

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES BERNARD LANG,

Defendant-Appellant.

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UNPUBLISHED  
November 1, 1996

No. 179520  
LC No. 90-001463

Before: Sawyer, P.J., and Marilyn Kelly and D.A. Burress,\* JJ.

PER CURIAM.

Defendant, James Bernard Lang, appeals as of right from his jury trial convictions of voluntary manslaughter, MCL 750.327; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to nine to fifteen years in prison for the voluntary manslaughter conviction and two years in prison for the felony-firearm conviction. We affirm.

Defendant first argues that the trial court erred in admitting into evidence certain hearsay statements made by defendant to Kay Beasley as statements against interest pursuant to MRE 804(b)(3). We disagree. The decision to admit evidence is within the sound discretion of the trial court and will not be disturbed by this Court absent an abuse of discretion. *People v Hurt*, 211 Mich App 345, 350; 536 NW2d 227 (1995). A statement tending to expose the declarant to criminal liability is excepted from the rule against hearsay as a statement against interest where a reasonable person would not have made the statement unless he believed it to be true. MRE 804(b)(3); *People v Poole*, 444 Mich 151, 159; 506 NW2d 505 (1993). The trial court found that defendant's statements to Beasley were against his penal interest and were therefore admissible. We disagree. However, a trial court's misidentification of the ground for the admission of evidence does not necessarily mandate reversal. *People v Vandelinder*, 192 Mich App 447, 454; 481 NW2d 787 (1992). Statements of a party opponent are admissions, not hearsay, and are admissible. MRE 801(d)(2); *People v Harajli*, 170 Mich App 794, 797; 428 NW2d 781 (1988). Here, the statements at issue were made by defendant

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

and may therefore have been admitted into evidence as admissions of a party-opponent pursuant to MRE 801(d)(2).

Conjunctively, defendant argues that the probative value of these statements was outweighed by their prejudicial effect. We disagree. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403; *People v Mills*, 450 Mich 61, 74-75; 537 NW2d 909 (1995). Unfair prejudice refers to the tendency of the evidence to adversely affect the objecting party by bringing extraneous considerations before the trier of fact. *People v Goree*, 132 Mich App 693, 702; 349 NW2d 220 (1984). Here, because defendant's statements directly reflect upon his actions with reference to the victim's death, they are not extraneous to the prosecution and are therefore not unfairly prejudicial.

Defendant next argues that insufficient evidence was presented at trial to sustain a conviction for the crime of voluntary manslaughter. We disagree. In determining whether evidence presented at trial was sufficient to sustain a conviction we must, viewing the evidence presented in a light most favorable to the prosecution, determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Catanzarite*, 211 Mich App 573, 577; 563 NW2d 570 (1995). The elements of the crime of voluntary manslaughter are: (1) defendant killed in the heat of passion, (2) that passion was caused by an adequate provocation, and (3) enough time had not elapsed between the provocation and the killing to permit a reasonable person to control his passions. *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). Circumstantial evidence and reasonable inferences drawn therefrom may constitute satisfactory proof of the elements of the crime. *People v Reddick*, 187 Mich App 547, 551; 488 NW2d 278 (1991). Intent may be inferred from the attendant facts and circumstances. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987).

Viewing the evidence presented at trial in a light most favorable to the prosecution, there was sufficient evidence to sustain defendant's conviction. First, the victim died of a gunshot wound to the head. Just prior to the infliction of that wound, defendant and the victim were engaged in an argument. A revolver was produced and a struggle ensued. Drawing reasonable inferences from these facts, a rational trier of fact could find that defendant killed the victim in the heat of passion, and that the passion was caused by adequate provocation. The question of whether provocation is adequate to support a conviction of voluntary manslaughter is a question of fact for the trier of fact. *Pouncey, supra* at 390. Furthermore, no evidence was presented at trial which indicated that a sufficient time period had elapsed to allow defendant an opportunity to control his passion. The evidence was sufficient to support defendant's conviction.

Affirmed.

/s/ David H. Sawyer  
/s/ Marilyn Kelly  
/s/ Daniel A. Burress