2026 IL App (1st) 250582-U
No. 1-25-0582
Order filed November 6, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

STEVEN DAVIS, Defendant-Appellant

Appeal from the Circuit Court of This County.
Honorable Alfredo Maldonado, Judge, Presiding.
No. 20-CR-7565

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C.A. Walker and Wilson concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for first degree murder over his contention that he was denied effective assistance of counsel.

¶ 2 Following a jury trial, defendant Steven Davis was found guilty of first degree murder and sentenced to 35 years in prison. On appeal, defendant contends that he was denied effective assistance when trial counsel did not request that the jury receive the pattern jury instructions defining the mental states of recklessness, intent, and knowledge where his mental state was the "key issue" at trial and the jury "expressed confusion" regarding mental states. We affirm.

¶ 3 Following a July 16, 2020, incident, defendant was charged by indictment with the first degree murder of Berasheet Mitchell, also referred to in the record as Be'Rasheet Ashaun Mitchell and Ashuan, the attempted murder of Jihad Mitchell, and aggravated discharge of a firearm. (For clarity, we refer to members of the Mitchell family by their first names.)

¶ 4 The State proceeded on two counts of first degree murder. Count V alleged that defendant intentionally or knowingly shot and killed Berasheet while armed with a firearm. See 720 ILCS 5/9-1(a)(1) (West 2020). Count VI alleged that defendant, without lawful justification, shot and killed Berasheet while armed with a firearm, knowing that such an act created a strong probability of death or great bodily harm to Berasheet. See 720 ILCS 5/9-1(a)(2) (West 2020).

¶ 5 We relate only those facts relevant to the issues on appeal.

¶ 6 The evidence at trial established that on the morning of July 16, 2020, Berasheet, his siblings, Jihad and Imani Mitchell, and Berasheet's ex-girlfriend Chistine "Carmen" Smith were present at the Mitchell family home preparing to leave for a trip.

¶ 7 Imani testified that she and defendant were in a "[t]oxic" three-year dating relationship, which she ended a few weeks prior to the incident. Defendant did not take the breakup "well" and told her that she "wasn't going anywhere or he would come after" her and her family.

¶ 8 On the morning of July 16, 2020, Berasheet woke Imani and told her that defendant was present. Imani met defendant on the front porch and they argued. Defendant wanted her to go "somewhere" with him rather than travel with her family. Imani refused. Defendant, who was angry, took her phone and went "through it." Imani attempted to retrieve her phone and told defendant to leave. Defendant left with her phone, but returned and they continued to argue. Smith came outside and Imani and Smith retrieved the phone.

¶ 9 Berasheet and Jihad then came outside. Defendant told them "to mind their business." Defendant also told Smith that "this is my b***." At this point, Berasheet "stepped in" between Imani and defendant and repeatedly told defendant to leave. Jihad also told defendant to leave. Defendant refused. Berasheet then "got into" defendant's face and loudly told him to leave, but did not touch him. Then, defendant reached toward his waist, drew a firearm, pulled the slide, and then pulled the trigger. The firearm was pointed at Berasheet, who fell. Jihad moved toward defendant, but also fell. Defendant fired two more shots and fled.

¶ 10 According to Imani, Berasheet was unarmed and first touched defendant when defendant drew the firearm. Berasheet tried to "grab" the firearm, but instead grabbed defendant's arm. Imani had seen defendant's firearm when he "flashed it" earlier that morning.

¶ 11 On July 16, 2020, Imani received a message from defendant through Facebook Messenger. Defendant wrote, relevant here, "It went off," that he "can't stand to be without you, but I gotta go Bae," and to "Till [sic] Ashuan" that he was "sorry." Defendant further wrote that Imani should tell "nobody" that she "talked" to defendant, that he was "sorry," and that he "did something wrong, really wrong."

¶ 12 During cross-examination, Imani testified that she knew defendant carried a firearm with a bullet in the chamber. She was unsure whether a bullet was ejected when defendant "racked" the firearm. Prior to the shooting, Berasheet grabbed defendant's hand and they then struggled over the firearm.

