2017 IL App (1st) 141742-U

FOURTH DIVISION
January 26, 2017

No. 1-14-1742

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 4904
	)	
DAVID JAMISON,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

Held: We affirm defendant's conviction of first degree murder as there was sufficient evidence supporting his conviction, the trial court did not abuse its discretion in allow prior consistent statements, and the trial court did not commit an error of law in rejecting involuntary manslaughter and it did not improperly consider hearsay.

¶ 1 Defendant David Jamison appeals as of right following his bench-trial conviction of first degree murder. On appeal, defendant challenges (1) the sufficiency of the evidence supporting his conviction, (2) the trial court's admission of a witness's prior consistent statements into

evidence, and (3) the trial court's alleged errors of law in considering hearsay substantively and in considering the applicability of the lesser offense of involuntary manslaughter. For the reasons discussed below, we affirm defendant's conviction.

¶ 2 BACKGROUND

¶ 3 Defendant was charged by indictment with two counts of first degree murder for the death of his cellmate, John Lambert, in the Cook County Jail. The victim was found unresponsive on the floor of their cell on the morning of June 26, 2007. He was transported to the hospital and died 12 days later. Defendant's trial occurred in October 2013.

¶ 4 The evidence at trial established that the 25-year-old victim was cellmates with defendant in Division 9, Tier 3-A, which was called the "old man's deck" because most inmates were over 40 years old. William Dukes[1] was a fellow inmate on the tier in June 2007. Dukes had previously been cellmates with defendant for one or two months but requested a transfer in February 2007 because he did not get along well with defendant. Dukes described defendant as approximately five feet, eight inches to five feet, ten inches tall, weighed 160 to 180 pounds, and was strong. Dukes testified that the victim was white, five feet, six inches to five feet, seven inches tall, weighed approximately 160 pounds, and was "timid and soft spoken."

¶ 5 Dukes testified that a few days before June 26, 2007, Dukes observed defendant and the victim arguing in the dayroom located in the middle of the cell block. He saw them from his cell. Dukes testified that the victim and defendant were a few feet from each other and defendant stated, "What the f*** are you doing with my stuff? Why you [*sic*] giving my stuff away? How the f*** can you give my book to some other m***." Dukes testified that the victim responded that "he didn't know, he thought he gave it to him, the book, he thought it was his to do what he

[1] Dukes had prior convictions for delivery of a controlled substance, possession of a stolen motor vehicle, and burglary, and was serving a natural life term at the time of defendant's trial because of a double murder conviction.

wanted with it, that he would get it back and give it [to defendant]." Defendant's voice was "loud" and the victim's voice was "soft, almost meek."

¶ 6 Dukes testified that on three occasions after this argument, Dukes spoke with the victim and encouraged him to request a cell change. Dukes saw the victim the night before he was removed from the tier. He did not observe any physical injuries. The victim did not complain of any pain and was not slurring his words.

¶ 7 On cross-examination, Dukes testified that he did not hear any noises that sounded like fighting on the night of June 25 or morning of June 26, 2007. Dukes testified that although he was on the upper level and the victim was on the lower level, Dukes was allowed into the dayroom when the lower level had access because he was allowed access to the library. The next day or the day after the victim was removed from the tier, a few officers questioned Dukes as he was returning to his cell from the library. He did not know what had happened to the victim at that time, and he did not tell the officers about the argument he had overheard regarding the book. Dukes indicated that it was a short conversation and they only questioned him about whether he saw or heard anything that night.

¶ 8 Vernon Thompson, another inmate on the "old man's deck" in June 2007, was in the cell next to the defendant and the victim's cell. There was a plumbing room between defendant's and Thompson's cells which was hollow and contained pipes. Thompson testified in his deposition[2] that defendant had been "talking junk" over a book that he allowed the victim to read, which the victim took out of the cell and gave to another inmate. Defendant told the victim that he was "going to beat his a***" when they returned to the cell because of the book. Thompson told

[2] Thompson refused to testify at trial. The parties stipulated to the testimony of an attorney who would verify the accuracy of the deposition transcript. He had a prior conviction for aggravated criminal sexual assault and was currently serving a 30-year sentence. He also has two prior convictions of aggravated battery and one conviction for manufacture and delivery of a controlled substance.

defendant to "leave it alone." Defendant initially responded that he was "going to beat him up," but then stated that he would "leave it alone."

¶ 9 Thompson testified in his deposition that, during the night of June 25, 2007, he heard "bop, bop, bop, bop, bop" and "fighting" in the cell next to his sometime after 9:30 p.m. He also heard "grabbing and wrestling over there" and "some punches." He testified that he could hear through a crack in his cell wall. Defendant told the victim "don't take his stuff out of there." Thompson testified that he heard the table in the cell with the victim and defendant "bump, and rub against it, and you heard a couple of punches and that was it. It didn't last longer than about two or three minutes." Thompson heard "[f]lesh hitting flesh."

¶ 10 Housed on Thompson's other side and two cells down from defendant and the victim was inmate Donzell Thomas.[3] Thomas described the victim as a "small petite guy." During the time he was incarcerated with the victim, he never observed the victim slur his speech, fall down, have seizures, or complain of head pain. He testified that on June 25, 2007, he was cleaning the deck after everyone was locked up for the night around 9:30 p.m. He saw the victim and there did not appear to be anything physically wrong with him.

¶ 11 Thomas testified before a grand jury on January 6, 2009,[4] that defendant and the victim were "arguing about a book" as defendant "had let [the victim] read one of the novels and someone in the day room picked the novel up without asking [the victim] can they read it, and [defendant] happened to see and kind of caught an attitude about it, and confronted [the victim] about it, and [the victim] told him to get out of his face. *** [M]yself and someone else intervened, and I told [defendant], leave that alone. And he went about his business." Thomas affirmed that defendant was angry.

[3] Thomas was serving a life sentence for armed robbery.

[4] When questioned about whether he witnessed an argument over a book, Thomas refused to testify. He acknowledged testifying before a grand jury on January 6, 2009.

¶ 12 In addition, Thomas testified before the grand jury that on the night in question, after everyone was locked in their cells and "all of us had passed out," he heard Thompson beating on defendant's side of the wall and Thomas "heard him tell DJ, who was Jamison [defendant], to leave the boy alone." Defendant told Thompson to "mind your own business." Two or three minutes later, Thomas heard a bump, "like somebody had bumped into the door," and then heard nothing else. At trial, Thomas testified that he did not hear anything on the night of the incident, but he affirmed that "you could just tell it was like a bump."

¶ 13 Thomas affirmed that he gave a deposition on August 17, 2009.[5] At the deposition, Thomas testified that he heard defendant and the victim talking loudly in their cell around 10:30 or 11 p.m. on June 25, 2007. Thomas testified that Thompson was banging on the wall and telling defendant to stop. Thomas testified that the victim and defendant had a fight over a book in the dayroom the day before this incident, and that defendant was angry.

