

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD WATTS,

Defendant-Appellant.

UNPUBLISHED

November 25, 1997

No. 191850

Recorder's Court

LC No. 95-001806 FH

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of involuntary manslaughter, MCL 750.321; MSA 28.553 and felony firearm, MCL 750.2276; MSA 28.424(2). That verdict must be understood in the context of an original charge of premeditated murder, MCL 750.316; MSA 28.548, as to which a directed verdict was granted at the close of the prosecution's proofs, and concomitant acquittal of second degree murder, MCL 750.317; MSA 28.549, at the conclusion of trial.

Defendant first contends that the prosecution's principal witness, Veronica Henderson, committed perjury when she testified that she first met her boyfriend, Kevin Levenson, in 1987; it was through Levenson that Henderson claimed to have made defendant's acquaintance, and thus to have been in defendant's company when, according to Henderson, defendant perpetrated the homicide at issue. On appeal, for the first time, defendant asserts that Kevin Levenson, Michigan Department of Corrections prisoner number 164606, was incarcerated from July 11, 1982 to March 7, 1990. Henderson was not asked either to spell the last name of the "Kevin Levenson" referenced in the trial transcript, nor to reveal where her first meeting with him, or any subsequent meetings, occurred. The transcript otherwise reflects that Henderson was a poor chronologist, so even if "Kevin Levenson" is the same person as "Kevin Levenson", Henderson might simply have been mistaken as to the time frame, or confused. The information concerning Kevin Levenson's incarceration was not presented to the trial court as trier of fact at any time during the trial, or subsequently, and thus the effect of such information on Henderson's credibility was never evaluated by the trier of fact. The information regarding Levenson was elicited by defense counsel on cross-examination, and there is no basis in the record for concluding that the prosecution knew such testimony was false and thus had a duty to correct

it. *People v Wiese*, 425 Mich 448, 455-456; 389 NW2d 866 (1986). Nor does the record unmistakably establish that in this respect Henderson committed perjury. See *People v Bright*, 50 Mich App 401, 407; 213 NW2d 279 (1973). Appellate relief on this issue is therefore unwarranted on this record. This determination, however, is without prejudice to defendant's opportunity to file a motion for new trial on this basis, allowing the trial judge the opportunity to determine whether "Leverson" and "Leaverson" are one and the same person, whether Henderson committed perjury or was merely confused or inaccurate, and whether grounds for a new trial have been thereby established.

Defendant's remaining contention is that the evidence was insufficient to justify a verdict of guilty of involuntary manslaughter. Given the stipulated testimony of the medical examiner, the crime would seem to be at least murder of the second degree, the principal issue at trial being whether defendant was the perpetrator. However, any error in construing this evidence as establishing the negligence or recklessness prerequisite to involuntary manslaughter was one benefiting the defendant and not appealable by the prosecutor, and thus provides no basis for appellate relief. *People v Wofford*, 196 Mich App 275, 280; 492 NW2d 747 (1992).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.