

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE DUANE BROWN,

Defendant-Appellant.

UNPUBLISHED

March 8, 2005

No. 250916

Clinton Circuit Court

LC No. 03-007310-FC

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to life imprisonment without parole for the first-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in refusing to instruct the jury on voluntary manslaughter. We disagree. We review claims of instructional error de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). Because voluntary manslaughter is a necessarily included lesser offense of murder, “when a defendant is charged with murder, an instruction for voluntary . . . manslaughter must be given if supported by a rational view of the evidence.” *People v Mendoza*, 468 Mich 527, 542; 664 NW2d 685 (2003). “[T]o show voluntary manslaughter, one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions.” *Id.* at 535-536. Here, defendant never claimed that the victim died during an argument or that he was provoked into killing the victim. Indeed, defendant denied killing the victim. Further, the evidence established that the only words that passed between the victim and an unidentified woman that could possibly be considered provocative were insufficient to establish adequate provocation. See *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). (“Not every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter.”) Therefore, the trial court properly concluded that a voluntary manslaughter instruction was not supported by a rational view of the evidence.

Defendant next argues that the trial court abused its discretion by ruling that defendant's prior conviction of unlawfully driving away an automobile (UDAA), MCL 750.413, was admissible for impeachment purposes under MRE 609. Defendant's challenge to the ruling is that the evidence was more prejudicial than probative.

The trial court carefully analyzed the prosecutor's request to allow impeachment under MRE 609(a) and (b) which provide:

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

(1) the crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

(b) Determining Probative Value and Prejudicial Effect. For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

In this case, the conviction was seven-years-old and involved a theft offense. UDAA is not at all similar to murder, the charged offense. As pointed out in the ruling of the trial judge, "The importance of using the UDAA to impeach is to prove he [the defendant] is a liar, not that he is a murderer, and the fact that he committed the UDAA tends more to prove the former than the latter.

The decision to allow impeachment by evidence of a prior conviction is reviewed for an abuse of discretion. *People v Bartlett*, 197 Mich App 15, 19; 494 NW2d 776 (1992). A theft crime, such as UDAA, is minimally probative and is admissible only if the probative value

outweighs the prejudicial effect. *Id.* We agree with the trial court in concluding that the probative value of defendant's earlier conviction outweighed any prejudicial effect it might have had and hold that there was no abuse of discretion. In any event, any error in admitting the evidence would be harmless because the evidence of guilt was overwhelming. *Id.*

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Bill Schuette