¶ 14 Cook County jail guard officer Joshua Seals was working on the night of June 25 to 26, 2007, from 11 p.m. to 7 a.m. He checked on the upper and lower levels of the tier every half hour. He did not recall hearing any arguments, fighting, or banging noises that night; he would be able to hear loud noises from inside the guard interlock area. At around 3 a.m. on June 26, 2007, Seals began passing out breakfast trays to the inmates. He opened the door to cell 3127 and gave the breakfast trays to defendant. He closed the door, but defendant "sat there staring at me with the trays in his hand." Seals continued serving other cells, but returned to defendant's cell 15 to 20 seconds later and opened the cell door again to investigate. Defendant pointed down and stated, " 'Whatcha gonna do about this?' " Defendant was pointing at the victim, who was lying on the ground covered by a blanket up to his forehead. Seals testified that it was not

[5] As with Thompson, the parties stipulated that a lawyer present at the deposition of Thomas would testify that the deposition was a true and accurate copy of the deposition given by Thomas.

unusual for an inmate to sleep on the floor. The victim was laying on his back, parallel to the bunk beds, with his feet were toward the door. Seals attempted to wake the victim, who was "snoring, shivering as if he was cold." Seals closed the cell door and contacted his sergeant over the radio.

¶ 15 Sergeant Margaret Stumpf arrived in a short amount of time and Seals again opened the cell door. Seals testified that the victim had white froth coming out of his mouth and he started having a seizure or involuntary muscle spasms. Seals did not see any blood. According to Stumpf, when she first entered the cell, she observed the victim sitting down with his back against the cell wall. She did not see any injuries or blood and she did not recall if there was a blanket on him. The victim was snoring and foaming from his mouth. Seals and Stumpf attempted to wake him and turned him on his side so he would not choke. Stumpf radioed to security to call Cermak Hospital for a paramedic. She asked defendant what was "wrong with his cellie" and defendant responded that he did not know. She had Seals search the cell for contraband or medications belonging to the victim, but they did not recover any medication for the victim. It did not appear that a struggle had occurred in the cell. She did not observe any injuries on defendant. She called security two more times to check on the arrival of the paramedics. After the third attempt, she had security call 911 instead.

¶ 16 The victim was taken to St. Anthony's Hospital and then to Stroger Hospital of Cook County for treatment. Dr. Patricia Raksin, a neurosurgeon at Stroger, treated the victim when he arrived on June 26, 2007. Dr. Raksin testified that a CT scan showed a large epidural hematoma with an associated fracture of the adjacent temporal bone on the left side of the victim's head. The hematoma was approximately three centimeters in diameter. She testified that she has performed thousands of brain surgeries, but only a "handful" of surgeries on a hematoma of that

size because patients with hematomas of this size and type typically "don't make it to medical attention." The brain was swollen and had shifted two centimeters. She performed a left craniotomy that day in order to evacuate the epidural hematoma. During the procedure, she observed a fracture on the left side of the skull and a laceration of the middle meningeal artery. Dr. Raksin testified that the fracture of the skull bone likely lacerated the artery, which runs beneath it. She testified that an epidural hematoma is often caused by a laceration of the middle meningeal artery. Following the operation, the victim's neurologic status never improved significantly.

¶ 17 The decision was ultimately made to withdraw life sustaining measures and the victim died on July 8, 2007. The victim's mother, Susan Lambert, testified that the victim had no health issues, other than an addiction to narcotics. Lambert testified that the family sued the Sheriff of Cook County over the death of the victim.

¶ 18 Cook County Sheriff officer John Barloga, a crime scene investigator, subsequently photographed defendant on June 26, 2007. He observed an injury to the left side of his nose, above his right eye, on the right and left temples, and on his left check.

¶ 19 Following the incident on June 26, 2007, defendant was removed from the tier and the other inmates of Tier 3-A were relocated to Tier 3-D. In mid- to late August 2007, defendant rejoined the inmates on Tier 3-D. Dukes testified that, on one occasion after defendant’s return, he heard defendant tell an inmate called "Butter" or "Butters" "about how he had to give that white boy some attention, how he had to stomp his f*** ears together. And then he was also pantomiming swinging his fists and stomping his feet like he was stomping something on the ground." Dukes explained that defendant was "stomping his feet like he was stomping a watermelon on the floor." Dukes testified that he was approximately five feet away when this

conversation occurred, watching through the chuckhole of his cell. A few days later, Dukes overheard defendant speaking to two different individuals in the cell to Dukes' right, "Mark something and Marshall Morgan." Dukes was in his own cell at the time. Dukes heard defendant state "how he had to clean the white boy up and give the white boy some attention."

¶ 20 On cross-examination, Dukes testified that defendant was in the dayroom while talking to Butters through the hole in the cell door. In a written statement he signed in December 2008, Dukes indicated that defendant stated that he hit the "white boy" and "choked him out" and defendant make a choking motion. A few days later, Dukes recognized defendant's voice when he overheard the conversation between defendant and Mark. Defendant was outside of the cell, talking at the door. Dukes testified that the first time he reported the conversation with Butters was to a Chicago Tribune reporter who contacted him in June or July 2008 and Dukes wrote him a letter in return. He told the reporter because there was a civil lawsuit by the victim's family against the jail and Dukes felt that "the Cook County jail staff was negligent in getting him treatment once they found him laying on the floor ***." Defense counsel questioned whether Dukes related this information to the investigator and Assistant State's Attorney (ASA) on December 29, 2008, and January 9, 2009, when he was interviewed and when he testified before a grand jury on January 28, 2009.

¶ 21 On redirect examination, Dukes testified regarding prior statements he made in his statement to the ASA and investigator and his testimony before the grand jury wherein he related the argument regarding the book and defendant's statements to Butters and Mark.

¶ 22 In addition to Dukes, Thomas was also moved to Tier 3-D. According to Thomas's deposition testimony, Thomas testified that at some point after defendant came to Tier 3-D, he

and defendant were in the shower and he asked defendant what happened between defendant and the victim. Thomas testified that defendant responded as follows:

> "[A]t first he didn't want to say. *** And he was like, man I cleaned dude up. They ain't got nothing on me. He told them they gave him some medication and he had a seizure. Man, you know what, I said, I ain't going to get into all that, man. You bogus for what you did. He said, man, dude got in my face and I hit him, and when he fell, he hit his head on the floor and he didn't move. *** I believed him because he was serious."

¶ 23 However, Thomas testified at trial that defendant was merely recounting false rumors to him. Thomas explained that he "knew what the family had went through" and he was sympathetic toward the victim's family. Thomas claimed his deposition testimony related "jail house rumors" and defendant actually explained that he and the victim were taking medication in their cell and the victim "started shaking and fell and he hit his head ***."

¶ 24 Dr. Mitra Kalelkar, a forensic pathologist retired from the Cook County Medical Examiner's Office, conducted a postmortem examination of the victim's body on June 10, 2007. She authorized an autopsy report which contained a microscopic examination performed by her, a neuropathology report and microscopic neuropathology report by Dr. Mark Reyes, radiographs from Stroger Hospital, a toxicology report, an anatomic chart, and a medical examiner's case report by Kalelkar's investigator.

¶ 25 Dr. Kalelkar testified that the victim was five feet, five inches tall and 182 pounds. In examining the body, she observed several marks related to medical treatment, including the incision in the victim's head where the craniotomy was performed and several needle puncture marks and incisions on his legs and arms which were used to delivery medication or hydration.