¶ 13 Jihad testified that he was on probation at the time of trial for resisting a police officer and aggravated fleaing and eluding. According to Jihad, Imani and defendant's "[r]ocky" relationship ended prior to July 16, 2020. On that morning, Jihad heard Imani and defendant arguing on the front porch. Defendant left and Imani went inside. When defendant returned, Imani "insisted" on

speaking with him to "smooth everything out." When the argument continued, Smith, then Berasheet, and finally Jihad went outside. Smith helped Imani retrieve her phone from defendant.

¶ 14 Defendant called Imani and Smith "b***" and told Smith to "mind your business, this is my b***." Berasheet tried to "ease" the situation and told defendant to go home. At one point, defendant and Berasheet were at the bottom of the porch steps, and Berasheet, who was "in" defendant's face, told defendant to leave two or three more times. Defendant was "standoffish" as though he was "not going nowhere." Jihad, who remained on the porch, told defendant to "just go" and that Imani was "moving on."

¶ 15 Jihad left the porch when he saw defendant draw a firearm. At that time, Berasheet was not touching defendant. Berasheet then grabbed defendant by the wrist of the arm in which defendant held the firearm. There was a "little tussle," and a "shot came off." Berasheet was shot in the lower abdomen and fell. Jihad moved toward defendant to try to gain control of the firearm. Defendant then fired two more times. Jihad grabbed defendant's "gun arm," there was a tussle, and Jihad fell. Defendant then fled.

¶ 16 During cross-examination, Jihad acknowledged that he did not like defendant "that much" because defendant did not treat Imani "right" and that it was "[f]air" to say that Jihad was unhappy to see defendant that morning. When Jihad heard loud voices, his "overprotectiveness" caused him to go outside to see if Imani needed "support." Jihad watched events from the porch. Berasheet was in defendant's "face," and defendant was "kind of backing off." As Berasheet and defendant argued, defendant reached toward his waist and Berasheet grabbed defendant's arm. When the first shot "rang off," Berasheet let go and fell. Jihad observed defendant pointing the firearm at Berasheet. Jihad then moved to defendant and grabbed defendant's arm. Jihad stopped the firearm

before it was pointed at him. Defendant then fired to the left of Jihad. Jihad denied making verbal threats to defendant. While defendant did not make verbal threats, "the threat itself [was] the gun."

¶ 17 During redirect examination, Jihad testified that he and Berasheet went outside to protect Imani when they heard defendant and Imani arguing the second time. When defendant drew the firearm, Berasheet "immediately" grabbed defendant's arm. The firearm ultimately pointed at Berasheet and Jihad saw defendant pull the trigger. The firearm was "going" toward Jihad when Jihad grabbed defendant's arm and stopped it. At this point, defendant fired two more times.

¶ 18 The State presented testimony establishing that on July 27, 2020, defendant, who was in the custody of the Macomb Police Department, identified himself as his twin brother Stacy Davis. Two days later, defendant admitted that he was Steven Davis.

¶ 19 The State presented additional testimony establishing that Berasheet died of a gunshot wound to the abdomen.

¶ 20 At the jury instruction conference, defense counsel requested that the jury be instructed as to involuntary manslaughter and second degree murder. The trial court agreed to instruct the jury as to involuntary manslaughter over the State's objection.

¶ 21 During closing argument, the State argued that defendant committed first degree murder when he "racked that slide" to "put that live round in the chamber." According to the State, defendant made the "intentional" decision to bring a firearm to the Mitchell home, and to thereafter draw it and pull the trigger three times. The State acknowledged that the jury would be instructed as to involuntary manslaughter, but argued that defendant's conduct was not reckless or careless.

