lynch* rationale. See *Figueroa*, 381 Ill. App. 3d at 844-45.

¶ 72 The parties disagree more substantially over the second rationale. The State maintains that no material factual dispute existed because the witnesses generally agreed that Osman threatened the defendant, struck first, and was immediately struck in return before the gunshot. The defendant responds that the critical dispute was between his account—that Osman grabbed him and attempted to slam him when the firearm accidentally discharged—and the State's theory that the defendant intentionally shot Osman. Under the second *Lynch* rationale, a defendant's knowledge of the victim's prior violent conduct is irrelevant where the evidence is offered to support his account of disputed events. *Id.* at 845-46.

¶ 73 We need not resolve whether Osman's prior convictions would ultimately have been admissible under the second *Lynch* rationale because the defendant cannot establish a reasonable probability that their admission would have changed the result. The evidence the convictions purportedly would have supported—that Osman was aggressive and that the defendant perceived danger from him—was already substantially before the jury. Anders testified that Osman threatened to beat the defendant, raised his shirt, approached him, and threw the first punch. The defendant testified that Osman wanted to fight, that Osman had a sheathed knife, and that Osman grabbed him and attempted to slam him.

¶ 74 More importantly, the jury returned a verdict of second degree murder. By doing so, the jury found the mitigating circumstance that the defendant actually believed deadly force was justified. Thus, the defendant obtained from the jury the principal finding to which additional evidence of Osman's violent character would have been directed: the jury accepted that the defendant genuinely perceived circumstances requiring defensive force. The disputed issue was whether that belief was objectively reasonable.

¶ 75 Osman's prior convictions, which the defendant did not know about, could not retroactively make his subjective perception more informed at the time of the encounter. Nor would evidence that Osman previously committed battery have materially altered the undisputed evidence concerning what Osman actually did on this occasion: he threatened the defendant and punched him first. The defendant therefore has not established a reasonable probability that admission of Osman's prior convictions would have resulted in a verdict of perfect self-defense rather than second degree murder.

¶ 76 For essentially the same reason, the defendant cannot establish prejudice from counsel's failure to object to the remaining portions of the prosecutor's closing argument. As discussed above, the challenged remarks did not deprive the defendant of a fair trial, and the jury's verdict demonstrates that it independently evaluated the competing theories presented. Because the defendant has not shown a reasonable probability of a different outcome absent counsel's alleged errors, his ineffective-assistance claims fail.

¶ 77 IV. Sentencing

¶ 78 Finally, the defendant challenges his 18-year sentence. He argues that the circuit court improperly penalized him for maintaining his innocence when it commented upon his failure to

accept responsibility and improperly discounted his employment history because his prior work did not provide health insurance. The defendant acknowledges that he failed to preserve these claims in his motion to reconsider sentence and therefore seeks review under the plain-error doctrine or, alternatively, as ineffective assistance of counsel.

¶ 79 A defendant ordinarily forfeits a sentencing issue by failing to make a contemporaneous objection and include the issue in a written postsentencing motion. See *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). Under *People v. Johnson*, 2024 IL 130191, ¶¶ 91-92, alleged errors in the sentencing process of the type raised here are reviewable, if at all, under the first prong of plain error. The defendant must first establish a clear or obvious error and, if error occurred, demonstrate that the evidence at sentencing was closely balanced. *Id.* ¶ 44; *Hillier*, 237 Ill. 2d at 545.

¶ 80 A sentencing court has broad discretionary authority, and the weight assigned to aggravating and mitigating factors depends upon the circumstances of the case. A reviewing court may not substitute its judgment merely because it might have weighed those factors differently. See *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The seriousness of the offense is an important sentencing consideration, and rehabilitative potential need not receive greater weight than the nature and circumstances of the offense. See *People v. Alexander*, 239 Ill. 2d 205, 214 (2010).

