

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE HENDERSON, JR.,

Defendant-Appellant.

UNPUBLISHED

December 28, 2004

No. 247609

Wayne Circuit Court

LC No. 02-009421

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree premeditated murder, MCL 750.316, in the strangulation death of his estranged wife. The medical examiner testified that decedent died of asphyxia from a neck hold. The trial court denied defendant's request to instruct the jury on involuntary manslaughter, MCL 750.321. The jury found defendant guilty of second-degree murder as a lesser included offense of first-degree murder.

Defendant argues that the trial court erred by failing to instruct the jury on the offense of involuntary manslaughter. We disagree. We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Involuntary manslaughter is the unintentional killing of another, without malice, during the commission of an unlawful act not constituting a felony and not naturally tending to cause great bodily harm, or during the commission of a lawful act negligently performed, or in the negligent omission to perform a legal duty. *People v Mendoza*, 468 Mich 527, 536; 664 NW2d 685 (2003). The elements of manslaughter are included in the offense of murder. When a defendant is charged with murder, instructions for voluntary and involuntary manslaughter must be given if those instructions are supported by a rational view of the evidence. *People v Nickens*, 470 Mich 622, 626; 685 NW2d 657 (2004); *Mendoza, supra* at 541.

The evidence established that decedent died of asphyxia from a neck hold, and that defendant was required to apply several minutes of constant pressure on her neck after she stopped struggling in order to bring about her death. This evidence would not support a finding

either that defendant engaged in an unlawful act not constituting a felony and not naturally tending to cause great bodily harm, or that he acted in a grossly negligent manner. *Mendoza, supra* at 536. The trial court correctly found that a rational view of the evidence did not support the giving of an instruction on involuntary manslaughter as a lesser included offense of murder. *Id.* at 541.

Moreover, the trial court instructed the jury that it should find defendant not guilty if it concluded that he did not intend to kill decedent or that he did not realize that his actions probably would result in her death. CJI2d 7.2. By convicting defendant of second-degree murder, the jury rejected his assertion that decedent's death was an unintended consequence of his actions. Any possible error in the trial court's failure to instruct the jury on involuntary manslaughter was harmless. *People v Lowery*, 258 Mich App 167, 172-173; 673 NW2d 107 (2003).

Affirmed.

/s/ William B. Murphy

/s/ Kirsten Frank Kelly