Dr. Kalelkar also noted evidence of injury to the body that was not related to medical treatment. This included three green bruises on his left upper arm. She testified that a bruise occurs on someone who is alive and the color of the bruising indicated it was toward the end of the healing process. There were also two faint green bruises less than one inch in diameter on the victim's left and right front chest area. The victim had multiple small scattered brown bruises on his left front thigh, in a seven-by-two inch area. He had a green bruise on his front right thigh near the knee. He had a more recent one-inch bruise on a knuckle of his left hand. Dr. Kalelkar also made incisions on the back of his body to examine for bruises. She found a large area of hemorrhage on the back of his left shoulder and the back of his left upper arm. The hemorrhages were red and brown in color. In her internal examination of the body, Dr. Kalelkar did not notice anything remarkable and the victim appeared to have been healthy, although his lungs showed patchy areas consistent with pneumonia. Dr. Kalelkar testified that someone on a ventilator was at high risk for developing pneumonia.

¶ 26 During her internal examination of the victim's head, she observed a hemorrhage underneath his scalp on the left side of his head. When she removed a portion of his skull to examine the brain, a fragment of bone became dislodged, which indicated there was a fracture of the left temporal bone. She observed an epidural hemorrhage on the outside of the dura underneath the skull. Dr. Kalelkar observed two contusions on the victim's front left temporal lobe, and a small subdural hemorrhage underneath the dura.

¶ 27 In her findings, Dr. Kalelkar diagnosed the victim with bronchopneumonia, extensive and bilateral; a left-side epidural hemorrhage and residual hemorrhage; a fracture of the left temporal bone; cerebral contusions; and diffuse hemorrhages in the subcutaneous tissues on the left upper back. She opined that the brain contusions occurred from blunt trauma to the left side of his

head, as a result of a direct hit on his head. She explained that this type of injury occurrs when the brain is stationary and a moving object hits the brain. Dr. Reyes had diagnosed the hematoma and multiple contusions to the left temporal lobes, and Dr. Kalelkar testified that Dr. Reyes' findings and diagnoses were consistent with her own. Accordingly, based on the autopsy findings, hospital records, and police reports, Dr. Kalelkar opined that the victim died "as a result of bronchopneumonia and complicating head injury, and the head injury occurred as a result of assault, and the manner of death was homicide."

¶ 28 On cross-examination, Dr. Kalelkar agreed that the fact that the victim was found in his cell at 3 a.m. seizing and vomiting did not necessarily mean that he had just suffered the head injury that morning. She opined that the victim suffered the injuries "[w]ithin a couple of hours or within two or three hours." She testified that if someone had placed the victim in a chokehold with an arm, this would not necessarily leave any injuries on his neck. She could not say with a reasonable degree of medical certainty that the bruises on his legs and chest occurred simultaneously with the head injury. The hospital did not test the victim for defendant's prescription medications which were present in the cell.[6] She did not find defensive wounds on his hands or face. He had a small abrasion by his left ear and eye.

¶ 29 On redirect examination, Dr. Kalelkar testified that the hospital records noted that the victim was unresponsive and had a "hematoma and redness to left temporal region, back of left ear, and scratches to the right lateral neck ***." The scratches on the neck could be consistent with being grabbed around the neck. He also had a tongue bite, which could be consistent with being choked or having a seizure.

[6]The parties stipulated that the following prescription medications were recovered from defendant from his cell: an inhaler, aspirin, methcarbamol tablets, lovastatin tablets, salsalate, enalapril, nitroglycerin, and triancinoline acetonice cream.

¶ 30 The defense presented the testimony of forensic pathologist Dr. Shaku Teas. Based on her review of the autopsy report and other reports and medical records regarding the victim, Dr. Teas opined that the victim's cause of death was an epidural hemorrhage "probably due to a fall." Dr. Teas explained that she qualified her opinion because she had to "really look at the ancillary investigation ***." She observed that one of the hospitals ran a drug scan on the victim which revealed two very low levels of anticonvulsant drugs Dilantin and Tegretol, which are used for seizure disorders and to stabilize an individual's mood. "[T]he Dilantin level was less than 2.5—was detectable. So I'm not sure whether that is a cut out level for St. Anthony Hospital but *** they reported a level of Tegretol as 0.6 which is very low but it's present." Dr. Teas testified that the victim's small tongue laceration was consistent with having a seizure, as was vomiting and falling and hitting your head. Dr. Teas opined that the small abrasion on the victim's left temple and bruising in that area was consistent with a "point of impact" from a fall. Dr. Teas noted that the CT scan report indicated no skull fracture, but Dr. Raskin described observing a fracture on the scan and finding a fracture when she performed the craniotomy. Dr. Teas testified that in reviewing the scan, there could or could not be a fracture and it did not make any difference to her opinion. Dr. Teas observed that the Cook County Hospital medical records indicated the victim had a history of attention deficit disorder, polysubstance abuse, and experiencing blackouts. The diagnosis of pneumonia was consistent with the information she was provided that the victim had been vomiting all night.

¶ 31 Dr. Teas observed that Dr. Kalelkar's post mortem report did not mention any injuries on the victim's neck. She opined that the bruising on the left side of the chest was described as green when the victim entered the hospital, and it was therefore "at least several days old." Dr. Teas opined that the bruise on the victim's hand was from receiving medical treatment. She opined

that the bruising on the victim's back showed hemorrhage "that was a couple days old" and did not "have a brownish discoloration that you would see in a 12 day old hemorrhage"; rather, the hemorrhaging appeared to be "fresh" and she opined that it was caused in the last few days in the hospital.

¶ 32 Dr. Teas testified that where there is surgical manipulation of the brain, "the details of the injury are not sometime[s] clear." Dr. Teas noted that Dr. Kalekar's report indicated that it would not be inconsistent that the injuries to the head occurred six to seven hours previously. Dr. Teas explained that a "lucid interval" was the time between when a head injury occurs and when a person collapses where the person appears to be lucid and uninjured, until the volume of blood increases and causes unconsciousness. Dr. Teas testified that a lucid interval was common with epidural hemorrhages. Although Dr. Reyes had identified multiple contusions on the brain's surface, Dr. Teas opined that she "couldn't see a clear cut disruption of the surface" and the brain had been manipulated. Although there were "a couple areas that are shown that could be contusions ***" she "could not say this is definitely a contusion." Dr. Teas opined the cause of death was cerebral injury from the epidural hemorrhage. As to the manner of death, Dr. Teas testified that "I would say there is nothing inconsistent in this case to say that it is not a fall." Dr. Teas affirmed that there was nothing that would indicate it was not caused by a fall, and that the "evidence is consistent with a fall." Dr. Teas testified that someone could fall and hit their head upon experiencing a blackout. Dr. Teas testified that the information she had indicated that the "cell mate said that [the victim] fell the night before, that he had been vomiting all night. And I find *** nothing inconsistent with that story."