¶ 81 We first reject the defendant's contention that the circuit court imposed a harsher sentence because he continued to maintain his innocence. We recognize that a sentencing court may not punish a defendant for refusing to confess guilt or abandon a claim of innocence. See *People v. Byrd*, 139 Ill. App. 3d 859, 866 (1986). The challenged remark, however, must be considered in the context of the court's entire sentencing explanation rather than in isolation.

¶ 82 The circuit court began by acknowledging that the defendant was only 23 years old and expressly considered his maturity. It then discussed the seriousness of the second degree murder

conviction, the impact upon Osman's family, the defendant's criminal history—including multiple prior batteries and an aggravated DUI—his education, employment history, substance-abuse problems, and the circumstances that brought him to Anders's home that evening. The court described the killing as a "senseless, senseless act of gun violence" and emphasized that Anders had told the intoxicated defendant that he could see his children the following day, but the defendant nevertheless insisted upon going to the residence. Only after discussing those matters did the court observe that it had heard nothing reflecting "any level of acceptance of responsibility for what occurred in this case."

¶ 83 Read in context, the circuit court's comment does not clearly establish that it enhanced the sentence because the defendant refused to admit that he intentionally shot Osman. A defendant's attitude toward his conduct and prospects for rehabilitation may properly bear upon sentencing, provided the court does not condition leniency upon abandonment of the defendant's claim of innocence. See *People v. Speed*, 129 Ill. App. 3d 348, 350 (1984). Here, the circuit court's remarks focused upon the defendant's broader choices leading to the offense, his history, and his rehabilitative prospects. The isolated reference to acceptance of responsibility does not establish a clear or obvious error. See *Johnson*, 2024 IL 130191, ¶ 44; see also *Hillier*, 237 Ill. 2d at 545.

¶ 84 We reach a similar conclusion concerning the circuit court's reference to employment "with health insurance." The court stated that it did not see many positive factors and noted that the defendant had dropped out of school in the eighth grade and lacked "any type of history in terms of steady employment with health insurance and so on." We do not read that statement as establishing that the absence of employer-provided health insurance constituted an independent aggravating factor. Rather, the remark occurred during the court's broader discussion of the defendant's employment history, stability, maturity, and rehabilitative potential.

¶ 85 We agree that a defendant's failure to possess health insurance, standing alone, would not be a proper basis to increase a prison sentence. But the record does not demonstrate that the circuit court did so here. The court did not return to the subject, quantify it, or suggest that the defendant deserved additional punishment because of his insurance status. Instead, the court emphasized the seriousness of the killing, the defendant's prior violent criminal history, his substance abuse, and the circumstances preceding the confrontation.

¶ 86 Moreover, even assuming that the reference to health insurance was an improper consideration, resentencing is not automatically required whenever a sentencing court mentions an improper factor. Rather, remand is unnecessary where the reviewing court can determine from the record that the factor carried insignificant weight and did not lead to a greater sentence. See *People v. Heider*, 231 Ill. 2d 1, 21-22 (2008). Here, the circuit court's explanation overwhelmingly focused upon permissible factors, while the insurance reference consisted of a brief phrase embedded within its discussion of the defendant's employment history.

¶ 87 The record at the hearing on the motion to reconsider reinforces that conclusion. In denying the motion, the circuit court again relied upon the circumstances of the offense, the factors in aggravation and mitigation, and what it described as the defendant's significant prior history of violence despite his young age. Although acknowledging that 18 years was only two years below the statutory maximum, the court expressly stated that, based upon those circumstances, the sentence was "entirely appropriate."

¶ 88 The defendant therefore has not established a clear or obvious sentencing error. Without such error, his plain-error argument necessarily fails. See *Hillier*, 237 Ill. 2d at 545. Likewise, because the defendant cannot establish that the result of the sentencing hearing would have been different had counsel raised these objections, his alternative ineffective-assistance claim fails.

¶ 89 III. CONCLUSION

¶ 90 For the foregoing reasons, we affirm the defendant's conviction for second degree murder and his sentence of 18 years' imprisonment.

¶ 91 Affirmed.