

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHARLES WILLIAMS,

Defendant-Appellee.

---

UNPUBLISHED

December 23, 2003

No. 230892

Wayne Circuit Court

LC No. 99-012087

ON REMAND

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

PER CURIAM.

This matter is before us on remand from the Supreme Court for reconsideration in light of *People v Mendoza*.<sup>1</sup> Following a jury trial, defendant was convicted of involuntary manslaughter, MCL 750.227b; 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 two to fifteen years for the manslaughter conviction and two years for the felony-firearm conviction.

We initially reversed defendant's convictions on the ground that the trial court improperly instructed the jury on the cognate lesser included offenses of voluntary and involuntary manslaughter.<sup>2</sup> This holding was in accordance with Supreme Court precedent declaring voluntary and involuntary manslaughter as cognate lesser included offenses of murder.<sup>3</sup> But our Supreme Court recently reassessed its position on this issue in *Mendoza*, holding that manslaughter is a necessarily included lesser offense of murder and that an inferior-offense instruction is appropriate if "a rational view of the evidence supports a conviction for the lesser offense."<sup>4</sup> In light of this recent change, we affirm defendant's convictions.

The facts of this case, as stated in our previous opinion, are as follows:

---

<sup>1</sup> 468 Mich 527; 664 NW2d 685 (2003).

<sup>2</sup> See *People v Cornell*, 466 Mich 335, 353-354; 646 NW2d 127 (2002).

<sup>3</sup> See *People v Van Wyck*, 402 Mich 266; 262 NW2d 638 (1978), overruled in part by *Mendoza*, *supra* at 529.

<sup>4</sup> *Mendoza*, *supra* at 544-545.

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.<sup>[5]</sup>

## I. Jury Instructions

Claims of instructional error are reviewed de novo on appeal.<sup>6</sup> As a general rule, “[w]e review jury instructions in their entirety to determine if error requiring reversal occurred.”<sup>7</sup> It is

---

<sup>5</sup> *People v Williams*, unpublished opinion of the Court of Appeals, issued September 13, 2002, (Docket No. 230892).

<sup>6</sup> *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

<sup>7</sup> *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

the function of the trial court to clearly present the case to the jury and instruct them on the applicable law.<sup>8</sup> Jury instructions must therefore include all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence.<sup>9</sup> Even if somewhat imperfect, reversal is not required where the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights.<sup>10</sup>

#### A. Manslaughter

A requested instruction on a necessarily included lesser offense is properly given “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.”<sup>11</sup> As determined by our Supreme Court in *Mendoza*, the offenses of voluntary and involuntary manslaughter are necessarily included lesser offense of murder.<sup>12</sup> The question remains, however, whether a rational view of the evidence supported these instructions.

The Supreme Court has 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; or during the commission of some lawful act, negligently performed; or in the negligent omission to perform a legal duty.”<sup>13</sup> Here, there was evidence that defendant fired the gun when the decedent swung at him with a knife. Such evidence supported a finding that defendant fired his gun without malice, while acting in a grossly negligent manner. Thus, the trial court did not err in instructing the jury on involuntary manslaughter. Further, because the jury did not convict defendant of voluntary manslaughter, any error in instructing on that offense was harmless.<sup>14</sup>

Because we find that reversal is no longer merited on this issue, we address the remainder of the claims defendant raised on appeal.

---

<sup>8</sup> *People v Katt*, 248 Mich App 282, 310; 639 NW2d 815 (2001), aff 468 Mich 272; 662 NW2d 12 (2003).

<sup>9</sup> *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

<sup>10</sup> *Aldrich*, *supra* at 124.

<sup>11</sup> *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002).

<sup>12</sup> *Mendoza*, *supra* at 544.

<sup>13</sup> *Id.* at 536.

<sup>14</sup> *People v Moorer*, 246 Mich App 680, 682-683; 635 NW2d 47 (2001).

