



practically certain to cause her daughter's death; that the defendant was denied a fair trial due to contradictory and confusing jury instructions; that the defendant was denied a fair trial due to the prosecutor's improper conduct and comments during his opening statement and closing argument; and that the case must be sent back for a new sentencing hearing because no judgment was entered on the verdict. We reverse and remand for a new trial.

¶ 3

### I. BACKGROUND

¶ 4 The defendant was charged by information in the circuit court of Williamson County with two counts of first-degree murder in the September 27, 2008, death of her three-year-old daughter, Bianca Starr. Count I was filed pursuant to section 9-1(a)(1) of the Illinois Criminal Code of 1961 (Code) (720 ILCS 5/9-1(a)(1) (West 2008)) and alleged that the defendant, without lawful justification and with intent to kill Bianca Starr, covered Bianca Starr's mouth and nose with her hand, causing Bianca Starr's death. Count II was filed pursuant to section 9-1(a)(2) of the Code (720 ILCS 5/9-1(a)(2) (West 2008)) and alleged that the defendant, without lawful justification, covered Bianca Starr's mouth and nose with her hand, knowing such act created a strong probability of death or great bodily harm to Bianca Starr, thereby causing Bianca Starr's death.

¶ 5 The defendant entered a plea of not guilty. The defendant then moved for an insanity evaluation to assess whether she, as a result of mental disease or mental defect, lacked substantial capacity to appreciate the criminality of her conduct at the time of the offense and, thus, was not criminally responsible for her conduct, and her motion was granted. Dr. Daniel J. Cuneo, a clinical psychologist, conducted the evaluation. After reviewing the police reports and prior psychological evaluations, and interviewing the defendant, Dr. Cuneo opined that at the time of the alleged offense, the defendant suffered from a substantial disorder of thought, mood, and behavior that substantially impaired her judgment and affected her behavior, but not to the extent that she was unable to appreciate the criminality

of her actions. Dr. Cuneo further opined that while the defendant was legally sane at the time of the alleged offense, her mental illness was the primary factor contributing to her actions.

¶ 6 The State filed a motion *in limine* to prohibit the defendant from calling Dr. Cuneo as a witness and from introducing any information contained in psychological evaluations of the defendant which preceded the offense because none of the evaluators had offered an opinion that the defendant was legally insane at the time of the offense. During a pretrial hearing, the defendant argued that she had asserted an insanity defense and that she may elect to pursue that defense depending on the evidence at trial. She also argued that she was not required to offer expert testimony to establish insanity if the evidence itself reveals a serious mental defect or illness, and that a jury is not required to accept an expert's opinion on an ultimate fact even if only one expert has offered an opinion on that subject. The defendant noted that her mental state was placed at issue where the State charged her with two counts of first-degree murder, the first requiring proof of an intent to kill, and the second requiring proof of knowledge that the acts were reasonably certain to result in death. She also noted that she would tender an instruction on involuntary manslaughter which requires proof of recklessness. The trial court denied the State's motion *in limine*.

¶ 7 The case proceeded to a jury trial. The primary factual issue in dispute was the mental state of the defendant at the time of the charged offense. A summary of the evidence pertinent to the issues on appeal follows.

¶ 8 A. The 9-1-1 Call and Police Investigation

¶ 9 On September 27, 2008, at approximately 7:27 p.m., Jean Morris, a 9-1-1 operator employed by the Herrin police department, answered a 9-1-1 call that was placed by the defendant. Morris testified that the defendant sounded hysterical during that call. She stated that the 9-1-1 call was recorded, and she authenticated the recording. The recording was played for the jury. In the recording, the defendant sounded distraught, and she was crying

loudly. She said that she had killed her daughter. Morris asked the defendant what had happened and whether her child was breathing. The defendant said that her child was not breathing. Morris asked whether anyone was performing CPR on the child. The defendant said that she was doing CPR but could not bring her daughter back. Morris asked the defendant to stay on the line while she dispatched the police and an ambulance to the defendant's residence. During this period, the defendant could be heard counting from 1 to 35 while sobbing. Morris returned to the call and remained on the line until the police arrived at the defendant's residence.

