

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

April 29, 1997

Plaintiff-Appellee,

v

No. 186966
Recorder's Court
LC No. 94-006797

CLIFFORD JAMES MCCLAIN,

Defendant-Appellant.

Before: Young, P.J., and Taylor and R.C. Livo,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for involuntary manslaughter, MCL 750.321; MSA 28.553, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to concurrent terms of three to fifteen years of imprisonment for the involuntary manslaughter conviction, and to three to ten years of imprisonment for the assault with intent to do great bodily harm less than murder conviction. We affirm.

First, defendant argues that the information was insufficient because it did not fully apprise him of the charge of involuntary manslaughter, and thereby allow him to prepare the appropriate defense, particularly where the information charged manslaughter, but defendant was convicted of involuntary manslaughter. We disagree.

Because defendant failed to challenge the sufficiency of the information in the lower court, he waived the issue for appellate review absent manifest injustice. *People v Weatherholt*, 209 Mich App 801, 804; 533 NW2d 24 (1995) (citing *People v Covington*, 132 Mich App 79, 86-87; 346 NW2d 903 (1994)). We conclude that no such injustice would result from this Court's failure to review. The information, charging statutory manslaughter, adequately apprised defendant that he could be convicted of involuntary manslaughter,¹ and defendant's assertion of the accident defense evidences his awareness and understanding of the charge against him.

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

Next, defendant argues that there was insufficient evidence produced at trial to support his convictions beyond a reasonable doubt. We disagree.

Involuntary manslaughter has been defined as “[a]n 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 viewing the evidence in the light most favorable to the prosecution, we find that evidence of defendant’s actions of procuring a gun and firing it in a room where four other people were present, while in the midst of a heated argument, which resulted in the death of one of the people present rose to the level of gross negligence in that it clearly placed the safety of others at risk. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995); *Datema, supra*, p 606.

In order to sustain a conviction for assault with intent to do great bodily harm less than murder, the prosecutor must prove the following elements beyond a reasonable doubt: 1) an attempt or offer of force or violence to do corporeal hurt to another (an assault), 2) coupled with an intent to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). In viewing the evidence in the light most favorable to the prosecution, we find that, where the evidence indicates that defendant knowingly procured the gun and shot it during a heated argument with one of the victims, a reasonable factfinder could conclude that defendant intended to do great bodily harm. *Hutner, supra*, p 282; *Lugo, supra*, pp 710-711.

Finally, defendant argues that the trial court’s findings of fact were insufficient to support his convictions because the court did not explicitly address defendant’s defense of accident. We disagree.

In rendering its findings of fact and conclusions of law, the trial court stated that testimony of defendant’s actions of procuring the gun and firing it in a crowded room was sufficient for the court to conclude that defendant did so knowing that the possibility that someone would be hurt existed. Therefore, by virtue of this finding, we conclude that the court implicitly declined to accept defendant’s defense of accident. Accordingly, the trial court’s findings were sufficient because they establish that the court was aware of the issues in the case and correctly applied the law. MCR 2.517(A)(2). *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Clifford W. Taylor
/s/ Robert C. Livo

¹ The statute, MCL 750.321; MSA 28.553, does not specify grades or degrees of manslaughter, nor does it provide a definition of the offense. *People v Knott*, 59 Mich App 105, 114; 228 NW2d 838 (1975). Because the evidence required to establish voluntary manslaughter can also establish the involuntary manslaughter, a charge of manslaughter is adequate to place a defendant on notice that he

could be convicted of involuntary manslaughter. See *People v Barnwell*, 60 Mich App 291, 297-298; 230 NW2d 400 (1975).