¶ 33 On cross-examination, Dr. Teas testified that it was significant that the victim had subtherapeutic levels of both Tegretol and Dilantin in his blood because someone with a seizure

disorder could suddenly experience a seizure and unexpected death if the levels are low. Dr. Teas testified that the presence of these drugs indicated that at some point the victim may have possibly been treated for a seizure. Dr. Teas testified that "somebody who has a seizure disorder can fall off a bunk bed." She testified that the victim would have a headache as the epidural hematoma was forming, and the police reports indicated that defendant told investigators that the victim had been complaining of a headache and had been vomiting on the night of June 25, 2007. Dr. Teas testified that the cerebral contusions shown in photographs from the autopsy of the left temporal lobe were consistent with contrecoup lesions seen with falls, although it was not clear that they were contusions, at all, as they could also be subarachnoid hemorrhages. Dr. Teas explained that countrecoup injuries result if an individual falls on the front of his head, causing the brain to impact on the back of the head. She did not think there were any definite coup or contrecoup injuries here; she testified that there was an "impact injury" and an epidural hemorrhage, and that considering the investigation of the case, "there is nothing inconsistent with a fall causing this kind of an injury." Dr. Teas testified that "usually when you have assaults [*sic*] an epidural hemorrhage you have multiple other injuires." She was not given any deposition or grand jury transcripts of Thomas, Dukes, or Thompson. She opined was that the victim most likely fell from the bunk bed or from a standing height, although a fall resulting from a push could not be ruled out. She testified that "this very well could be an accidental death. *** If there is a question that he may have been pushed and as a result of the push he fell then I would say that I cannot tell the difference and may call it undetermined. So I would go between either an accident or an undetermined on the case."

¶ 34 Called as a defense witness, Cook County Sheriff officer Dale Peters testified that he was assigned to investigate the victim's case. Cook County jail guard Seals told him that the victim

appeared to have a seizure and was vomiting. Sergeant Stumpf similarly related to him that the victim was having a seizure and bubbling from his mouth.

¶ 35 Cook County Sheriff investigator Kenneth Raher testified that he met with Dr. Kalelkar on July 10, 2007, when she performed the autopsy on the victim's body. Dr. Kalelkar told him that she could not determine the cause or manner of death until she received and reviewed medical records from the two hospitals because the brain had been surgically manipulated.

¶ 36 Anthony Brown, who was serving a life sentence for felony murder, testified that his cell was above the victim and defendant's cell. If it was loud enough, he would be able to hear an argument or physical fight in their cell. He usually went to sleep between 11:30 p.m. and 12 a.m. and he did not recall hearing anything until he woke up the morning of June 26, 2007.

¶ 37 In its findings, the trial court stated that it would be an easy case to decide if the only evidence was the expert testimony of Drs. Kalelkar and Teas, as they were credible witnesses with differing opinions of the cause of death. The trial court indicated, however, that several pieces of evidence contradicted the defense's assertions that the victim fell while having a seizure and possibly had taken defendant's medication or was on anti-seizure medication. The trial court observed that defendant did not seek help from the jail guard Seals, who was performing rounds every half hour, when the victim allegedly fell; that someone must have placed the blanket over the victim, and the only person who could have done so was defendant; and that defendant also did not try to get help for the victim when Seals first opened the cell door to deliver breakfast. With respect to Dukes, Thomas, and Thompson, the trial court noted that they had criminal histories and were all serving life sentences. The trial court was not surprised they were uncooperative and became more cooperative when they had "the opportunity to stick it to Cook County jail." The trial court indicated that, if Dukes was lying about defendant's guilt, he could

have made it worse by saying that defendant actually stated the victim's name instead of just referring to him as the "white boy." The trial court found that "what happened here is Mr. Jamison out of anger beat Mr. Lambert in such a manner that Mr. Lambert suffered the horrific wound to his head that he did causing his death." It found defendant guilty of first degree murder.

¶ 38 Defendant made a postrial motion for a new trial arguing, in part, that it was error to allow Dukes' prior consistent statements, and, alternatively, that his conviction should be reduced to involuntary manslaughter. The trial court denied the motion. The court sentenced defendant to 32 years' imprisonment. This timely appeal followed.

¶ 39 ANALYSIS

¶ 40 A. Sufficiency of the Evidence

¶ 41 On appeal, defendant first argues that his conviction should be vacated given the lack of credible evidence against him.

¶ 42 "[T]he State carries the burden of proving beyond a reasonable doubt each element of an offense." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979)). "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Id.* (citing *Jackson*, 443 U.S. 318-19). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Id.* at 225. In analyzing defendant's challenges, we are mindful that "in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences

therefrom, and to resolve any conflicts in the evidence." *Id.* at 228. "A reviewing court will not reverse a conviction simply because the evidence is contradictory ([citation]) or because the defendant claims that a witness was not credible." *Id.*

¶ 43 The offense of first degree murder requires the State to prove that defendant performed some act which caused the death of another without lawful justification and either (1) intended to cause death or great bodily harm, or (2) knew that her conduct created a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a) (West 2012). A defendant's mental state may be inferred from the particular facts of a given case, including the defendant's actions, the circumstances surrounding the incident, and the nature and severity of the victim's injuries. *People v. Weeks*, 2012 IL App (1st) 102613, ¶ 35; *People v. Coleman*, 311 Ill. App. 3d 467, 473 (2000).

¶ 44 Initially, defendant challenges his conviction on grounds that the three inmates who testified against him all had serious, multiple prior felony convictions, their accounts were contradictory to each other and conflicted with other evidence, and they had a motive to embellish to help the victim's family in its civil case against the jail.

¶ 45 However, we defer to the trial court's assessment of the witnesses' credibility; we will not overturn a conviction simply because a defendant claims that a witness was not credible. *Siguenza–Brito*, 235 Ill. 2d at 228. The fact that Dukes, Thomas, and Thompson had prior criminal histories was known to and considered by the trial court. The existence of their criminal records does not necessitate a finding that there was insufficient evidence to support defendant's conviction. Moreover, there was no indication that the inmates were offered anything in exchange for their testimony or had anything to gain by testifying against defendant. The trial court observed that their cases were likely resolved by the time they testified at defendant's

criminal trial and all three were already serving long sentences in the penitentiary. In fact, it was apparent at trial that Thomas and Thompson had no desire to testify at all, causing the State to resort to prior testimony given by these witnesses. Further, defendant raised at trial and in his postrial motion his contention that the witnesses had an incentive to embellish in order to assist the victim's family with their civil suit, and the trial court rejected this argument.

¶ 46 Additionally, any inconsistencies in their testimony were minor, they were brought to the trial court's attention, and any inconsistency pertained only to the weight of the evidence and did not "negate its import[.]" *People v. Yuknis*, 79 Ill. App. 3d 243, 251 (1979) ("Any inconsistencies in testimony do not negate its import but rather go to the weight the trier of fact gives to the testimony. *** The trier of fact *** determines the credibility of the witnesses and the weight to be given their testimony.") Whether the dispute regarding the book occurred on June 25 or a day or a few days before the assault did not render their testimony entirely incredible. Regardless, Thomas, Thompson, and Dukes all similarly testified that, before the night of June 25 when the victim was assaulted, defendant became angry at the victim for giving out his book. They all gave similar testimony regarding the argument over the book. Similarly, any differences in the inmates' testimony regarding the exact timing of the assault were minimal. Whether the assault occurred at 9:30 p.m. or 11 p.m. did not impair the inmate witnesses' credibility, as they uniformly testified that the assault occurred that night after they were locked in their cells for the night. This aligned with Dr. Kalelkar’s testimony that the head injury could have occurred several hours before the victim was found. Although the prison guards testified that they did not hear any loud yelling or fighting from the cellblock that night, they testified that they could only hear noise from the cellblock if it was very loud. By one account, the assaulted lasted only two or

three minutes, and none of the three inmates testified that defendant or the victim yelled or screamed very loudly that night.