¶ 22 The defense argued that defendant was a "stupid kid" who made a "deadly mistake." Counsel acknowledged that Berasheet's death was a "terrible tragedy," but asserted that the question before the jury was whether defendant was a "cold blooded killer" or a "dumb 18 year

old" who carried a firearm "everywhere" and was mad that his girlfriend left him. According to counsel, when Imani's "loud, angry, over protective brother" left the porch, defendant made a "really dumb decision" and reached for his firearm. Counsel concluded that this was not an "intentional pulling of trigger"; rather, two people struggled over a firearm which went off "accidently." Counsel asserted that the "biggest reason" that this was the act of a "stupid, scared kid" was that defendant messaged Imani to apologize and admit that he did something wrong.

¶ 23 In rebuttal, the State argued that defendant was a "grown man" who followed through on his threat to go "after" Imani and her family. Defendant's regret did not make his actions "less" intentional or knowing. The State further questioned how defendant could accidentally fire a weapon three times.

¶ 24 After the parties' closing argument, the trial court instructed the jury. The court's instructions included, relevant here, Illinois Pattern Jury Instruction, Criminal No. 7.01 (4th ed. 2000), which defines first degree murder; Illinois Pattern Jury Instruction, Criminal No. 7.02 (4th ed. 2000) (IPI 7.02), the propositions instruction for first degree murder when second degree murder is not also an issue; and Illinois Pattern Jury Instructions, Criminal No. 7.07 (approved Jan. 30, 2015) (IPI Criminal No. 7.07), which defines involuntary manslaughter.

¶ 25 During deliberations, the jury sent a note titled "Regarding the Charge of 1st degree murder":

> "Is the word 'intent' applicable to all 3 subpropositions of 'Second Proposition"? Or is intent only applicable to the sentence 'he intended to kill or do great bodily harm to Berasheet Mitchell' ?"

¶ 26 The trial court instructed the jury to "refer to the plain wording of the instruction" and to continue deliberations.

¶ 27 The jury then sent a second note: "Is *'intent' required* to sustain a verdict of Guilty of 1st degree murder (we feel the wording is ambiguous)[.]" (Emphases in original.) The trial court responded, "Please follow the instructions as worded" and to continue deliberations.

¶ 28 At 5:36 p.m., after approximately 5½ hours of deliberations, the jury sent a third note: "What if we cannot come to an agreement?" The trial court responded, "Please continue with your deliberations."

¶ 29 At 7:10 p.m., the jury sent a fourth note: "We are at an impasse[.] I would not expect that to change[.]" The trial court instructed the jury pursuant to *People v. Prim*, 53 Ill. 2d 62 (1972), over the defense's objection, and instructed the jury to continue deliberations.

¶ 30 At 7:51 p.m., the jury sent a fifth note, asking for "the transcript." The trial court brought the jurors to the courtroom and ordered them to return in the morning when transcripts would be available.

¶ 31 When the jury returned the next morning, it received a redacted version of the trial transcript. The jury thereafter found defendant guilty of first degree murder.

¶ 32 Trial counsel filed a motion for a new trial. However, at the next hearing, defendant asked to proceed *pro se*, which the trial court permitted following admonishments. Defendant later retained another attorney, who filed another motion for a new trial. The trial court denied this motion. At sentencing, the trial court merged count V into count VI for first degree murder and imposed 35 years in prison thereon.

¶ 33 On appeal, defendant contends that he was denied effective assistance when trial counsel did not request that the jury receive the pattern jury instructions defining the mental states of recklessness, intent, and knowledge. He argues that the jury's notes "expressed confusion" regarding mental states, the "key issue" at trial.

¶ 34 "An ineffective assistance of counsel claim requires a defendant to establish 'both that counsel's performance fell below an objective standard of reasonableness and that a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Bush*, 2023 IL 128747, ¶ 79 (quoting *People v. Gayden*, 2020 IL 123505, ¶ 27); see also *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant's failure to establish either prong of the *Strickland* test is fatal to his ineffective assistance claim. *People v. Webb*, 2023 IL 128957, ¶ 21.

