

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN R. JAMES,

Defendant-Appellant.

UNPUBLISHED

April 15, 1997

No. 191194

Oakland Circuit Court

LC No. 94-132754

Before: Young, P.J., and Gribbs and S. J. Latreille,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of involuntary manslaughter, MCL 750.321; MSA 28.553. He was sentenced to 365 days in prison, with credit for 586 days served. He appeals as of right, and we affirm.

Defendant alleges that there was insufficient evidence to support his conviction. In reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992); *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979). Involuntary manslaughter involves an unlawful act committed with the intent to injure or in a grossly negligent manner that proximately causes death. *People v Datema*, 448 Mich 585, 606; 533 NW2d 272 (1995).

In the instant case, there is no dispute that defendant choked the victim and that such behavior directly contributed to the victim's death. Defendant, who was larger and stronger than the victim, went over to the victim's house on the day of her death in spite of his volatile past relationship with her. An eyewitness testified that, during defendant's physical fight with the victim, defendant refused to get off the victim, even after he was asked to do so. Furthermore, the eyewitness saw defendant jump on the victim's back after the victim attempted to crawl away. Combining defendant's large size, his knowledge of the victim's propensity for violent behavior, and his refusal to stop fighting, a reasonable

* Circuit judge, sitting on the Court of Appeals by assignment.

person could conclude that defendant acted in a manner evincing a careless and reckless disregard of human life.

Additionally, although defendant claimed self-defense, the jury was free to disregard defendant's theory of the case. Defendant was significantly larger than the victim and the jury may have concluded that he could have left the premises instead of choosing to fight the victim. It is apparent from the verdict that the jury found defendant's argument that he feared for his own safety unpersuasive.

Defendant also argues that the trial court erred in instructing the jury, over defendant's objection, as to the lesser included offense of involuntary manslaughter. We disagree. A trial judge must instruct the jury as to the applicable law, and fully and fairly present the case to the jury in an understandable manner. *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). Involuntary manslaughter is a cognate lesser included offense of murder. *People v Cheeks*, 216 Mich App 470, 479; 549 NW2d 584 (1996). The trial court is required to give an instruction for a cognate lesser included offense if (1) the principal offense and the lesser offense are of the same class or category, and (2) the evidence adduced at trial would support a conviction on the lesser offense. In this case, sufficient evidence existed on the record to support defendant's conviction for involuntary manslaughter. The trial court did not err in reading the involuntary manslaughter instruction.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Roman S. Gibbs

/s/ Stanley J. Latreille