

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE STANTON MICHEL III,

Defendant-Appellant.

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UNPUBLISHED

May 2, 1997

No. 181123

Oakland Circuit Court

LC No. 94-132889

Before: Hood, P.J., and Saad and T.S. Eveland,\* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of voluntary manslaughter, MCL 750.321; MSA 28.553, conspiracy to commit armed robbery, MCL 750.157(a); MSA 28.354(1); MCL 750.529; MSA 28.797, attempted armed robbery, MCL 750.92; MSA 28.287; MCL 750.529; MSA 28.797, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

I

Defendant asserts that the trial court erred by giving an instruction on voluntary manslaughter because there was no evidence of provocation or heat of passion that would justify such an instruction. However, because defendant failed to object to the instructions, our review is precluded unless relief is necessary to avoid manifest injustice to defendant. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

Although we agree that there was insufficient evidence of provocation or heat of passion, a jury has the unrestricted power to return verdicts that may be inconsistent with the evidence presented at trial. *People v Buck*, 197 Mich App 404, 421; 496 NW2d 321 (1992). In *Buck*, this Court upheld a conviction of voluntary manslaughter, despite the lack of evidence to support it, where there was sufficient evidence to convict the defendant of the greater offense of aiding and abetting first-degree

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

murder and the defendant requested a jury instruction on voluntary manslaughter. *Id.* at 420-421. The record is not clear as to whether defendant here requested a voluntary manslaughter instruction. However, defendant argued that his codefendant was guilty of voluntary manslaughter and failed to object to the voluntary manslaughter instruction. Defendant cannot now seek redress in this Court after allowing or requesting the voluntary manslaughter instruction. See *Id.* at 423. After a thorough review of the record, we find that the instructions, taken as a whole, fairly presented the issues to be tried and sufficiently protected defendant's rights; thus, manifest injustice will not result from this Court's failure to further review the issue. *People v Moldenhauer*, 210 Mich App 158, 159-160; 533 NW2d 9 (1995).

## II

Next, defendant asserts that the trial court erred in refusing to instruct the jury regarding the defense of "claim of right." We disagree. There was no evidence presented to support an argument that defendant had a good faith belief that he was legally entitled to possession of the money, drugs, television or toolbox. See *People v Holcomb*, 395 Mich 326, 333; 235 NW2d 343 (1975); *People v Henry*, 202 Mich 450, 455; 168 NW 534 (1918). Thus, the trial court did not err in refusing to give the requested instruction. *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909, modified and remanded 450 Mich 1212; 539 NW2d 504 (1995). Upon a review of the jury instructions in their entirety, we conclude that the court's refusal to give an instruction regarding claim of right did not result in an unfair presentation of the issues to be tried and the instructions, as presented, sufficiently protected defendant's rights.

## III

Defendant further contends that the prosecutor's comments during his closing and rebuttal arguments denied him a fair trial. Defendant raises ten separate claims of error, none of which require reversal. We note initially that defendant failed to object to the alleged misconduct or request a curative instruction. Therefore, our review is precluded unless the conduct was so egregious that no curative instruction could have removed any prejudice to defendant or unless manifest injustice would result from our failure to review. *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995). Considering the prosecutor's closing argument in its entirety, we conclude that the prosecutor properly argued the evidence and all reasonable inferences from the evidence as it related to the prosecution's theory of the case and, thus, no manifest injustice would result from our failure to further review this unpreserved issue.

## IV

Defendant also maintains that the prosecutor erroneously introduced evidence that defendant wanted two of his codefendants to help him kill the other two codefendants several days after the murder. Again, because defendant failed to object to the testimony at trial, we review only to the extent that it is necessary to prevent manifest injustice. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995). Contrary to defendant's assertions, a statement does not constitute a bad act coming under MRE 404(b). *People v Goddard*, 429 Mich 505, 518; 418 NW2d 881 (1988);

*People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989). Instead, the appropriate inquiry is whether the admitted statement is relevant. *Goddard*, 429 Mich at 518; *Rushlow*, 179 Mich App at 176. A general denial of guilt puts at issue all elements of a charged offense. *Mills*, 450 Mich at 69-70. We conclude that the statement was relevant and its probative value was not substantially outweighed by the danger of unfair prejudice. MRE 401; MRE 403.

V

Finally, defendant argues that his sentence of twenty to forty years' imprisonment for his conspiracy to commit armed robbery conviction is disproportionate and impermissibly based on the trial court's belief that defendant was guilty of a more severe offense than voluntary manslaughter. We disagree. A sentencing court abuses its discretion when it violates the principle of proportionality. A sentence must be proportionate to the seriousness of the crime and the defendant's prior record. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). Although no sentencing guidelines have been promulgated for the offense of conspiracy to commit armed robbery, the trial court properly articulated on the record the criteria considered and the reasons for the sentence imposed. In sentencing defendant, the trial court appropriately considered the nature and severity of the crime committed, defendant's attitude, social and personal history, and his previous criminal record. *People v Hunter*, 176 Mich App 319, 320-321; 439 NW2d 334 (1989). Contrary to defendant's assertions, a trial court may conclude by a preponderance of the evidence that the defendant committed a greater offense and consider that crime as an aggravating factor in sentencing without an admission of guilt by the defendant. *People v Fleming*, 428 Mich 408, 418; 410 NW2d 266 (1987); *People v Purcell*, 174 Mich App 126, 130-131; 435 NW2d 782 (1989).

Affirmed and remanded for entry of an amended judgment of sentence.<sup>1</sup> We do not retain jurisdiction.

/s/ Harold Hood  
/s/ Henry William Saad  
/s/ Thomas S. Eveland

<sup>1</sup> The judgment of sentence erroneously indicates that defendant was convicted of the crime of manslaughter with a motor vehicle. In fact, defendant was convicted of, and sentenced for, the crime of voluntary manslaughter.