¶ 35 We review ineffective assistance of counsel claims using a bifurcated standard of review. *People v. Ortega*, 2020 IL App (1st) 162516, ¶ 24. We defer to any factual findings made by the trial court unless they are against the manifest weight of the evidence. *Id*. However, the ultimate legal question of whether counsel provided ineffective assistance is reviewed *de novo*. *Id*.

¶ 36 "Jury instructions are intended to help jurors properly apply the law to the evidence presented and reach a correct verdict." *People v. Hampton*, 2024 IL App (1st) 230171, ¶ 28. "An instructional error will be harmless beyond a reasonable doubt where the evidence in support of the verdict is so clear and convincing that the verdict would not have been different had the jury been properly instructed." *People v. Cook*, 2014 IL App (1st) 113079, ¶ 32.

¶ 37 Trial counsel's decision as to which jury instructions to tender is a matter of trial strategy that is generally immune to claims of ineffective assistance. *People v. Elizondo*, 2021 IL App (1st) 161699, ¶ 92; see also *People v. Sims*, 374 Ill. App. 3d 231, 267 (2007) ("counsel's choice of jury instructions, and the decision to rely on one theory of defense to the exclusion of others, is a matter of trial strategy"). Counsel's failure to request a specific instruction can constitute ineffective assistance, however, "if the instruction was so critical to the defense that its omission denied the right of the accused to a fair trial." *Elizondo*, 2021 IL App (1st) 161699, ¶ 92; see also *Sims*, 374

Ill. App. 3d at 267 (a decision regarding which jury instructions to tender supports an ineffective assistance claim "only if that choice is objectively unreasonable"). We review such a claim *de novo*. *Elizondo*, 2021 IL App (1st) 161699, ¶ 92.

¶ 38 Defendant first contends that he was denied effective assistance by trial counsel's failure to request a jury instruction defining the mental state of recklessness because the jury may have confused recklessness with negligence.

¶ 39 Here, the trial court instructed the jury with IPI Criminal No. 7.07 which defines involuntary manslaughter. The Committee Note to IPI Criminal No. 7.07 states: "Give Instruction 5.01, defining 'recklessness.' " Illinois Pattern Jury Instructions, Criminal No. 5.01 (4th ed. 2000) (IPI Criminal 5.01), which defines recklessness, provides, in part that:

> "A person [(is reckless) (acts recklessly)] when 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 which a reasonable person would exercise in the situation." *Id.*

¶ 40 Trial counsel did not request, and the trial court did not provide, IPI Criminal No. 5.01 to the jury.

¶ 41 *People v. Cook*, 2014 IL App (1st) 113079, is instructive. In that case, the trial court agreed to instruct the jury on involuntary manslaughter, but refused the defense's request to instruct the jury as to the definition of recklessness. *Id.* ¶ 20. The defendant was found guilty of involuntary manslaughter and sentenced to 13½ years' imprisonment. *Id.*

¶ 42 On appeal, the defendant argued that the trial court committed reversible error when it refused to give the jury IPI Criminal 4th No. 5.01 because the jury may have confused recklessness with ordinary negligence, and the evidence was closely balanced. *Id.* ¶ 23.

¶ 43 We noted that the trial court instructed the jury as to involuntary manslaughter, but did not follow the Committee Note to IPI Criminal 4th No. 7.07, which states: " 'Give Instruction 5.01, defining the word "recklessness." ' " *Id.* ¶ 25 (quoting IPI Criminal 4th No. 7.07, Committee Note). We further noted that in *People v. Hopp*, 209 Ill. 2d 1 (2004), our supreme court noted that, "[i]f a Committee Note indicates to give another instruction, that is a mandatory requirement." (Internal quotation marks omitted.) *Id.* ¶ 29. "Thus, we read *Hopp* to make the Committee Note to IPI Criminal 4th, No. 7.07, stating to give IPI Criminal 4th No. 5.01, a mandatory requirement" and determined that the trial court erred when it denied the defendant's request to give the jury IPI Criminal 4th No. 5.01. *Id.*

¶ 44 Such an error, however, did not require automatic reversal. That is, the trial court's failure to instruct the jury as to the definition of recklessness "did not affect the framework within which the trial proceeded, but was simply an error in the trial process itself." *Id.* ¶¶ 30-31. Thus, this error was subject to harmless error analysis. *Id.* ¶ 31. We then analyzed whether the jury's verdict would have been different had the jury been instructed as to definition of recklessness (see *id.* ¶ 33 (citing IPI Criminal 4th No. 5.01)), and ultimately affirmed the defendant's conviction.