¶ 10 Chad Parks, a patrol officer employed by the Herrin police department, was in the police station when the 9-1-1 call came in. He responded immediately and arrived at the defendant's residence within five minutes of the call. Officer Shawn McEvers from the Energy police department arrived at the same time as Officer Parks. Two other Herrin officers, Ryan Howell and Ryan Morris, arrived minutes later. The defendant lived in a second-floor apartment in an apartment complex. Officer McEvers was stationed at the door to the apartment unit to control entry to the unit. Officer Parks testified that when he entered the apartment, he was immediately directed to the southeast bedroom. As he walked down the hall, he observed the defendant lying on the floor just outside the bedroom. As he stepped into the bedroom, he observed a man performing CPR on a child. The child, identified as Bianca Starr, was lying on her back next to a bed. The man, identified as Ronnie Starr, was Bianca's grandfather and the defendant's father. Officer Howell entered the bedroom shortly after Officer Parks. He assisted with CPR until the medics arrived.

¶ 11 Officer Parks testified that the defendant became hysterical when the medics began working on Bianca. He observed Ronnie Starr put his arm around the defendant and walk her into the nearby computer room. Officer Parks followed them. Officer Parks stated that the defendant was crying and yelling that she had killed her baby. He asked her what had

happened so that he could relate the information to the medics. The defendant stated that she put her hand over her daughter's mouth and nose until she could not breathe and that she was punishing her daughter for not going to bed. Officer Parks testified that the defendant was upset, but she was very clear when she made those statements. Officer Parks stated that he saw a few cans of beer scattered about when he surveyed the defendant's apartment. He did not see any obvious signs that the defendant was intoxicated.

¶ 12 Roy Bird was one of the medics who worked on Bianca. Bird testified that when he stepped into the bedroom, he saw a man performing CPR on a child. He noted that frothy blood was coming from the child's nose as the man did compressions. Bird stated that he saw no external signs of injury on the child. He noted that the child was not breathing, that she had no pulse, and that her pupils were fixed and dilated. Bird testified that he attempted to place a tube into the child's airway so that he could administer 100% oxygen, but he was unable to visualize the vocal cords and trachea because there was blood in the airway. Bird suctioned blood from the airway. He then inserted the tube, placed an oxygen mask over the child's face, and administered oxygen. Bird also hooked up a cardiac monitor to check the child's heart. The monitor indicated that there was no electrical activity in the heart. He administered epinephrine and atropine intravenously in an attempt to restart the heart, but the child did not respond. Bird testified that he continued resuscitation efforts as the child was transported to the hospital. The child was treated in the emergency room, but she never responded. Bird was asked about the proper way to count chest compressions during CPR. He stated that compressions are counted out from 1 to 15, not 1 to 35.

¶ 13 When Officer Ryan Morris arrived, he was assigned to stay with the defendant. He entered the computer room and saw the defendant on the floor. She was crying. Officer Morris sat with the defendant for about 10 minutes. He observed the defendant cycle through a range of emotions during that period. He noted periods where the defendant showed

extreme anger, striking the wall with her fists, and other periods where she cried uncontrollably. At one point, the defendant said that she needed a drink and reached for a cup. When Officer Morris offered the defendant some water, she stated that she wanted a cup that contained Dr. Pepper and vodka. Officer Morris did not allow her to have that cup.

¶ 14 Officer Morris testified that he was instructed to take the defendant into custody on a charge of aggravated battery. When he advised the defendant that she was under arrest, she tried to pull away. He handcuffed her and placed her into his police car. Officer Morris testified that he did not Mirandize the defendant because he did not intend to question her. As Officer Morris pulled away from the defendant's apartment, the defendant said several times, "You are a fucking pig." Then, while crying, the defendant said that she did not mean to hurt her daughter. She said that she put her hand over her daughter's nose and mouth, that blood started to come from her daughter's nose, and that she immediately called for help. Officer Morris testified that he did not engage the defendant in conversation on the drive, and he did nothing to provoke her statements. Officer Morris stated that the defendant was placed in a holding cell and that she was given a blanket and some water. She again said that she did not mean to harm her daughter.

