

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEM GRANT DOLBY,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

No. 194203

Mecosta Circuit Court

LC No. 95-003626-FC

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted as charged of first-degree murder and possession of a firearm during the commission of a felony. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in refusing his request to instruct the jury on the cognate lesser offense of voluntary manslaughter. The record, however, is devoid of evidence of adequate provocation which would cause a reasonable person to kill in the heat of passion. To the contrary, the victim had successfully avoided all contact with defendant for nearly two months, and defendant was subject to a restraining order which precluded him from having any contact with the victim. Defendant nonetheless tracked his victim down and assassinated her with a bullet fired from long range. The trial court did not err in rejecting defendant's requested instruction. *People v Pouncey*, 437 Mich 382, 388-389; 471 NW2d 346 (1991). Furthermore, even if there were enough evidence to warrant such an instruction, inasmuch as the jury rejected the opportunity to find defendant guilty of second-degree murder, any error was harmless beyond a reasonable doubt. *People v Beach*, 429 Mich 450; 418 NW2d 861 (1988).

Affirmed.

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

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Edward A. Quinnell