STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GUY LEE WOODS,

Defendant-Appellant.

UNPUBLISHED
June 23, 2000

No. 212325
Midland Circuit Court
LC No. 96-008214-FC

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548. He was sentenced to life without parole. Defendant appeals as of right. We affirm.

Defendant argues that the evidence presented at trial mandated that the defenses of insanity and diminished capacity be submitted to the jury. Defendant attributes error to the trial court for refusing to instruct the jury regarding these defenses. We disagree. We review a claim of instructional error de novo. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). However, we will not set aside, reverse or grant a new trial on the ground of misdirection of the jury, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice. MCL 769.26; MSA 28.1096. See also MCR 2.613(A).

A trial judge must instruct the jury on the applicable law, and fully and fairly present the case to the jury in an understandable manner. *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). Instructions must cover each element of each offense charged, along with all material issues, defenses, and theories that have evidentiary support. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999). An instruction that is without evidentiary support should not be given. *Id.*

MCL 768.21a: MSA 28.1044(1) states in pertinent part:

> (1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense.

> An individual is legally insane if, as a result of mental illness .. . that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or being mentally retarded does not otherwise constitute a defense of legal insanity.
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> (3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

The insanity statute was amended by 1994 PA 56, which took effect on October 1, 1994. Prior to the amendments, the amount of evidence required of the defendant sufficient to overcome the presumption of sanity was minimal. *People v Savoie,* 419 Mich 118; 349 NW2d 139 (1984). However, "the sufficiency of the evidence is [to be resolved by] the jury unless there is no evidence at all *upon a material point*." *Id.* at 126 (emphasis in the original).

After 1994, legal insanity is considered an affirmative defense and a defendant has the burden of proving the defense by a preponderance of the evidence. *People v McRunels,* 237 Mich App 168, 173; 603 NW2d 95 (1999); MCL 768.21a; MSA 28.1044(1):

> Before the 1994 amendment, if a defendant proffered even minimal evidence of insanity, the prosecution was required to prove beyond a reasonable doubt that the defendant was sane. Guided by the authority already discussed, we conclude that the amendment was substantive and not procedural, because the prosecutor's burden is lessened and the defendant's burden is increased such that he must prove by a preponderance of the evidence that he was insane at the time of the crime. [*Id.* at 180.]

The defense of diminished capacity comes within the codified definition of legal insanity and is thus subject to the same procedural requirements that are statutorily imposed on the insanity defense. See, e.g., *People v Anderson*, 166 Mich App 455, 464; 421 NW2d 200 (1988).

Where there is insufficient evidence of insanity, no insanity instruction is necessary, and the failure of the trial court to instruct on insanity is not error. *Savoie, supra* at 130. Without concluding whether the "minimal evidence" threshold or the "preponderance of the evidence" threshold applies in this case, our review of the record convinces us that defendant failed to present any material evidence demonstrating his insanity at the time of the offense. See *Savoie, supra* at 126.

The record demonstrates extensive and unequivocal testimony that defendant was not insane at the time he killed the nineteen-month-old victim. Evidence was presented that defendant suffered from at least two personality disorders that, under certain stressful situations, may have caused him to engage in violent behavior. However, the record is devoid of testimony from any expert or lay witness that equated these events of decompensation to periods of insanity as defined by statute. To the contrary,

although evidence was presented regarding what occurred during and after defendant's apparent decompensation, there was no basis on which any witness could conclude that defendant was legally insane at the time of the victim's death. Our review of the record shows that defendant was able to appreciate the wrongfulness of his conduct, that he decided to inflict injury on the victim, and that he was capable of conforming his conduct to the requirements of the law at the time of the offense.

Defendant argues that there was post-incident evidence showing he decompensated and that this decompensation rendered him insane. Expert testimony indicated that after a period of decompensation defendant could be expected to be withdrawn, lethargic, internally attaching shame and criticizing himself. Our review of the record reveals that, after committing the offense, defendant appeared to have a very flat effect, seemed unconcerned and uncaring, and was at the point of being lethargic. Contrary to defendant's argument, this testimony only served to establish that defendant may have suffered from a period of decompensation at the time he killed the victim. However, unequivocal testimony, even in light of this evidence, showed that defendant was not insane at the time the offense was committed. Thus, we are persuaded that any evidence of decompensation could not satisfy the "minimal evidence" threshold, let alone a "preponderance of the evidence" threshold, because the implicit evidence of decompensation constituted no evidence on a material point. See *Savoie, supra* at 126.

Defendant's claim of insanity was without any evidentiary support. Thus, no insanity instruction was necessary and the trial court's refusal to instruct the jury regarding this defense, as well as the defense of diminished capacity, was not error. *Savoie, supra* at 130; *Wess, supra* at 243.

Defendant also argues that the trial court erred in failing to instruct the jury on the offense of involuntary manslaughter. Again, we disagree. A trial judge must instruct the jury on the applicable law, and fully and fairly present the case to the jury in an understandable manner. Thus, a judge must instruct on lesser included offenses when so requested and if supported by the evidence. *Moore, supra* at 319. Instructions must cover each element of each offense charged, along with all material issues, defenses, and theories that have evidentiary support. *Wess, supra* at 243. An instruction that is without evidentiary support should not be given. *Id.*

In Michigan, the penalty for manslaughter is codified, but the definition is left to the common law. *People v Datema,* 448 Mich 585, 593; 533 NW2d 272 (1995). Involuntary manslaughter is defined as

> the killing of another without malice and unintentionally, but: (1) in doing some unlawful act *not amounting to a felony nor naturally tending to cause death or great bodily harm*; or (2) in negligently doing some lawful act in itself; or (3) by the negligent omission to perform a legal duty. [*Id.* at 596 (emphasis added); see also *People v Clark*, 453 Mich 572, 478; 556 NW2d 820 (1996).]

Involuntary manslaughter contemplates an unintended result and thus requires something less that an intent to do great bodily harm, an intent to kill, or the wanton and wilful disregard of its natural

consequences. *Datema*, *supra* at 606. Manslaughter is not a necessarily included offense of murder, but may be a cognate lesser offense if the evidence adduced at trial would support a guilty verdict. *People v Beach*, 429 Mich 450, 476; 418 NW2d 861 (1988).

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), reh den 437 Mich 1285; 474 NW2d 291 (1991). Giving an instruction on a lesser offense which has no evidentiary basis detracts from the rationality and reliability of the factfinding process. *Moore*, *supra* at 319.

As noted above, to fall within the definition of involuntary manslaughter, the killing must be the result of an unlawful act not amounting to a felony, negligently performing a lawful act, or negligent omission. *Datema*, *supra* at 596. The record in the present case shows that, at the very least, defendant committed the unlawful act of second-degree child abuse, a felony. Defendant admitted that he bit the nineteen-month-old victim's hands and forearms on the day she died. He also admitted to pushing her down and forcibly punching her three or four times while she was lying on the floor. Defendant admitted to hitting the victim in the chest with some force. He also admitted to "headbutting" the victim after picking her up off the floor. Evidence presented at trial demonstrated that there were over twenty different areas of external injuries on the victim's body. The record shows that there was internal bruising of internal organs, primarily the heart and that these injuries resulted from a blow to victim's chest. Finally, there is no dispute that the victim died from the injuries inflicted by defendant. These unlawful actions constituted a felony under the child abuse statute. MCL 750.136b(1)(e); MSA 28.331(2)(1)(e). Therefore, defendant's actions did not fall under the definition of involuntary manslaughter and the trial court was not required to grant defendant's request to instruct the jury on this lesser offense. *Pouncey*, *supra* at 387; *Moore*, *supra* at 319.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer