

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY KENT BURRIS,

Defendant-Appellant.

---

UNPUBLISHED

May 26, 2000

No. 217107

Berrien Circuit Court

LC No. 98-402984-FC

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to 150 to 450 months' imprisonment on the second-degree murder conviction and the mandatory consecutive term of two years' imprisonment on the felony-firearm conviction. Defendant appeals as of right. We affirm.

I

Defendant argues that the trial court erred in denying his request for an instruction on voluntary manslaughter. This Court reviews jury instructions in their entirety to determine if there is error requiring reversal. Even if jury instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998).

Voluntary manslaughter is a cognate lesser included offense of murder. *People v Darden*, 230 Mich App 597, 600; 585 NW2d 27 (1998). Before a court instructs on a cognate lesser offense, it must examine the specific evidence to determine whether it would support a conviction of the lesser offense. *People v Pouncey*, 437 Mich 382, 387; 471 NW2d 346 (1991).

The elements of voluntary manslaughter are (1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse of time during which a reasonable person could control his passions. *People v Sullivan*, 231 Mich App 510,

518; 586 NW2d 578 (1998), aff'd 461 Mich 986 (2000). The element of provocation distinguishes the offense of manslaughter from murder. The provocation necessary to mitigate a homicide from murder to manslaughter is that which would cause a reasonable person to lose control and act out of passion, rather than reason. *Id.*

After carefully reviewing the record, we agree with the trial court that there was no evidence of sufficient provocation to mitigate the homicide from murder to manslaughter. See *id.* Defendant argues that the fact that the decedent, in the company of at least one armed associate, expressed the desire to fight him, constitutes adequate provocation. Defendant asserts that he reasonably could have believed that flight was impossible. However, as the trial court observed, such evidence supports an instruction on self-defense (which was given), not an instruction on voluntary manslaughter. Because there was no evidence of provocation that would cause a reasonable person to lose control and act out of passion, *Sullivan, supra*, the trial court properly refused defendant's request for an instruction on voluntary manslaughter, *Pouncey, supra*. The jury instructions fairly presented the issues to be tried and sufficiently protected defendant's rights; accordingly, he is not entitled to relief.<sup>1</sup> See *Whitney, supra*.

## II

In addition, defendant argues that the trial court erred in refusing to allow him to present evidence regarding both a prior incident and the Vice Lords' reputation for violence. 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 Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

After reviewing the record, we conclude that the trial court did not preclude defendant from testifying about the details of the prior incident. The trial court ruled only that such evidence would not be relevant unless some of the same people had been involved in both incidents. Defendant subsequently testified that Reginald Bland had been involved in each incident. For whatever reason, defense counsel chose not to pursue the issue. Under the circumstances, there was no abuse of the trial court's discretion.

Likewise, the record does not support defendant's claim that he was not permitted to testify concerning the Vice Lords' reputation for violence. Defendant provides no citation to a specific ruling in which the trial court refused to admit such testimony. The transcript is silent regarding the content of an earlier ruling, made by the trial court during a bench conference, that the court mentioned while defendant testified regarding his knowledge of the Vice Lords. Under these facts, we cannot find that the trial court abused its discretion.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ David H. Sawyer  
/s/ Mark J. Cavanagh

<sup>1</sup> Defendant also argues that “[t]he doctrine of imperfect self-defense provides a second support for finding that a voluntary manslaughter instruction should have been given.” However, defendant did not advance imperfect self-defense as a theory at trial, and he does not actually argue on appeal that he was entitled to invoke the doctrine. Defendant does state that the jury could have found that defendant reasonably believed that he was going to be beaten by the decedent, but concluded that the decedent’s conduct did not justify the use of deadly force. However, a defendant is not entitled to claim imperfect self-defense if he acted with excessive force. See *People v Kemp*, 202 Mich App 318, 325; 508 NW2d 184 (1993). Under the circumstances, we find no error requiring reversal.