¶ 15 Pete Sopczak, a crime scene investigator, arrived at the defendant's apartment at approximately 9:10 p.m., on September 27, 2008. Sopczak testified that he inspected the child's bedroom for blood spatter or bloodstains, but found none. He looked for evidence indicating that the child may have been injured as a result of coming into contact with a sharp corner on a piece of furniture, but found none. He seized a T-shirt, a pair of blue jeans, and a wad of chewed gum that he found in the bedroom. Sopczak attended the autopsy and collected a DNA swab, hair samples, and fingernail clippings from the child's body. Sopczak delivered the items seized from the apartment and the samples collected during the autopsy to the Illinois State Police crime lab for testing and analysis. The results revealed nothing

of significant evidentiary value to the case.

¶ 16 B. The Defendant's Police Interview

¶ 17 The defendant was interviewed by Detective Bruce Graul. The interview began on September 28, 2008, at approximately 1:48 a.m., and concluded at 2:35 a.m. It was recorded by audio and video. Detective Graul authenticated the video, the audio, and a typed transcription of the interview. Detective Graul testified that he did not know whether the defendant had been given anything to eat or drink while she was detained prior to the interview, and he did not know whether she rested during that period.

¶ 18 The video of the interview was played for the jury. The defendant was 18 years old at the time. The video reveals that the defendant was Mirandized and that after some discussion she signed the *Miranda* waiver form. The defendant stated that on the evening of September 27, 2008, she went to a park within her apartment complex to look for her boyfriend and her three-year-old daughter, Bianca. She was concerned that the park was not a safe place for children in the evening. The defendant found Bianca playing with some other children. The defendant talked with a female neighbor for a few minutes before she grabbed Bianca's arm and took her back to the apartment. When they were in the apartment, Bianca repeatedly asked for something. The defendant grew impatient with Bianca's requests and told Bianca to go to bed. The defendant stated that Bianca went to the bedroom and began screaming her head off. The defendant went into the bedroom and placed her hand over Bianca's mouth to stop her from screaming. The defendant said that she removed her hand from Bianca's mouth and asked Bianca if she was okay, and that Bianca said she was okay. The defendant stated that she started to leave the room, but then turned around. She saw Bianca stand up in the bed. There was foam and blood coming from Bianca's mouth. Bianca fell to the floor. The defendant went to Bianca and felt for a pulse. When she found none she began CPR. The defendant stated that she performed five cycles of CPR. Each

time, she gave 2 rescue breaths and counted 35 chest compressions. When Bianca did not respond, the defendant walked out of the bedroom, grabbed a phone, and called 9-1-1. The defendant stated that she told the dispatcher that she thought she had killed her daughter. The defendant told Detective Graul that she had consumed shots of vodka earlier in the evening. The video shows that the defendant displayed intense emotional swings throughout the interview. She displayed a childlike or adolescent defiance, hysterical crying, sobbing, remorse and resignation. When Detective Graul told the defendant that her child was dead, the defendant banged against the wall and then screamed and wailed on the floor.

¶ 19

### C. Medical Evidence

¶ 20 Dr. Russell Deidiker, a forensic pathologist, performed the autopsy on the body of Bianca Starr. At trial, he discussed the results of the autopsy and his opinions about the manner and cause of death. Dr. Deidiker testified that the external examination of the child's body was unremarkable. He found no exterior injuries to the face and body. There was a reddish tinge on the cheeks and underneath the nose, and a minimal amount of blood and frothy material exuding from the nostrils. During the internal examination, Dr. Deidiker found that the lungs were congested. When he sectioned the lungs, he observed a pinkish-white frothy fluid bubble from the cut surfaces. The microscopic examination revealed congestion in the kidneys, liver, and spleen and congestion and edema in the lungs. Dr. Deidiker noted that the congestion and edema in the lungs could be consistent with an asphyxial death. Dr. Deidiker found some artifact in the brain tissue that was consistent with edema. He also observed evidence of a blunt trauma around the kidney but noted that such an injury, by itself, would not be fatal.