¶ 47 We agree with defendant that the notion that defendant killed the victim over a book is absurd. However, the State was not required to prove motive for committing a crime. *People v. Gonzalez*, 388 Ill. App. 3d 566, 586 (2008). That the motive seems absurd does not negate that evidence regarding motive existed, nor does it establish that the evidence was insufficient to support his conviction. To the contrary, "any evidence which tends to show that an accused had a motive for killing the deceased is relevant because it renders more probable that the accused did kill the deceased." *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 48 Defendant's attempt to discredit Thompson's testimony based on the location of his cell is also unavailing. The defense presented evidence that a plumbing closet existed between Thompson's cell and defendant and the victim's cell. The fact remains that defendant and Thompson's cells were not separated by another cell containing inmates and, regardless of the plumbing closet, Thompson testified that he was able to hear what was happening in defendant's cell. Even Thomas, who was two cells away, could hear banging on the wall and a "bump."

¶ 49 Defendant next asserts that Dukes' and Thomas's testimony regarding defendant's confessions to assaulting the victim was inconsistent. They each testified to different instances when defendant admitted to assaulting the victim in slightly differing manners. Considering the medical evidence, it is possible that defendant inflicted all three actions – hitting, "choking out," and stomping. Regardless, their testimony consistently indicated that defendant stated that he "cleaned up" the victim in order to teach him a lesson for taking his book. Again, we defer to the trial court's assessment of the witnesses' credibility.

¶ 50 Defendant also contends that the trial court made the unreasonable assumption that defendant placed the blanket over the victim. The trial court considered the blanket in evaluating the defense expert's testimony, as Dr. Teas testified that she was informed that defendant indicated the victim fell while having a seizure and struck his head. The trial court found that her testimony did not raise a reasonable doubt of defendant's guilt when considered alongside the other evidence. The trial court reasoned that assuming the victim fell, it did not make sense that defendant failed to seek help earlier or seek help from Seals when he delivered the breakfast trays. The trial court inferred that someone must have placed the blanket, as the victim could not have done so himself given his condition. The trial court concluded that "[t]he obvious answer is [defendant]. There is no one else who could have done so." The fact that defendant covered the victim with the blanket "means without qualification that [defendant] knew something was wrong. So at the first opportunity *** that [defendant] has to tell somebody that something is wrong with [the victim], he doesn't do it. Really only one reason not to alert Seals in that regard and that's because he had something to do with how it was that [the victim] ended up on the floor." We do not find the trial court's inferences to be unreasonable or based on speculation.

¶ 51 Alternatively, defendant asserts that this court should reduce his conviction to involuntary manslaughter based on Thomas's testimony relating a "single punch scenario." As defendant also raises this claim in his third issue on appeal, we further address this issue in section C, *infra*.

¶ 52 However, we note that the trial court considered the possibility of involuntary manslaughter when presented with defendant's motion for a new trial, and rejected it. Moreover, the State's evidence overwhelming proved that defendant was guilty of first degree murder of the victim. Cause of death is a question of fact to be determined by the trier of fact based on its evaluation of the expert testimonies and other evidence. *People v. Sims,* 374 Ill. App. 3d 231,

251 (2007). The trier of fact is not obligated to believe one expert over the other. *Id.*; *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007). "When the expert testimonies offer divergent conclusions, the trier of fact is entitled to believe one expert over the other [citation] and is not required to search out a cause of death compatible with innocence [citation]." (Internal quotation marks omitted.) *Sims*, 374 Ill. App. 3d at 251.

¶ 53 The evidence showed that the victim sustained a fracture to his left temporal bone, a severed meningeal artery, and had a large epidural hemorrhage on the left side of his brain. According to Dr. Kalelkar, the injuries were caused by trauma to the left side of his head which occurred as a result of assault. The victim's body also showed signs of other injuries consistent with assault such as injuries to his face, tongue, body, and neck. The testimony from Dukes, Thompson, and Thomas established that defendant became angry with the victim prior to the night of the assault because the victim had loaned or given away defendant's book. Defendant was alone with the victim in their cell that night. Thompson heard grabbing, wrestling, punches, and "flesh hitting flesh" in defendant's cell that night. Thomas similarly heard what sounded like someone bumping into the door that night. He also heard Thompson beating on defendant's side of the cell wall, telling defendant to "leave the boy alone." The victim was found early the next morning unresponsive on the cell floor and either shaking, seizing, and foaming at the mouth. Defendant did not seek help, but merely asked Seals, "Whatcha gonna do about this?" when Seals delivered breakfast trays at 3 a.m. Dukes and Thomas both testified that a few months after the murder, defendant confessed to assaulting the victim. We agree with the trial court's conclusion that this was a "planned beating" and that defendant is guilty of first degree murder.

¶ 54 B. Introduction of Prior Consistent Statements

¶ 55 Defendant next asserts that the trial court abused its discretion in allowing the State to introduce Dukes' prior consistent statements on redirect examination. Defendant argues that the trial court never found that the defense asserted Dukes gave false testimony or successfully impeached by omission. Defendant also argues that Dukes' motive to fabricate (to assist the civil case against the jail) predated his prior statements.

¶ 56 The defense objected at trial to the admission of the challenged statements and included the issue in defendant's posttrial motion. We review the trial court's evidentiary rulings for an abuse of discretion. *Short*, 2014 IL App (1st) 121262, ¶ 102. "An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 39.

¶ 57 Generally, statements made by a witness before trial are inadmissible for the purpose of corroborating the witness's trial testimony or rehabilitating a witness. *People v. Cuadrado*, 214 Ill. 2d 79, 90 (2005); Ill. R. Evid. 613 (eff. Jan.1, 2011). "This is because the trier of fact is likely to unfairly enhance a witness's credibility simply because the statement has been repeated." *People v. McWhite*, 399 Ill. App. 3d 637, 641 (2010) (citing M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 611.14, at 499 (9th ed. 2009)).

