STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 25, 2004
v	No. 238389 Kent Circuit Court
CHARLES DEO HYDE, Defendant-Appellant.	LC No. 01-000521-FC ON REMAND

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

This case is before us on remand from our Supreme Court. In lieu of granting leave to appeal, our Supreme Court partially vacated our opinion and remanded for reconsideration in light of *People v Mendoza*.[1] We affirm.

I. Facts and Procedural History

Defendant Charles Deo Hyde and his girlfriend, Vicki Harig, spent the day of December 30, 2000, drinking in celebration of the decedent's birthday. The facts surrounding her death were set forth in our prior opinion as follows:

> In the instant case, the decedent's mother heard thumping coming from her daughter's upstairs apartment that she shared with defendant. The noises lasted for approximately thirty to ninety minutes. The evidence revealed that the decedent had extensive bruising on both sides of her face, multiple bruises to other areas of her body, and injuries to the back of her hands that were consistent with defensive wounds. According to the record, the bruises on her face were most likely caused by at least five blunt force blows from a fist. There was testimony that the pattern of the decedent's injuries was more consistent with an assault than a simple fall. Several witnesses also claimed that defendant admitted that he must have caused the decedent's injuries but that he could not remember. Moreover, Krystal Hyde, defendant's daughter, testified that when she stopped by

[1] *People v Hyde*, 469 Mich 974 (2003), citing *People v Mendoza*, 468 Mich 527; 664 NW2d 685 (2003).

> the apartment that night she heard her father tell the decedent to "get up, bitch." Ms. Hyde then observed the decedent struggling to get off the floor and back into a chair.[2]

The following morning, defendant found Ms. Harig lying on the couch. She was bruised and was having difficulty breathing. Defendant said he had no recollection of the events of the prior evening. Ms. Harig was brought comatose to the hospital where she subsequently died on January 1, 2001.

At trial in this matter, defendant requested a jury instruction for the lesser offense of involuntary manslaughter. The trial court denied defendant's request citing the lack of evidence to support the charge. The decedent's death arose from a beating, which persisted over a significant period of time and involved repeated severe blows to the head. The evidence showed that the death did not arise from a simple assault and battery, and therefore, an instruction for involuntary manslaughter was insupportable. Defendant was convicted of second-degree murder[3] and was sentenced to twenty-five to forty years' imprisonment.

On appeal as of right, defendant contended that the trial court committed reversible error in failing to instruct the jury on the lesser offense of involuntary manslaughter. Defendant argued that the evidence showed that the death was the unintended result of a mere assault and battery committed without an intent to kill. We concluded that the trial court properly denied defendant's requested instruction.[4] Relying on *People v Cornell*, we limited jury instructions for inferior offenses under MCL 768.32 to necessarily included lesser offenses.[5] Involuntary manslaughter was at that time considered a cognate lesser included offense of murder,[6] and therefore, we ruled that an instruction was not warranted.

Defendant filed a delayed application for leave to appeal. Our Supreme Court vacated our opinion in part and remanded for reconsideration regarding defendant's requested jury instruction in light of *Mendoza*.

II. Legal Analysis

We review jury instructions in their entirety to determine whether the trial court committed reversible error.[7] "Jury instructions must include all elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them."[8]

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[2] *People v Hyde*, unpublished per curiam opinion of the Court of Appeals, issued June 19, 2003 (Docket No. 238389), slip op at 2 (*Hyde I*).

[3] MCL 750.317.

[4] *Hyde I*, *supra* at 1.

[5] *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002).

[6] *People v Cheeks*, 216 Mich App 470, 479; 549 NW2d 584 (1996).

[7] *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997).

[8] *Id.*, citing *People v Reed*, 393 Mich 342, 349-350; 224 NW2d 867 (1975).

Even if imperfect, jury instructions are not erroneous if they fairly present the issues and sufficiently protect the defendant's rights.[9] However, a trial court is not required to give requested instructions that are unwarranted by the facts.[10] A jury instruction for a necessarily included lesser offense is appropriate if "the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it."[11]

Our Supreme Court recently defined involuntary manslaughter as "the unintentional killing of another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm."[12] The Court then found, contrary to prior case law, that involuntary manslaughter is a necessarily included lesser offense of murder and is an inferior offense under MCL 768.32.[13] All the elements of a necessarily included lesser offense are subsumed by a greater offense.[14] The elements of involuntary manslaughter are completely subsumed by the greater offense of murder as murder's greater mens rea includes the lesser.[15]

Upon reconsideration, we affirm our previous ruling affirming the trial court's denial of defendant's requested jury instruction. Although involuntary manslaughter is a necessarily included lesser offense of murder, a rational view of the evidence does not support an instruction for that charge. Defendant's violent acts of aggression had a natural tendency to cause great bodily harm. The evidence showed that the death was caused by a severe and prolonged beating, not by a single blow or an accidental fall. The evidence showed that defendant continued his assault even after Ms. Harig was unable to stand. Based on this evidence, an instruction for involuntary manslaughter was not warranted.

Affirmed.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood

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[9] *Id.*

[10] *Id.*

[11] *Cornell*, *supra* at 357; see also *Mendoza*, *supra* at 533, 545.

[12] *Mendoza*, *supra* at 536. A death arising from a negligently performed lawful act or the negligent omission to perform a legal duty also amounts to involuntary manslaughter. *Id.*

[13] *Id.* at 541-542.

[14] *Id.* at 541.

[15] *Id.* at 542.