¶ 21 Dr. Deidiker opined that the cause of the child's death was smothering and that the manner of death was homicide. He testified that smothering is classified as a mechanical asphyxia and that mechanical asphyxia occurs when a physical obstruction prevents the flow

of oxygen in and out of the lungs. Dr. Deidiker stated that in a typical case of smothering asphyxia, the mouth and nose are obstructed. Dr. Deidiker testified that within 30 seconds of obstructing the flow of oxygen through the nose and mouth, the heart rate slows, and that within 60 to 90 seconds, there is a decrease in brain activity and a slowing of respiratory attempts. Dr. Deidiker stated that if the obstruction is removed within the initial 30 seconds, the person will resume respirations spontaneously, and that if the obstruction is maintained through the sequence of a slowing of the heart rate, a slowing of respiratory attempts, and a decrease in brain activity, the person will lose consciousness and will require resuscitation to restart respirations. Dr. Deidiker stated that it takes four to six minutes of oxygen deprivation for irreversible brain damage to occur. Dr. Deidiker testified that when a person is deprived of oxygen, he will initially struggle to remove the obstruction and to get air, and that the struggling will cease as the heart rate and brain activity slow and he loses consciousness.

¶ 22 Dr. Deidiker acknowledged that in forming his opinions in this case, he considered the reported accounts indicating that a caregiver had covered the child's mouth and nose for an undisclosed time period. Dr. Deidiker testified that if the caregiver had obstructed the child's nose and mouth up to the point of unconsciousness, and then removed the obstruction, the child would have been unconscious for a period of time, but she would have begun to breathe on her own without resuscitation. He opined that in those circumstances, the child would not have been able to stand up in bed immediately after the obstruction was removed. He opined that in a case where oxygen deprivation progressed to the point that the person has a pinkish frothy fluid coming from the nose, the person would not be capable of standing on his own.

¶ 23 During cross-examination, Dr. Deidiker stated that he found no injuries to the child's head and face, no injuries inside her mouth, and no bruising or marks on her arms, wrists,

hands, or fingers. There was no evidence of blunt-impact trauma to the head. Dr. Deidiker acknowledged that while his findings of pulmonary edema, brain edema, and congestion in the liver, spleen, and kidneys are consistent with a smothering death, those findings do not establish that it was a smothering death.

¶ 24 On redirect, Dr. Deidiker testified that in a smothering case, the presence or absence of marks on the body depends largely on the amount of force applied and the amount of resistance offered. He noted that children and elderly persons are generally weaker and unable to put up a lengthy struggle, so that an absence of injuries to their faces does not rule out the application of force.

¶ 25 D. Defendant's Evidence

¶ 26 The defendant's sister, Kaitlyn Starr Schmechel, testified that she and the defendant were very close and were in contact almost daily. She had never seen the defendant try to harm Bianca. Kaitlyn testified that sometimes Bianca was a difficult child to handle, and that the defendant punished Bianca by taking away her toys or spanking her hand or bottom. She noted that the defendant had been trying alternative forms of discipline, such as embarrassing Bianca and putting hot sauce in her mouth. Kaitlyn testified that she went to the defendant's apartment on the evening of September 27, 2008. When she arrived, the defendant was there, but Bianca was not. Bianca had already been taken to the hospital. Kaitlyn testified that on prior occasions she had seen the defendant in a drunken state, and that the defendant was staggering and appeared to be very intoxicated that evening.

¶ 27 Dr. Dan Cuneo, the clinical psychologist who performed the pretrial sanity evaluation on the defendant, was called by the defense. Dr. Cuneo testified that prior to the evaluation of the defendant, he reviewed the police reports, the defendant's recorded police interview, the defendant's childhood records from the Department of Children and Family Services (DCFS), the reports of a psychological evaluation done by Michael Althoff, Ph.D., in August

2007, and a psychiatric evaluation done by David Taylor, M.D., in July 2004. He then interviewed the defendant. Dr. Cuneo testified that in his evaluations he first considers whether the individual has any type of mental illness, and if so, then whether the mental illness substantially impaired her ability to appreciate the criminality of her conduct.

¶ 28 In this case, Dr. Cuneo diagnosed the defendant with recurrent major depressive disorder, chronic posttraumatic stress disorder, alcohol dependence and cannabis abuse, and borderline personality disorder. He noted that his diagnoses are consistent with those made by Dr. Althoff and Dr. Taylor. In reaching these diagnoses, Dr. Cuneo noted that the defendant had been raised in an alcoholic home; that she had been physically, sexually and emotionally abused as a child; and that she had little stability, bouncing around from foster home to foster home as a ward of DCFS. He testified that the defendant was extremely depressed, that she had a labile mood with sudden, extreme bursts of emotion, and that she had an extremely low frustration tolerance so that she quickly moved to anger when she was subjected to even small amounts of stress. He noted borderline personality disorder is characterized by periods of extreme rage, and that people with borderline personality disorder love and hate at the same time and often have extremely stormy, short-lived interpersonal relationships. Dr. Cuneo testified that the defendant used alcohol to self-medicate and that she eventually became alcohol dependent. He stated that when the defendant consumes alcohol, she experiences a decrease in impulse control and judgment and an increase in the potential to act out aggressively.

¶ 29 Dr. Cuneo opined that the defendant suffered from a substantial disorder of thought, mood, and behavior which substantially impaired her judgment and affected her behavior, but not to the extent that she was unable to appreciate the criminality of her actions at the time of the alleged offense. Dr. Cuneo testified that at the time of the alleged offense, the defendant had been extremely angry with her boyfriend and that she had been drinking

heavily, but she was not hallucinating, and she was not acutely psychotic or delusional. Dr. Cuneo stated that heavy drinking increased the defendant's impulsivity, impaired her judgment, and dramatically increased her potential for acting out; that she went into a rage when her child would not stop crying; that she put her hand over the child's nose and mouth to stop the crying; and that she did not think much beyond getting the child to stop crying. Dr. Cuneo explained that while the defendant loved her daughter and she felt that her daughter was the only thing that made anything in life worthwhile, she exploded and acted without thinking when the child would not stop crying. Dr. Cuneo stated that the defendant had the intellectual capacity to understand that covering a child's nose and mouth could cause death and that the defendant could have controlled her behavior if she desired. Dr. Cuneo concluded that on the evening of September 27, 2008, the defendant was mentally ill, but not legally insane, and that the defendant's mental illness was the primary factor contributing to her actions.

¶ 30

#### E. Jury Instructions

¶ 31 During the instruction conference, the State offered an issues instruction on first-degree murder that included the possibility of a finding of guilty but mentally ill. The instruction, combining Illinois Pattern Jury Instructions, Criminal, No. 7.02 and No. 24-25.01I (4th ed. 2000) (hereinafter IPI Criminal 4th), stated:

"To sustain the charge of first degree murder, the State must prove the following proposition:

*First Proposition:* That the defendant performed the acts which caused the death of Bianca Starr; and

*Second Proposition:* That when the defendant did so, he [*sic*] intended to kill or do great bodily harm to Bianca Starr; or he [*sic*] knew that his [*sic*] acts created a strong probability of death or great bodily harm to Bianca Starr.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty of First Degree Murder, your deliberations on this charge should end, and you should return a verdict of not guilty of First Degree Murder.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of First Degree Murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt that the defendant is guilty of First Degree Murder; and,

*Second:* That the defendant had proved by a preponderance of the evidence that he [*sic*] was mentally ill at the time he [*sic*] committed First Degree Murder.