¶ 58 "There are two exceptions to this rule, prior consistent statements admitted to rebut: (1) a charge that the witness is motivated to testify falsely or (2) a charge that the witness's testimony has recently been fabricated." *People v. Short*, 2014 IL App (1st) 121262, ¶ 102 (citing *People v. Williams*, 147 Ill. 2d 173, 227 (1991)). "The party seeking to introduce the prior consistent statement bears the burden of establishing that the statement was made before the alleged recent fabrication or the existence of the motive to testify falsely." *Id.* "Even where admissible, prior

consistent statements may only be used for rehabilitative purposes and are not admissible as substantive evidence." *People v. McWhite,* 399 Ill. App. 3d 637, 641 (2010). "[P]rior consistent statements may not be admitted merely because a witness's testimony has been discredited. [Citation.] Nor may a prior consistent statement be admitted to rebut a charge of mistake, poor recollection, or inaccuracy." *Id.*

¶ 59 On direct examination, Dukes testified that he witnessed an argument over a book between defendant and the victim. Dukes testified that about one month after the victim was removed from the tier, defendant returned to the tier and he heard defendant tell Butters that he "had to give that white boy some attention" and "had to stomp [the victim's] f*** ears together" as defendant pantomimed swinging his fist and stomping his feet. Dukes also overheard defendant speaking to Mark a few days later, and defendant told Mark that he had to "clean the white boy up and give the white boy some attention."

¶ 60 On cross-examination, defense counsel questioned Dukes extensively regarding how he was able to overhear the argument about the book and asked defendant about “the conversation that you supposedly had or supposedly overheard.” Defense counsel inquired whether defendant told the officers about the book argument when he was questioned the day of or the day after the attack. Upon objection by the State, defense counsel indicated "[r]ecent fabrication" and asked Dukes why he did not tell the investigators. Defense counsel also questioned Dukes about a gang affiliation and in response to another objection by the State, counsel told the trial court that he wanted to impeach Dukes' characterization that the conversation with the investigators on the day of the assault was "casual" and that counsel believed Dukes was interviewed at length and wanted to "show a pattern of lies that in fact, [Dukes] has" told regarding "[t]his incident[.]" Counsel explained that her questions "go[] to, in fact, a pattern of lies, in fact, his first lie in front

of this court, oh, that was a casual conversation when they were bringing me back from the law library."

¶ 61 In further cross-examination, defense counsel inquired when defendant last told anyone about the book argument, and defendant indicated that this was in 2009 when he was interviewed by investigators and ASAs. Dukes testified that the first time he told anyone about the book argument was when the Chicago Tribune reporter contacted him in June or July 2008 because the "Cook County Sheriff didn't want to hear none of it." Dukes decided to write the reporter back in September or October 2008. Defense counsel inquired whether Dukes told the grand jury about the book argument or defendant's admissions to Butters or another inmate. Dukes did not remember. Defense counsel asked Dukes if he ever told the investigator and ASA about the book argument or defendant's admissions. Dukes responded that he did not know and he answered their questions. Dukes testified that he did tell them that defendant stated that he stepped on the victim's head like a watermelon and jumped on the victim and pantomimed his actions. Counsel impeached Dukes with a written statement from December 2008 in which he stated that defendant hit the "white boy" and "choked him out" and Dukes indicated that defendant pantomimed choking. Dukes testified that the first time he told anyone about overhearing defendant's subsequent admissions to attacking the victim was when the Tribune reporter contacted him, and Dukes told prosecutors when he was re-interviewed in late 2008 or early 2009. Dukes testified that he corresponded with the reporter because of the victim's family's civil lawsuit as he wanted to expose the jail's negligence.

¶ 62 On redirect examination, Dukes testified that on the day of or day after the victim was removed from his cell, Dukes was only questioned about what he saw and heard that night. When defense counsel objected to questions regarding the investigators, the trial court held that

the cross-examination had sought to elicit that Dukes did not tell the investigators what he had witnessed, and thus the State was permitted to show that Dukes "was never given the opportunity" to relate what he had witnessed to the guards. Dukes then testified that the guards never asked about any conversations between the victim and the defendant before the assault. Further, Dukes testified that he spoke to an investigator and an ASA on December 29, 2008, and gave a written statement and he told them about defendant's subsequent admissions. Over defense counsel's objection to the statement, the trial court held that it would probably relate to the book argument and defendant's subsequent admissions to Butters and Mark, and that it was

> "appropriate rehabilitation *** in the face of the cross-examination which seeks to establish that subsequent to that in the Grand Jury on January 29, 2008, it was never brought up. That claim on cross-examination would thus seek to establish that it was made up today, but if it was *** apparently talked about prior to the Grand Jury, that would tend to rebut that claim and thus afford the State an opportunity to rehabilitate the apparent impeachment by omission."

¶ 63 Testifying further on redirect, Dukes related that in the written statement, he stated that he overheard defendant and the victim arguing about a book, that Dukes overheard defendant tell Butters that he "had to clean up that white boy and teach him, the white boy, a lesson" by "choking him out" and that defendant made punching gestures, and that Dukes overheard defendant tell Mark that he was "teaching a snot nose white boy a lesson and cleaning him up."

¶ 64 Dukes acknowledged on redirect examination that in his grand jury testimony, he had also testified about the book argument. The defense objected, but the trial court ruled that this "was gone over in cross and the implication is that he didn't remember telling this to the State's

Attorney or testifying to it in the Grand Jury." Dukes told the grand jury that he overheard defendant tell Mark that he had to "clean the white boy up, teach the snot nose white boy a lesson," and Dukes overheard defendant tell Butters that he hit the victim "on the back of the head, choked him out and stomped on him once" and that defendant mimicked punching his hand, grabbing his neck, and stomping on him.

¶ 65 The record belies defendant's assertion on appeal that the defense never charged that Dukes was providing false testimony or had a motive to fabricate. It is clear from defense counsel's statements to the trial court and the questions posed to Dukes that the defense sought to establish that Dukes was fabricating his testimony on the stand. Counsel spoke of wanting to show a "pattern of lies" that Dukes was telling "in front of this court." Defense counsel's cross-examination attempted to show that Dukes' testimony that he overheard the book argument and defendant's two admissions were invented by Dukes on the stand. The defense's closing argument similarly accused Dukes of fabricating his testimony and being a "professional liar."

¶ 66 Defendant argues that the defense's attempt to impeach Dukes by omission was "unsuccessful," but the law does not require successful impeachment before allowing introduction of prior consistent statements. Rather, all that need be shown is "a charge" of recent fabrication or motivation to testify falsely. *Short,* 2014 IL App (1st) 121262, ¶ 102. As such, the trial court did not abuse its discretion in finding that the defense accused Dukes of fabricating his testimony. *Short*, 2014 IL App (1st) 121262, ¶ 102; *Williams,* 147 Ill. 2d at 227.

¶ 67 Defendant also argues on appeal that, considering Dukes testified that he wanted to help the victim's family with its civil suit against the jail, his motive to fabricate arose before the prior consistent statements were made and, consequently, they are inadmissible.

¶ 68 It is notable that, at trial, defense counsel asserted that Dukes was fabricating his testimony *on the stand* and attempted to show that Dukes failed to previously mention the argument over the book and defendant's admissions to the investigators, the ASA, or the grand jury. According to the defense's allegations at trial, the prior consistent statements were made before the alleged time of fabrication, *i.e.*, at defendant's trial. In allowing Dukes' testimony on redirect examination, the trial court correctly recognized that the defense had asserted that Dukes' testimony was "made up today." As such, the challenged testimony was properly admissible because the defense accused Dukes of fabricating his testimony *at trial* and the prior consistent statements were "made before the alleged recent fabrication." *Short*, 2014 IL App (1st) 121262, ¶ 102.

