

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDRICK DEON McKNIGHT,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 179770

Saginaw County

LC No. 94-009039-FC

Before: McDonald, P.J., and Murphy and J. D. Payant*, JJ.

PER CURIAM.

Defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and first-degree child abuse, MCL 750.136b(2); MSA 28.331(2)(2). He was sentenced to twenty-five to fifty years for the murder conviction and to five to fifteen years for the child abuse conviction. Defendant appeals as of right. We affirm.

The first issue to be decided is whether the trial court violated defendant's due process right to present a defense by refusing to give a requested instruction on involuntary manslaughter, a cognate lesser included offense of murder. *People v Heflin*, 434 Mich 482; 456 NW2d 10 (1990). Defendant was not entitled to the cognate lesser included offense instruction on involuntary manslaughter because, as a matter of law, the child abuse defendant committed was an intentional unlawful act amounting to a felony, thereby making the instruction inapplicable. *People v Datema*, 448 Mich 585; 533 NW2d 272 (1995). Moreover, it cannot be said that defendant's assault on the decedent, i.e., striking with great force a two-year-old child three times in the stomach, would not have tended to cause death or great bodily harm. An involuntary manslaughter instruction would have been inapplicable on this basis as well. Thus, this Court finds that the trial court did not err.

The second issue is whether the prosecution violated defendant's due process rights in its closing argument by asking the jury for justice for the decedent and the decedent's mother. The majority of the alleged improper remarks were not objected to by defendant at trial, and therefore not

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

preserved. This Court will not reverse unless an instruction could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994). While the prosecutor's appeals for justice for the decedent may indeed have been improper civic duty arguments, the evidence of defendant's guilt was so strong that this Court cannot find manifest injustice in affirming defendant's convictions. *People v Crawford*, 187 Mich App 344; 467 NW2d 818 (1991).

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ John D. Payant