## B. Self-Defense

Defendant maintains that the trial court's instructions on self-defense were inadequate. Because defendant failed to object to these instructions, our review is limited to plain error affecting his substantive rights.<sup>15</sup>

The record shows that the trial court instructed the jury on self-defense in accordance with CJI2d 7.15, 7.16, and 7.20. The jury was also given the reasonable doubt instruction by the trial court and informed that defendant did not have the burden of proving that he acted in self-defense. Rather, the trial court instructed the jury that it was the prosecutor that had the burden of proving that defendant did not act in self-defense. Accordingly, we find no plain error.

## II. Prosecutorial Misconduct

Defendant next argues that he was denied a fair trial because of several instances of prosecutorial misconduct. Prosecutorial misconduct claims are reviewed case by case, examining any remarks in context, to determine if the defendant received a fair and impartial trial.<sup>16</sup> Where an issue was not preserved with an appropriate objection at trial, we review the issue for plain error affecting the defendant's substantial rights.<sup>17</sup> Here, defendant failed to object to all but one of the alleged instances of misconduct. "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction."<sup>18</sup>

Defendant asserts that the prosecutor confused the jury and personally attacked defendant's credibility by remarks in closing argument. As to any confusion caused by the prosecutor's comments regarding the elements of voluntary and involuntary manslaughter, we note that the jury was instructed to follow the trial court's instructions rather than counsel's statements about the law. The trial court also instructed the jury that counsel's comments were not evidence. Jurors are presumed to follow the instructions provided by the trial court.<sup>19</sup> In light of these instructions, defendant has failed to establish error affecting his substantial rights.<sup>20</sup>

Nor was it improper for the prosecutor to argue that it was inconsistent for defendant to tell the police that he had not handled a gun and then argue that he shot in self-defense. Once a

---

<sup>15</sup> *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Knapp*, 244 Mich App 361, 375; 624 NW2d 227 (2001).

<sup>16</sup> *Aldrich*, *supra* at 110.

<sup>17</sup> *Carines*, *supra* at 763-764.

<sup>18</sup> *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

<sup>19</sup> *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

<sup>20</sup> *Carines*, *supra* at 763-764.

defendant presents evidence or a theory, the prosecutor may advance argument on that theory and any inferences arising therefrom.<sup>21</sup>

Defendant also alleges that the prosecutor denigrated defense counsel by suggesting that the theory of self-defense did not arise until after a conversation between counsel and defendant. This is the only instance of alleged misconduct that was preserved with an objection below. In response to defendant's objection, the trial court struck the prosecutor's remark and ordered the jury to disregard the remark. As noted previously, the jury was also instructed that counsels' remarks were not evidence. Again, the jury is presumed to have followed the trial court's instruction, which was sufficient to eliminate any prejudice.<sup>22</sup> Defendant was not denied a fair and impartial trial on this basis.<sup>23</sup>

To the extent defendant further asserts that the trial court should have granted a mistrial when the prosecutor improperly suggested that defense counsel "created a defense," we disagree. A trial court's decision regarding a motion for a mistrial is reviewed on appeal for an abuse of discretion.<sup>24</sup> An abuse of discretion will only be found where the trial court's denial of the motion deprived the defendant of a fair and impartial trial.<sup>25</sup> Although we agree that the prosecutor's remarks were improper, the trial court sustained defendant's objection to the comments and any prejudice was dispelled by the trial court's instruction to disregard the remarks and that the arguments of attorneys are not evidence. As our Supreme Court stated, "'we normally presume that a jury will follow an instruction to disregard inadmissible evidence . . . .'"<sup>26</sup> Not every mention before a jury of an inappropriate subject matter warrants a mistrial.<sup>27</sup> We find no abuse of discretion.

Affirmed.

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

---

<sup>21</sup> *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995).

<sup>22</sup> See *Graves*, *supra* at 486.

<sup>23</sup> *Aldrich*, *supra* at 110.

<sup>24</sup> *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999).

<sup>25</sup> *People v Wolverton*, 227 Mich App 72, 75; 574 NW2d 703 (1997).

<sup>26</sup> *People v Dennis*, 464 Mich 567, 581; 628 NW2d 502 (2001), quoting *Greer v Miller*, 483 US 756, 767 n 8; 107 S Ct 3102; 97 L Ed 2d 618 (1987).

<sup>27</sup> *Griffin*, *supra* at 36.