¶ 69 Additionally, the record does not support Dukes' assertion that the alleged motive to testify falsely, that is, to assist in the civil suit against the jail, predated Dukes' written statement to the ASA and investigators and his grand jury testimony. Defendant relies on the fact that Dukes was contacted by a reporter in mid 2008, but there is no indication from the trial record whether the reporter was involved in the civil suit at all or how defendant's correspondence with the reporter aided the family's civil suit. It is unclear whether a civil suit was pending at that point or what stage the litigation was in. It also does not appear that Dukes was involved in the civil lawsuit, unlike Thompson and Thomas, who both gave depositions in the civil case. Moreover, the alleged motive to fabricate would be directed at the jail. Defendant does not explain how Dukes' testimony implicating him for the victim's murder would have assisted the civil suit and Dukes had no motive to fabricate against defendant. As such, Dukes' prior consistent statements were admissible to rebut the implication that he was fabricating his testimony at trial. *Short*, 2014 IL App (1st) 121262, ¶ 102; *Williams*, 147 Ill. 2d at 227.

¶ 70 However, even if we were to conclude that the trial court abused its discretion in allowing the challenged testimony, we would nevertheless find that such error does not require reversal. "To determine whether an ordinary trial error, such as the improper admission of hearsay evidence, was harmless, we must ask whether the verdict would have been different if the evidence had not been admitted." *McWhite,* 399 Ill. App. 3d at 643. In addition to Dukes' testimony, Thompson testified to hearing defendant beat the victim on the night of the assault and corroborated that defendant was angry at the victim over a book. Thomas similarly testified that defendant was angry at the victim about the book, he heard Thompson yelling at defendant to "leave that boy alone" on the night of the assault, and he heard a bump. Thomas testified that defendant admitted to him that he had "cleaned dude up." Defendant did nothing to assist the victim either earlier that night or when Seals delivered the breakfast trays. The physical evidence and expert testimony from the treating physician and the medical examiner corroborated that the victim suffered an epidural hematoma and other injuries consistent with an assault involving a blunt-force trauma head injury. Accordingly, even if the admission of the challenged evidence was error, such error was harmless.

¶ 71 C. Trial Court's Alleged Errors of Law

¶ 72 Defendant argues that the trial court committed two errors of law in that it (1) rejected an involuntary manslaughter defense based on an erroneous interpretation of the law of that offense, and (2) considered hearsay substantively.

¶ 73 Defendant argues for a *de novo* standard of review. The State claims that defendant has forfeited review of these issues. Although defendant argued in his posttrial motion that his conviction should be reduced to involuntary manslaughter, he did not raise this contention at trial. He also failed to object to the trial court's alleged reliance on hearsay evidence in rendering

its decision at the bench trial. He has therefore forfeited appellate review of these claims. See *People v. Enoch*, 122 Ill.2d 176, 186 (1988) (to preserve an issue for review, the defendant must both object at trial and raise the issue in a written motion for a new trial). However, a reviewing court may consider forfeited error under the plain error doctrine when defendant shows that (1) a clear or obvious error occurred and the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred and it was so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2009); *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29.

¶ 74 We first turn to defendant's argument that the trial court improperly construed the law of involuntary manslaughter. Defendant contends that the trial court conflated the mental states of intent to harm and intent to kill, and erroneously stated that the lack of alcohol precluded a finding of guilt for involuntary manslaughter.

¶ 75 As previously stated, first degree murder requires a showing that the defendant intended to cause death or great bodily harm or knew that his conduct created a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a) (West 2012). In contrast, the lesser included offense of involuntary manslaughter occurs "when, without lawful justification, [a defendant] unintentionally kills an individual by recklessly performing acts that are likely to cause death or great bodily harm." *People v. Castillo*, 188 Ill. 2d 536, 540 (1999). A person acts intentionally when he possesses the conscious objective or purpose to accomplish a result; he acts knowingly when he is consciously aware that his conduct is practically certain to cause the prohibited result. *People v. Lengyel*, 2015 IL App (1st) 131022, ¶ 45; 720 ILCS 5/4-4, 4-5(b) (West 2012). On the other hand, "a person acts recklessly when he consciously disregards a substantial and

unjustifiable risk that his acts are likely to cause death or great bodily harm to another." *Castillo,* 188 Ill. 2d at 540-41; 720 ILCS 5/4-6 (West 2012). Whether a defendant is guilty of murder or involuntary manslaughter is generally a question for the trier of fact. *People v. DiVincenzo,* 183 Ill. 2d 239, 253 (1998). The following non-exhaustive factors may assist in determining whether a defendant's conduct was knowing or reckless: "(1) the disparity in size between the defendant and the victim; (2) the brutality and duration of the beating, and the severity of the victim's injuries; and (3) whether the defendant used his or her bare fists or a weapon." *Lengyel*, 2015 IL App (1st) 131022, ¶ 58 (citing *DiVincenzo,* 183 Ill. 2d at 239). A defendant's state of mind can be proved based on the surrounding circumstances, including the character of the defendant's acts and the nature and seriousness of the victim's injuries. *People v. Williams,* 165 Ill. 2d 51, 64 (1995). "Circumstantial evidence, including medical testimony regarding the severity of the injuries imposed, is sufficient to prove that the injuries were intentionally or knowingly inflicted ***." *People v. Ripley,* 291 Ill. App. 3d 565, 569 (2000).

¶ 76 In his posttrial motion, defendant asserted that the evidence was consistent with the victim having a seizure and falling, and alternatively, the defense argued that there was no evidence of intent to kill and defendant should be convicted of involuntary manslaughter instead. Defense counsel provided an example of someone punching someone "on Rush Street" or during a hockey game fight, which would not indicate an intent to kill.

¶ 77 In denying the motion, the trial court found the evidence proved that defendant knowingly inflicted an injury knowing that there was a strong probability of death or great bodily harm and that involuntary manslaughter did not apply. The court stated that the difference between first degree murder and involuntary manslaughter was the mental state accompanying the conduct. The court noted that it was familiar with the case law involving instances

> "where two persons, usually men, will have some kind of 'dust up' as it were, maybe a fight that happens quickly because of alcohol, maybe a fight that happens because of bad blood, so-called one punch instances. [Defense counsel] actually referred to Rush Street. It may be an oblique reference for all I know to the recent Vanecko case that was in the news[.] *** [W]herein one individual, a dispute well after midnight, an area frequented by people who visit taverns, licensed facilities, oftentimes liquored up, a dispute takes place, one punch, two punches get thrown, someone falls in a certain way, hits their head, as appears to have been the case in that instances, goes on to die."