If you find from your consideration of all the evidence that each of the circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill of First Degree Murder.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of First Degree Murder and if you find that the second circumstance concerning the guilty but mentally ill is not present, you should return the general verdict finding the defendant guilty of First Degree Murder."

¶ 32 The State tendered an instruction based on IPI Criminal 4th No. 24-25.01B, which stated that a person who is found guilty but mentally ill is not relieved of criminal

responsibility for her conduct if at the time of the commission of the offense she was not insane but was suffering from a mental illness, and an instruction based IPI Criminal 4th No. 24-25.01C, which stated that a person is mentally ill at the time of the commission of the offense if she was afflicted by a substantial disorder of thought, mood, or behavior which impaired her judgment but not to the extent that she was unable to appreciate the wrongfulness of her behavior. The State also tendered an instruction based on IPI Criminal 4th No. 7.15, which stated that in order to find the defendant's acts caused the death of Bianca Starr, the State must prove beyond a reasonable doubt that the defendant's acts contributed to cause the death and that the death did not result from a cause unconnected with the defendant, and that the State does not have to prove that the acts were the sole or immediate cause of death.

¶ 33 The defense tendered an instruction on involuntary manslaughter that included the possibility of a finding of guilty but mentally ill, based on IPI Criminal 4th No. 7.08 and No. 24-25.01I, which provided as follows:

"To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Bianca Starr; and

*Second Proposition:* That the defendant performed those acts recklessly; and

*Third Proposition:* That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that any one of these proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of Involuntary Manslaughter, your deliberations on this charge should end, and you should return a verdict of not guilty of Involuntary Manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on this charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt that the defendant is guilty of Involuntary Manslaughter; and,

*Second:* That the defendant had proved by a preponderance of the evidence that he [*sic*] was mentally ill at the time he [*sic*] committed Involuntary Manslaughter.

If you find from your consideration of all the evidence that each of the circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill of Involuntary Manslaughter.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of Involuntary Manslaughter and if you find that the second circumstance concerning the guilty but mentally ill is not present, you should return the general verdict finding the defendant guilty of Involuntary Manslaughter."

¶ 34 During the instruction conference, the defense also tendered instructions taken from IPI Criminal 4th No. 5.01, No. 5.01A, and No. 5.01B[2] that define the mental states of recklessness, intent, and knowledge. IPI Criminal 4th No. 5.01 states that a person 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." IPI Criminal 4th No. 5.01A states that "[a] person intends to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct." IPI Criminal 4th No. 5.01B[2] states that "[a] person knows the result of his conduct when he is consciously aware that such result is practically certain to be caused by his conduct."

¶ 35 The State did not object to the instruction defining recklessness, but it did object to those defining intent and knowledge. The State argued that the words "intentionally" and "knowingly" have a plain meaning within a jury's common understanding. The trial court agreed with the State and refused to give the instructions unless the jury specifically requested the definitions during its deliberations.

¶ 36 F. Jury Notes During Deliberations

¶ 37 The jury began its deliberations at 1:15 p.m. During deliberations, the jury submitted four notes to the trial court requesting clarification regarding the defendant's mental state and the implications of finding the defendant "guilty but mentally ill." The notes were sent at 1:45 p.m., 2:35 p.m., 2:45 p.m., and 3:15 p.m. After consulting with the attorneys as to each note, the trial court told the jury that the instructions he had given them included the law and issues that were to be considered, and he asked the jury to continue to deliberate. The jury reached a verdict at 3:40 p.m. It found the defendant guilty but mentally ill on the charge of first-degree murder.

¶ 38 II. ANALYSIS

¶ 39 Initially, the defendant contends that where the jury was asked to decide between first-degree murder and involuntary manslaughter, it was reversible error for the trial court to refuse to instruct the jury that the defendant could not be guilty unless she knew that her daughter's death was "practically certain to be caused" by her conduct.

