

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH A. LEE,

Defendant-Appellant.

UNPUBLISHED
December 2, 1997

No. 197888
Recorder's Court
LC No. 95-012299

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of involuntary manslaughter, MCL 750.321; MSA 28.553. The trial court sentenced defendant as a second habitual offender, MCL 769.10(1)(a); MSA 28.1082(1)(a); MCL 769.13; MSA 28.1085, to fifteen to twenty-two and one-half years' imprisonment. We affirm.

Defendant argues that the trial court erred in refusing to permit him to introduce a witness' statement from the preliminary examination. The decision whether to admit or exclude evidence is within the trial court's discretion. This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

We conclude that the trial court did not abuse its discretion in excluding the statement. Prior consistent statements are generally not admissible as substantive evidence. *People v Miller*, 165 Mich App 32, 49; 418 NW2d 668 (1987). In the present case, none of the exceptions to this rule applies. The statement was not offered to support the witness' credibility in the face of accusations by the prosecutor that the witness had been improperly influenced or had made a prior inconsistent statement, nor was the statement offered to rebut a charge of recent fabrication. See *id.* The prosecutor established during the direct examination of the witness that the latter had not initially told the police that the victim had reached into his jacket shortly before defendant struck him. While evidence of the omission reflects on the witness' credibility, it does not show fabrication or improper influence. Neither party in a criminal trial is permitted to bolster a witness' testimony by seeking the admission of a prior

consistent statement made by that witness. *People v Lewis*, 160 Mich App 20, 29; 408 NW2d 94 (1987). We therefore find no error requiring reversal.

Defendant also contends that the trial court's instruction on involuntary manslaughter was erroneous. However, defendant did not object or request that the instructions at issue be given at trial. Therefore, our review is limited to the issue whether relief is necessary to avoid manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Manifest injustice occurs where the erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Johnson*, 187 Mich App 621, 628; 468 NW2d 307 (1991). As a general rule, this Court is hesitant to reverse a lower court because of an error in jury instructions where no objection was raised at trial. *People v Hess*, 214 Mich App 33, 36; 543 NW2d 332 (1995).

Defendant contends that the trial court improperly instructed the jury that involuntary manslaughter is a misdemeanor crime. We disagree. When read in its entirety, the trial court's instruction made it clear that the misdemeanor involved was defendant's assault on the victim, not the crime of involuntary manslaughter. See *People v Datema*, 448 Mich 585, 608; 533 NW2d 272 (1995). Accordingly, we conclude that manifest injustice is not present, and we decline to review the instructions further.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Stephen J. Markman