¶ 45 Thus, although this court has determined that the failure to instruct a jury as to the definition of recklessness when instructing it as to involuntary manslaughter may be error, such an error, in itself, does not necessarily demonstrate deficient performance.

¶ 46 *People v. Lemke*, 384 Ill. App. 3d 437 (2008) is relevant to this analysis. In that case, the jury was instructed as to first degree murder and involuntary manslaughter, and found the defendant guilty of first degree murder. *Id.* at 445. On appeal, the defendant argued, relevant here, that he was denied effective assistance when trial counsel failed to request that the jury be instructed as to IPI Criminal 4th No. 5.01, which defines recklessness, the requisite mental state

for involuntary manslaughter. *Id.* at 449. The defendant further relied on *People v. Howard*, 232 Ill. App. 3d 386 (1992), to argue that counsel's failure to request that the jury be instructed as to the definition of recklessness was reversible error. *Id.*

¶ 47 The court found, based upon the record before it, that trial counsel's decision not to request that the jury be instructed as to the definition of recklessness was trial strategy. *Id.* at 449-50. The court noted that trial counsel elicited testimony that the defendant " 'behaved foolishly[,] * * * even say recklessly,' " and "did not 'appreciate the dangerousness and, therefore, the recklessness of his actions.' " *Id.* at 450. Then, during closing arguments, trial counsel stated that the trial court's instructions would define knowledge and intent for the jury, but referred to the witness's testimony when discussing recklessness. *Id.*

¶ 48 The court determined that counsel's decision not to tender the instruction defining recklessness was a matter of trial strategy rather than "incompetent oversight," as counsel directed the jury to the witness's testimony regarding the defendant's actions rather than a legal definition. *Id.* The defense's theory of the case was that the defendant was "extremely intoxicated" at the time of the shooting, and "counsel could have reasoned that the defense was better served by emphasizing [the witness's] testimony and not tendering IPI Criminal 4th No. 5.01 with its 'consciously disregards' language." *Id.* Thus, through the witness's testimony, "counsel provided the jury with a concept of recklessness less stringent than the legal definition set forth in IPI Criminal 4th No. 5.01." *Id.*

¶ 49 The court was unpersuaded by the defendant's reliance on *People v. Howard*, 232 Ill. App. 3d 386 (1992), which did not address a situation where trial counsel's failure to tender the definition of recklessness instruction was a matter of trial strategy. *Id.* at 450 (citing *Howard*, 232 Ill. App. 3d at 390-93). The court also noted that *Howard* involved cumulative error, and a reversal

was warranted " '[b]ased upon the specific facts in [the] case.' " *Id.* at 450-51 (quoting *Howard*, 232 Ill. App. 3d at 390, 392-93). The court therefore concluded that, because the defendant was unable to overcome the presumption that trial counsel did not request that the jury receive a recklessness instruction "as a matter of sound trial strategy," the defendant's claim of ineffective assistance failed. *Id.* at 451.

¶ 50 Similarly, based upon the record before us, trial counsel could have decided, "as a matter of sound trial strategy (see *id.*), not to request that the jury be instructed as to recklessness. At trial, counsel elicited from Imani that following the shooting, defendant messaged her that he was sorry and "did something wrong, really wrong." Then, during closing argument, trial counsel referred to the shooting as a "deadly mistake" and characterized the firearm as going off "accidently" during a struggle. Counsel also referred to defendant as a "stupid kid" and a "dumb 18 year old" who made a "really dumb decision," and thereafter messaged Imani to apologize and admit that he did something wrong.

