STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 13, 2002
v	No. 230892 Wayne Circuit Court
CHARLES WILLIAMS, Defendant-Appellant.	LC No. 99-012087

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317, but was convicted by a jury of the lesser offense of involuntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to consecutive prison terms of 2 to 15 years for the manslaughter conviction and 2 years for the felony-firearm conviction. He appeals as of right. We reverse.

On October 29, 1999, defendant's wife owned and operated a bar. On the night in question, defendant was working at the bar and offered to escort Sabrina Mattox, a former female employee, to her vehicle. While sitting in her automobile and talking with defendant through the window, Mattox noticed two men coming out of the alley. When defendant realized that Mattox was looking past him, rather than at him, he turned and saw the decedent and another man approaching.

The decedent walked up to defendant. Mattox testified that she heard mumbling from defendant and the two men but did not see any weapons before hearing a gunshot. According to defendant, the decedent pulled out a knife and swung at him. Defendant admitted to shooting the decedent but testified that he did so in self-defense. However, defendant denied knowing that his shot hit the decedent. Rather, defendant said he thought that he had only chased the men away. Indeed, after the weapon discharged both the decedent and the man with him, Marque Tigney, ran in different directions. Tigney testified that he found the decedent later in a nearby field bleeding from his mouth and chest.

Defendant claimed that after the shooting he closed the bar and called the police. When the police arrived at the bar they asked if anyone had called to report a shooting. Defendant replied that nobody was shot but that some individuals were attempting to rob people out in the

parking lot. The police left the bar and returned to patrol. At trial, the police testified that defendant gave them a false name. Defendant denied this claim.

Approximately fifteen minutes after the initial dispatch, the police received another call regarding a person shot within half a block of the bar. Upon arriving at the scene, the police secured the area and assisted the emergency workers with the decedent. Tigney, who was with the decedent when the police arrived, gave the police a description of the shooter. Based on this information, the police returned to the bar and discovered defendant hiding in a closet, which was located in a storage room of the bar, with the lights off. Conversely, defendant testified that he was working in his office, with the lights on, when the police arrived. The police recovered several weapons and boxes of ammunition from inside the bar.

Defendant argues on appeal that the trial court erred in instructing the jury on both voluntary and involuntary manslaughter. We agree.

Defendant was originally charged with second-degree murder. However, before closing arguments the prosecution requested an instruction on voluntary manslaughter and then suggested that the trial court would have to instruct on involuntary manslaughter as well. Defendant objected to instructing the jury on any type of lesser-included offenses. Nevertheless, the trial court agreed with the prosecution and proceeded to instruct the jury on both voluntary and involuntary manslaughter.

Because this issue was preserved at trial and raised on appeal, it is controlled by our Supreme Court's recent decision in *People v Cornell*, 466 Mich 335, 367; 646 NW2d 127 (2002). Pursuant to *Cornell*, *supra* at 354-355, 358-359, MCL 768.32(1) permits a trial court to instruct on necessarily lesser included offenses only, and not on cognate lesser offenses. Both voluntary and involuntary manslaughter are cognate lesser offenses of murder. *People v Cheeks*, 216 Mich App 470, 479-480; 549 NW2d 584 (1996). Under *Cornell*, the jury was not permitted to convict defendant of the lesser cognate offense of involuntary manslaughter; consequently, reversal is mandated.

In light of our decision, defendant's remaining issues need not be addressed.

Reversed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Jane E. Markey