STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFRED SELF,

Defendant-Appellant.

UNPUBLISHED
August 23, 1996

No. 169191
LC No. 92001560

Before: Markman, P.J., and Marilyn Kelly and L.V. Bucci,* JJ.

PER CURIAM.

Defendant appeals as of right following his jury trial conviction for second-degree murder. MCL 750.317; MSA 28.549. He argues that the judge erred in failing to instruct the jury on involuntary manslaughter. He claims that reversal is required where intentionally perjured testimony was introduced at trial. He urges that the judge erred in permitting officer Jackman to testify to an editorialized version of his alleged threat to kill his wife. He asserts error occurred in admitting evidence that he threatened to kill his wife six months before the homicide and threatened her on numerous occasions over the previous two years. Finally, he argues that there was insufficient evidence to sustain the jury verdict. We affirm.

The judge did not err in denying defendant's requests for an involuntary manslaughter instruction. Involuntary manslaughter is a cognate lesser offense of murder. *People v Beach*, 429 Mich 450, 455; 418 NW2d 861 (1988). A judge need only give an instruction on a cognate lesser offense if the evidence would support a jury verdict on that charge. *Id.*, p 463. Involuntary manslaughter is the unintentional killing of another without malice in (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the commission of some lawful act, negligently performed or (3) in the negligent omission to perform some legal duty. *People v Heflin*, 434 Mich 482, 507-508; 456 NW2d 10 (1990). We find that the evidence would not support any of those theories. Therefore, the judge correctly denied defendant's request to instruct the jury on involuntary manslaughter.

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*Circuit judge, sitting on the Court of Appeals by assignment.

We find that defendant's allegations that Officer Jackman intentionally falsified the preliminary complaint report, then perjured himself at trial, are not supported by the record. Officer Jackman made a report regarding an alleged assault perpetrated by defendant against decedent on May 31, 1990. Defendant threatened decedent in Officer Jackman's presence after being taken to the police station. There is no evidence that this report was intentionally changed to add defendant's threat after Officer Jackman discovered that decedent had been killed. The statement about the threat was included in the preliminary complaint report involving the homicide. The record, at most, shows that while testifying, Officer Jackman made an ambiguous statement about the dates of the reports. He later clarified his testimony. Because the record is devoid of any clear evidence suggesting that the testimony was perjured, we will not reverse defendant's conviction on this ground. See *People v Coddington*, 188 Mich App 584, 603; 470 NW2d 478 (1991).

The record does not support defendant's argument that Officer Jackman gave an editorialized version of defendant's alleged threat to kill his wife. Officer Jackman testified that he recalled defendant's statement that he would "kill the bitch" if decedent ever sought a divorce. Defendant failed to elicit testimony that Jackman was paraphrasing or modifying the statement. See *People v Eccles*, 141 Mich App 523, 525; 367 NW2d 355 (1984). Moreover, the fact that Jackman did not reduce defendant's statement to writing until six months had passed did not preclude its admission. *Id.*, p 524.

The judge did not abuse his discretion in admitting evidence that defendant had previously threatened to harm or kill his wife. It was defendant who elicited Kenneth's testimony that defendant threatened decedent several times in the two years preceding her death and that he menaced her with a rifle. Defendant cannot predicate error on evidence he himself introduced. See *People v Cutchall*, 200 Mich App 396, 409; 504 NW2d 666 (1993).

Evidence of defendant's threats to kill his wife if she divorced him were properly admitted, as their prejudicial effect did not substantially outweigh their probative value. *People v Milton*, 186 Mich App 574, 576; 465 NW2d 371 (1990); *People v Melvin*, 70 Mich App 138, 144; 245 NW2d 178 (1976). The circumstances of the threats were probative, because they were closely related to the circumstances of the killing. Moreover, they refuted defendant's theory that the killing was accidental. *Melvin*, *supra*, p 143.

Finally, we have reviewed the evidence in a light most favorable to the prosecution. We conclude that a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Chandler*, 201 Mich App 611, 612; 506 NW2d 882 (1993); *People v Harris*, 190 Mich App 652, 659; 476 NW2d 767 (1991). The preliminary examination testimony of Donielle, defendant's daughter, admitted as substantive evidence pursuant to MRE 801(d)(1)(A), supports a finding of malice. The determination whether to

believe Donielle or defendant was a question of credibility for the jury to resolve. *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989).

Affirmed.

/s/ Stephen J. Markman
/s/ Marilyn Kelly
/s/ Lido V. Bucci