

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG JOSEPH CYMES,

Defendant-Appellant.

UNPUBLISHED

April 24, 2007

No. 267146

Oakland Circuit Court

LC No. 2005-202735-FC

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder based upon the alternate theories of premeditated murder, MCL 750.316(a), and felony murder, MCL 750.316(b). The predicate offense underlying the felony murder theory was arson, MCL 750.72. He was sentenced to a mandatory life sentence on the murder conviction and 10 to 20 years' imprisonment on the arson conviction. We affirm.

Defendant admitted setting a fire that burned the home he shared with his disabled parents; both parents were killed. Defendant was his parents' primary caretaker.

Defendant argues that the trial court committed error requiring reversal when it refused to give a requested manslaughter instruction. We review claims of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002). Where a defendant is charged with murder, instructions on manslaughter must be given if supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). To establish voluntary manslaughter, a rational view of the evidence must show that the defendant killed in the heat of passion, that the passion was caused by adequate provocation, and that there was no lapse of time during which a reasonable person could have controlled his passions. *Id.* at 535. The provocation necessary to mitigate murder to manslaughter is that which would cause a defendant to act out of passion rather than reason and was such that would cause a reasonable person to lose control. *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998).

The trial court correctly determined that the evidence adduced at trial did not support the giving of the requested voluntary manslaughter instructions. The stress associated with caring for his disabled parents when combined with the purported brief hysteria defendant's mother experienced when she thought that defendant's father had died, was not provocation of sufficient magnitude such that a rational person would lose control and act out of passion. Moreover, even

had the trial court erred when it refused to give the requested manslaughter instruction, the error was harmless. Here, the jury was instructed on both first- and second-degree murder, but it convicted defendant of the greater offense. Where a defendant is convicted of first-degree murder although also instructed on lesser included offenses, the trial court's failing to instruct the jury on voluntary manslaughter is harmless. *Id.* at 120.

Defendant next argues that the prosecution failed to present sufficient evidence of premeditation to support his conviction. This contention requires our de novo review of the record. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *Id.* Circumstantial evidence and reasonable inferences therefrom may constitute sufficient evidence to find all the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The standard for reviewing a claim of insufficient evidence is deferential, and this Court must make all reasonable inferences and resolve credibility conflicts in favor of the jury verdict. *Id.*; *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997).

Defendant's sufficiency challenge is without merit. Viewing the evidence in the light most favorable to the prosecution, we conclude there was sufficient evidence of premeditation presented. In instant messages defendant exchanged with his son on the night of the fire, he referred to blowing up the house, searching for bullets, being made a slave or having his life taken from him, and getting payback. Further, immediately after the fire and during later questioning, defendant lied about setting the fire. Moreover, the prosecutor presented evidence that gasoline was poured directly underneath the couch and the bed where each of his parents slept. The prosecutor also presented evidence that defendant had to walk eight to ten feet across the family room to get the container of gasoline from the garage, had to pour the gasoline on the family room floor, and had to bend down to ignite the fire. Finally, there was sufficient time between defendant's pouring the gasoline and igniting it for his mother to tell him to clean it up. Under these circumstances, a reasonable jury could conclude beyond a reasonable doubt that defendant acted with premeditation.

We affirm.

/s/ Pat M. Donofrio
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey