

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

EDWARD H. TEGELER,

Defendant-Appellant.

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UNPUBLISHED

August 14, 2001

No. 222155

Wayne Circuit Court

LC No. 98-013207

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to natural life in prison for the murder conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that his case should be remanded in order to determine whether his due process rights were violated because he was incompetent to stand trial. We disagree.

Generally, an issue must be raised before and addressed by the trial court to be preserved for appellate review. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Here, defendant failed to raise this issue before the trial court. However, a criminal defendant may obtain relief based on unpreserved constitutional error if the error was plain and affected the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal is only warranted if the error resulted in the conviction of an actually innocent person or seriously affected the fairness, public reputation or integrity of the proceedings. *Id.* at 763-764.

A defendant is presumed competent to stand trial, "unless his *mental condition* prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000), citing MCL 330.2020 (emphasis added). While the determination of a defendant's competence to stand trial is within the trial court's discretion, the trial court must raise the issue of incompetence where facts are brought to its attention that raise a bona fide doubt as to a defendant's competence. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990). Where such evidence was presented to the trial court, and no such hearing was held, appellate courts may order a new trial. *People v Whyte*, 165 Mich App 409, 413; 418 NW2d 484

(1988). However, the decision as to the existence of a bona fide doubt will only be reversed if the trial court abused its discretion. *Id.* at 412. An abuse of discretion by the trial court occurs when “an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made.” *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

In the instant case, the trial transcript provided no evidence indicating that the trial court should have had a bona fide doubt regarding defendant’s mental competence to stand trial. Although defendant suffered some mild physical side effects as a result of missing his morning dose of prescription medication on the opening day of trial, defendant himself stated at that time that he was well enough to proceed. There is also no indication that defendant’s mental condition prevented him from understanding the nature and object of the proceedings against him or assisting in his defense. Thus, defendant’s argument on this point fails.

Next, defendant asserts that the trial court erred when it refused his request to give a jury instruction on the lesser offense of voluntary manslaughter. We disagree.

A trial judge is required to instruct the jury on lesser included offenses when so requested and if supported by the evidence. *People v Sullivan*, 231 Mich App 510, 517-518; 586 NW2d 578 (1998). This case deals with a cognate lesser included offense. A cognate lesser offense is one which shares common elements and is of the same class as the greater offense, but has additional elements *not* found in the greater offense. *People v Perry*, 460 Mich 55, 61; 594 NW2d 477 (1999).

In this case, defendant did not present any evidence to support a conviction of voluntary manslaughter. Voluntary manslaughter is composed of three essential elements: (1) the defendant must have committed a homicide in the heat of passion; (2) the passion was caused by an adequate provocation; and (3) there was no lapse of time during which a reasonable person could have gained control of his passions. *Id.* at 518. Manslaughter is distinguished from the offense of murder by the element of provocation. *Id.*

The trial evidence indicates that defendant shot the victim several hours after hearing that defendant’s girlfriend planned to leave him and go on vacation with the victim. Our Supreme Court has stated that, in the context of voluntary manslaughter, the term “passion” describes “a state of mind incapable of cool reflection.” *People v Townes*, 391 Mich 578, 589 n 3; 218 NW2d 136 (1974). In this case, defendant made the following statement to police regarding how he felt at the time he confronted the victim, “I was upset, a little angry and stressed.” However, “upset” and “a little angry” does not constitute the level of passion necessary to sustain the first element of voluntary manslaughter. *People v Jones*, 151 Mich App 1, 4; 390 NW2d 189 (1986). Moreover, defendant failed to establish adequate provocation and there was a significant lapse of time before the murder, during which a reasonable person could have gained control of his passions. *Sullivan, supra* at 518-519.

Finally, defendant asserts that the circuit court lacked jurisdiction to try him on a charge of first-degree premeditated murder because that charge was not listed on the bindover document and the prosecutor failed to file a motion with the court before amending the felony information to reflect a charge of first-degree premeditated murder. We disagree.

Absent a showing of miscarriage of justice, a defendant may not challenge an information for the first time on appeal. *People v Swinford*, 150 Mich App 507, 516; 389 NW2d 462 (1986). Here, defendant failed to raise this issue before the trial court. However, a criminal defendant may obtain relief based on an unpreserved constitutional error if the error is plain and affected his substantial rights. *Carines*, *supra* at 763-764.

Generally, the court may permit the prosecutor to amend the information before, during or after trial unless the proposed amendment would unfairly surprise or prejudice the defendant or charge the defendant with a new crime. MCL 767.76; MCR 6.112(H); *People v Higuera*, 244 Mich App 429, 444; 625 NW2d 444 (2001). Prejudice occurs when a defendant refuses to admit guilt and is not given a chance to defend against the crime. *People v Stricklin*, 162 Mich App 623, 633; 413 NW2d 457 (1987).

The prosecution erred when it filed an amended information reflecting a charge of first-degree premeditated murder on December 18, 1998, without first filing a motion to do so with the trial court. MCR 6.435(A). However, the prosecution essentially corrected a clerical error that occurred when the bindover order, as prepared, failed to include the charge of first-degree premeditated murder that was orally ordered by the magistrate at defendant's preliminary examination on December 1, 1998. Defendant was not prejudiced by the prosecution's error.

The preliminary examination transcript makes clear that the examining magistrate ordered defendant to be bound over on the charges of first-degree felony murder, first-degree premeditated murder and felony-firearm. Defendant was on notice that he was to be charged with first-degree premeditated murder, and he had ample opportunity to defend against this charge at trial. Furthermore, the trial court again informed defendant of the first-degree premeditated murder charge at defendant's arraignment on December 18, 1998. Defendant's request for a jury instruction on voluntary manslaughter—a cognate lesser offense to first-degree premeditated murder—also indicated his awareness that he was being tried on a charge of first-degree premeditated murder. Finally, while the prosecutor failed to file a motion with the trial court requesting permission to amend the felony information, the prosecutor nonetheless informed the trial court on December 18, 1998, that she had filed an amended felony information reflecting a charge of first-degree premeditated murder. Therefore, defendant has failed to show plain error affecting his substantial rights.

Affirmed.

/s/ Kathleen Jansen  
/s/ Jeffrey G. Collins  
/s/ Jessica R. Cooper