¶ 40 Jury instructions are intended to convey the legal principles applicable to the evidence

presented at trial. *People v. Mohr*, 228 Ill. 2d 53, 65, 885 N.E.2d 1019, 1025 (2008). The task of the reviewing court is to determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense. *Mohr*, 228 Ill. 2d at 65, 885 N.E.2d at 1026. Whether to give an instruction is within the sound discretion of the trial court, and its decisions will not be disturbed absent an abuse of discretion. *Mohr*, 228 Ill. 2d at 65-66, 885 N.E.2d at 1026. A trial court abuses its discretion if the jury instructions are not clear enough to avoid misleading the jury or if the instructions do not accurately state the law. *Mohr*, 228 Ill. 2d at 66, 885 N.E.2d at 1026. Although jury instructions are generally reviewed for an abuse of discretion, the standard of review is *de novo* when the question is whether the applicable law was accurately explained to the jury. *People v. Pierce*, 226 Ill. 2d 470, 475, 877 N.E.2d 408, 410 (2007).

¶ 41 As previously noted, the defendant tendered instructions taken from IPI Criminal 4th No. 5.01, No. 5.01A, and No. 5.01B[2] that define the mental states of "recklessness," "intent," and "knowledge." The State did not object to the instruction defining "recklessness," but it did object to those defining "intent" and "knowledge." The trial court gave the instruction defining "recklessness," but refused to instruct on the definitions of "intent" and "knowledge" unless the definitions were requested by the jury during deliberations. The court stated that it was following the general proposition these words have a plain meaning, and it referred to the respective committee note following IPI Criminal 4th No. 5.01A and No. 5.01B[2].

¶ 42 The committee note which follows IPI Criminal 4th No. 5.01B provides in pertinent part: "The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill.App.3d 1005, 512 N.E.2d 1364, 111 Ill. Dec. 727 (1st Dist.1987), for the general proposition that the words 'intentionally' and 'knowingly' have a plain meaning within the jury's common

understanding." IPI Criminal 4th No. 5.01B, Committee Note, at 142. The same statements are set forth in the committee note following IPI Criminal 4th No. 5.01A. IPI Criminal 4th No. 5.01A, Committee Note, at 141.

¶ 43 After reviewing the record, we conclude that this case is not one to which the general proposition should be applied. The record demonstrates that the primary factual dispute was the defendant's mental state at the time she placed her hand over Bianca's nose and mouth. The jury had to determine whether the defendant's conduct was reckless, intentional, or knowing, and the effect, if any, of the defendant's mental illness on the issue of her mental state. The jury had to wade through issues, instructions, and verdict directors that were intricate. Additionally, the jury was presented with five separate verdict forms. It had to decide whether the defendant was guilty of first-degree murder, guilty but mentally ill of first-degree murder, guilty of involuntary manslaughter, guilty but mentally ill of manslaughter, or not guilty. The jury was instructed on the definitions of "mental illness" and "recklessness," but it was not instructed on the definitions of "intent" and "knowledge." Though the jury did not specifically request definitions of "intent" or "knowledge," its confusion was clearly manifested in that it sent four separate notes seeking clarification about the role of the defendant's mental illness during its deliberations. That the jury focused on the defendant's mental state and sought clarification on that issue should not have been a surprise given the varying mental states at issue and the complexity of the instructions.

¶ 44 In our view, the instructions, taken together, did not completely, accurately, and clearly explain the applicable law to the jury, and so we lack confidence in this verdict. The trial court's failure to instruct the jury on the definitions of intent and knowledge was error, and that error requires that the judgment be reversed and the cause remanded for a new trial. Had the jury been completely instructed as to the definitions of the differing mental states to be considered and had it then found the defendant guilty but mentally ill of first-degree

murder on the evidence presented, we could affirm the conviction.

¶ 45 The foregoing is dispositive of this case, and we decline to lengthen this decision by addressing the remaining issues which are either not preserved for review or unlikely to recur on retrial.

¶ 46

### III. CONCLUSION

¶ 47 For the reasons stated, we reverse the judgment of the circuit court and remand the case for a new trial.

¶ 48 Reversed and remanded.