¶ 51 As in *Lemke*, counsel could have decided that not instructing the jury as to the definition of reckless would permit the jury to define the term in a manner more beneficial to defendant. As discussed, trial counsel's decisions as to which jury instructions to tender are a matter of trial strategy generally immune from claims of ineffective assistance. *Elizondo*, 2021 IL App (1st) 161699, ¶ 92. We cannot agree with defendant that this trial strategy decision was "objectively unreasonable." See *Sims*, 374 Ill. App. 3d at 267.

¶ 52 Defendant further contends that he was denied effective assistance when trial counsel did not request that the jury be instructed as to the definitions of intent and knowledge. See Illinois Pattern Jury Instructions, Criminal, Nos. 5.01A and 5.01B (approved Oct. 28, 2016) (hereinafter IPI Criminal Nos. 5.01A and 5.01B).

¶ 53 However, absent a specific request by the jury, it is not necessary to provide instructions defining intent and knowledge because these terms have a plain meaning within the jury's common knowledge. *People v. Sperry*, 2020 IL App (2d) 180296, ¶ 15; *People v. Powell*, 159 Ill. App. 3d 1005, 1013 (1987) ("the jury need not be instructed on the terms knowingly and intentionally because those terms have a plain meaning within the jury's common knowledge"); see also IPI Criminal 4th No. 5.01B, Committee Note.

¶ 54 "[S]ince IPI Criminal 4th No. 5.01B's addition in 1989, a general rule has emerged: if a jury asks the court to define a mental state term, or manifests confusion or doubt regarding such a term's meaning, the court must instruct the jury accordingly." *Sperry*, 2020 IL App (2d) 180296, ¶ 15; see also IPI Criminal 4th No. 5.01B, Committee Note ("The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request.").

¶ 55 Applying those standards to the present case, we find that defendant has not established that his trial counsel was deficient for failing to request that the jury be instructed as to the definitions of intent and knowledge, where there was no request for further definition by the jury and the instruction was not otherwise required to be given.

¶ 56 The jury was instructed, relevant here, that

> "To sustain the charge of first degree murder, the State must prove the following propositions:
>
> *First Proposition*: That the defendant performed the acts which cause the death of Berasheet Mitchell; and
>
> *Second Proposition*: That when the defendant did so, he intended to kill or do great bodily harm to Berasheet Mitchell;
>
> or

he knew that his acts would cause death to Berasheet Mitchell;

or

he knew that his acts created a strong probability of death or great bodily harm to Berasheet Mitchell." (Emphasis in original.)

¶ 57 Here, the jury's notes did not request the definition of any of the terms in the original jury instruction. Rather, the first note asked whether " 'intent' " was "applicable to all 3 subpropositions of 'Second Proposition' ?" The second note then asked whether " *'intent'* [was] *required* to sustain a verdict of Guilty of 1st degree murder (we feel the wording is ambiguous)[.]" (Emphases in original.). In each case, the trial court instructed the jury to refer to the wording of the instructions.

¶ 58 Thus, the jury's notes did not ask that any term be defined. Rather, the notes went to the grammatical structure of the instruction itself. It is unclear how additional instructions defining "intent" and "knowledge" would have answered the questions actually presented in the notes. Where, as here, the jury did not request to define these terms and there is no indication that the jury expressed confusion as to their meaning, defendant cannot establish that counsel was deficient for failing to request that the jury be instructed as to the definitions of intent and knowledge. See *Elizondo*, 2021 IL App (1st) 161699, ¶ ¶ 92-93, 95.

¶ 59 As defendant cannot establish that counsel's failure to request that the jury be instructed as to the definitions of recklessness, intent, and knowledge constituted deficient performance, his ineffective assistance claim must fail. See *Webb*, 2023 IL 128957, ¶ 21 (failure to establish either prong of the *Strickland* test is fatal to an ineffectiveness claim).

¶ 60 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 61 Affirmed.