

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE COX,

Defendant-Appellant.

UNPUBLISHED

November 25, 1997

No. 191866

Recorder's Court

LC No. 95-005391 FH

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

MEMORANDUM.

In a bench trial in the Recorder's Court for the City of Detroit, defendant was convicted of involuntary manslaughter, MCL 750.321; MSA 28.553. The charges arose from the death of defendant's neonatal daughter, who, according to the medical examiner's report, died of cerebral edema produced by a subarachnoid hemorrhage engendered by violent shaking of the infant without the infant's head being supported. Relying on defendant's own testimony during trial, the trial judge, as trier of fact, concluded that defendant was the agency of the child's death and that his actions were at least grossly negligent, defendant having testified that, while burping the child after feeding her, he had shaken her up and down for about 15 minutes while holding her in such fashion that her head was unsupported.

During cross-examination of defendant, the prosecutor impeached defendant with several prior convictions, without objection. Defendant, however, now contends that such prior convictions were not admissible for impeachment purposes under MRE 609, and that his trial counsel was ineffective in failing to timely object to such improper impeachment. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A review of the trial court's findings of fact at the conclusion of trial reflect that it did not in any way refer to defendant's prior convictions in making those findings. To the contrary, it favorably commented on defendant's credibility and relied on his own testimony in adjudicating him guilty of the charged offense. Hence, any error in the admission of such evidence was harmless beyond a reasonable doubt in the context of a bench trial. *People v Jones*, 134 Mich App 371, 373; 350 NW2d 885 (1984). Furthermore, defendant not having been prejudiced in any cognizable way by

admission of such evidence, the prerequisites for appellate relief on a claim of

ineffective assistance of counsel are entirely lacking. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). The same result would obtain if this case were analyzed on the basis of unpreserved, nonconstitutional error. *People v Lane*, 453 Mich 132, 141; 551 NW2d 382 (1996).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.