¶ 78 The trial court distinguished the examples referenced by the defense because in the present case, defendant told Thompson beforehand that he planned to beat the victim that night in the cell because the victim "was giving my s*** out." Further, when Thompson told defendant to leave the victim alone, defendant told Thompson to "mind my own f*** business." The trial court also cited Thomas's testimony that he heard Thompson tell defendant to leave the victim alone that night and defendant responded, "mind your own business," and that defendant later admitted that he "cleaned him up. I hit him, he fell and hit his head on the floor." The trial court also cited Dukes' testimony that defendant confessed to assaulting the victim on two different occasions, including pantomiming the actions he took. The trial court noted that the victim suffered a very severe injury, citing Dr. Raskin's testimony that "only a handful" of the thousands of brain surgeries she had performed had hematomas as large as the victim's and that people with that size hematoma usually die before receiving medical attention. The trial court held that it was a "planned beating. This was not some happenstance with the snap of a finger where someone's bad blood or bad alcohol, a lack of judgment diminished because of alcohol and the time of day,

this was an instance that was planned out way in advance *** leading to a horrid substantial injury way beyond what would be anticipated by a fall." The trial court reasoned that the evidence indicated that the incident occurred around midnight and defendant did nothing to assist the victim until breakfast was served by Seals at 3 a.m., at which point defendant merely asked Seals "What you gonna do about this?" The trial court reasoned that assuming the victim experienced a lucid interval and laid down on the floor and placed the blanket over himself, this would not explain how defendant knew that something was wrong with the victim when Seals came to the door. The court indicated that Thomas's and Thompson's testimony established that the victim did not have a seizure resulting in the head injury, but that the victim suffered the injury at defendant's hands. In sum, the trial court cited defendant's statements and the nature of the victim's injury in finding that defendant knowingly inflicted the injury, knowing that there was a strong probability of death or great bodily harm.

¶ 79 Based on the above record, we conclude that the trial court did not misconstrue the law of involuntary manslaughter. The trial court did not assert that intoxication was an essential element of involuntary manslaughter. Rather, the trial court merely discussed intoxication in the context of and in response to the defense's argument that involuntary manslaughter would apply to situations involving a fight "on Rush Street" and that this was possibly a "one punch" type of case. The record does not support defendant's argument that the trial court ignored whether the killing was intended or expected. Rather, the trial court specifically held that the assault was "planned" in this case based on the evidence.

¶ 80 Defendant argues that the trial court did not consider the lack of a great disparity in the size of the victim and defendant or the fact that defendant did not use a weapon. However, the trial evidence showed that there was some disparity in height and size between the victim and

defendant and that defendant was "strong" while the victim was "timid." Moreover, the trial court considered numerous other evidence in finding that defendant acted knowingly and intentionally that night, including defendant's statements and actions before and after the assault, the severity of the head injury sustained by the victim, defendant's failure to obtain help for the victim, and defendant's admissions to other inmates following the assault. *Lengyel*, 2015 IL App (1st) 131022, ¶ 58; *DiVincenzo,* 183 Ill. 2d at 239.

¶ 81 The trial court clearly considered the defense's contention that defendant possibly hit the victim once which caused him to fall and hit his head, and rejected this alternative explanation. This was not an error of law. *Hernandez*, 2012 IL App (1st) 092841, ¶ 41. The trial court correctly assessed the law and applied it to the evidence of the case. The evidence did not support that defendant acted recklessly or unintentionally or otherwise consciously disregarded "a substantial and unjustifiable risk that his acts [were] likely to cause death or great bodily harm" to the victim. *Castillo,* 188 Ill. 2d at 540-41; 720 ILCS 5/4-6 (West 2012).

¶ 82 As the trial court did not misunderstand the law, defendant has not shown that a clear or obvious error occurred. *Bowman*, 2012 IL App (1st) 102010, ¶ 30 (quoting *People v. Lewis*, 234 Ill. 2d 32, 43 (2009) (" '[t]he first step of plain-error review is to determine whether any error occurred.' "). Moreover, the trial court did not abuse its discretion in denying defendant's motion for a new trial or an alternative finding of involuntary manslaughter on that basis. *People v. Gibson,* 304 Ill. App. 3d 923, 930 (1999) (a trial court's decision on a motion for a new trial will not be disturbed absent a clear abuse of discretion).

¶ 83 We now consider defendant's contention that the trial court relied on hearsay substantively in rendering its opinion at the bench trial.

¶ 84 While out-of-court statements offered to prove the truth of the matter asserted are generally inadmissible, the underlying facts and data relied on by an expert witness may be admitted "for the purpose of explaining the basis for his opinion." *People v. Williams*, 238 Ill. 2d 125, 143 (2010). "[P]recedent has long held that the underlying facts reasonably relied upon by an expert witness are admissible and subject to comment for the purpose of explaining the basis for the expert witness's opinions even if not independently admissible." *In re Commitment of Butler*, 2013 IL App (1st) 113606, ¶ 36.

¶ 85 Here, Dr. Teas testified that the information she received came from defendant's statement (that the victim fell while having a seizure) to officers at the scene as related in sheriff's reports. In its findings of fact following the bench trial, the trial court held that both experts were credible witnesses and presented different conclusions as to manner of death. It noted that Dr. Teas based her conclusion on the victim's alleged seizure history, drug and alcohol abuse, and history of blackouts, and defendant's statement that the victim fell while having a seizure. The trial court specifically noted that defendant did not testify, "as is his absolutely right" and that the court would

> "certainly not use that in any manner in deciding this case. That is, that statement by Mr. Jamison that Mr. Lambert fell while having a seizure and struck his head in some manner is admissible only pursuant to People versus Clark and People versus Anderson not truth of the matter asserted but to afford that basis of Doctor's opinion based upon that and so many other circumstances that she has described and I just mentioned. But in gauging the efficacy of her testimony and whether that raises any doubt, let alone

> reasonable doubt, you have to look at a couple of factors in my estimate and one of the factors is the testimony of Officer Seals."

¶ 86 The trial court reasoned that the defense's contention in closing arguments that defendant did not know what happened to the victim was belied by defendant's statement to jail officials that he did not know what happened "but that Mr. Lambert fell while having a seizure. You can't have it both ways. That begs a number of questions." The trial court questioned why defendant did not request help if the victim had fallen while having a seizure. The trial court also questioned how the blanket came to be placed over the victim's body in the first place, if he was having a seizure, and reasoned that "[s]omeone must have placed it there. *** The obvious answer is Mr. Jamison." The trial court questioned why defendant failed to tell Seals about the victim's condition when Seals first opened the door to deliver breakfast, and the fact that he placed the blanket on the victim "means without qualification that Mr. Jamison knew something was wrong. *** Really only one reason not to assert Seals in that regard and that's because he had something to do with how it was that Mr. Lambert ended up on the floor."

¶ 87 The trial court specifically noted that it could not rely on defendant's statement for its truth and it was only admissible to afford the basis of Dr. Teas' opinion. The trial court went on to gauge the efficiacy of Dr. Teas' testimony and whether it raised a reasonable doubt. It is for the trier of fact to determine cause of death, and to evaluate and the weigh the relative worth of expert testimonies. *Sims*, 374 Ill. App. 3d at 251; *People v. Torruella*, 2015 IL App (2d) 141001, ¶ 33. Defendant has not demonstrated that a clear or obvious error occurred. *Bowman*, 2012 IL App (1st) 102010, ¶ 30

¶ 88 III. CONCLUSION

¶ 89 For the above reasons, we affirm defendant’s conviction of first degree murder.

¶ 90 Affirmed.