

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEWART CHRIS GINNETTI,

Defendant-Appellant.

---

UNPUBLISHED

September 18, 2007

No. 268182

St. Clair Circuit Court

LC No. 05-001868-FC

Before: O’Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, MCL 750.316(1), kidnapping, MCL 750.349, and conspiracy to commit murder/kidnapping, MCL 750.157a, in connection with the death of 20-year-old Ryan Rich. Defendant was sentenced as a second habitual offender, MCL 769.10, to mandatory life in prison for first-degree murder and to concurrent terms of 29 years, 8 months to 50 years in prison for kidnapping and conspiracy. We affirm.

First, defendant argues that the trial court erred in denying his request for jury instructions on involuntary manslaughter.<sup>1</sup> We disagree.

We review de novo questions of law related to jury instructions, but review a trial court’s determination of whether an instruction was applicable to the facts of the case for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Because manslaughter, voluntary or involuntary, is a necessarily included lesser offense of murder, when a defendant is charged with murder, an instruction for manslaughter must be given if it is supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). Malice is the sole element distinguishing manslaughter from murder, and involuntary manslaughter is a catch-all concept encompassing all manslaughter not

---

<sup>1</sup> Although defendant requested instructions on both voluntary and involuntary manslaughter at trial, he only challenges the refusal to instruct on involuntary manslaughter on appeal, conceding “that there was no evidence of provocation or heat of passion killing to support a traditional voluntary manslaughter theory.”

characterized as voluntary. *Gillis, supra* at 138. An unintentional killing is involuntary manslaughter if it is neither murder nor voluntary manslaughter nor within the scope of a recognized justification or excuse. *Id.* When a homicide is “committed with a lesser mens rea of gross negligence or an intent to injure, and not malice, it is not murder, but only involuntary manslaughter.” *Id.* (citation omitted).

“Malice” is defined as an act done with either an intent to kill, an intent to commit great bodily harm, or an intent to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result. *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999). Generally, “[t]he facts and circumstances of the killing may give rise to an inference of malice,” and malice may be inferred “from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.” *Id.* at 759.

In this case, a rational view of the evidence does not support an instruction on involuntary manslaughter. In his videotaped interview with law enforcement, which was introduced into evidence at trial, defendant admitted that he lured Rich to a detached garage owned by two co-defendants, the Hills brothers, tackled him, bound him with tape and electrical cord, and turned him over to co-defendant Bowman for—at the very least—a beating. The evidence reflected that Rich became a target after defendant and the co-defendants learned that Rich was supposedly assisting law enforcement relative to drug activities. After Rich was subdued in the garage, defendant called Bowman, a drug boss, who had been waiting at a local bar, and Bowman subsequently proceeded to the crime scene. Defendant and Bowman had been in contact by phone and in person at the bar earlier in the evening. Bowman was overheard at the bar remarking that “I am going to kill that m\*\*\*\*\* f\*\*\*\*\*.” There was evidence that, although defendant was not in the garage during much of the assault and the eventual killing, he did step in at times at Bowman’s demand to “finish” Rich. Defendant told police that he observed Bowman trying to hang Rich using an electrical cord, but it snapped and Rich fell to the floor. Defendant admitted to kicking Rich in the ribs before leaving the garage. Defendant later proceeded to assist in disposing of the body. Accordingly, despite defendant’s protestation that he believed they were only going to scare Rich, with no intent to kill, the evidence suggests the contrary. There can be no dispute that defendant provided aid and assistance relative to the entire scheme. And defendant specifically provided aid and assistance by kicking Rich in the ribs after a point in time that defendant was told to “finish” Rich and was aware that Bowman had attempted to hang Rich.

The only rational view of the evidence is that this homicide was committed with malice, not a lack thereof; therefore, an instruction on involuntary manslaughter would not have been proper. Defendant was prosecuted primarily under an aiding and abetting theory. The elements necessary for a conviction under an aiding and abetting theory are as follows:

“(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time . . . [the defendant] gave aid and encouragement.” [*Carines, supra* at 768 (citation omitted).]

Clearly, defendant himself had, at a minimum, an intent to commit great bodily harm, and, regardless, when defendant was giving aid and assistance he had knowledge that Bowman intended to kill, intended to commit great bodily harm, or intended to create a very high risk of death or great bodily harm, and not an intent to merely injure Rich to a less significant degree. There was no error in failing to instruct the jury on involuntary manslaughter.

Next, defendant argues that there was insufficient evidence adduced at trial that he intended to kill Rich as required to support a conviction of first-degree murder.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *Carines, supra* at 757. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Intent to kill can be proved by inferences that arise from any facts in evidence, and because of the difficulty in proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Defendant's argument only focuses on the alleged lack of an intent to kill. In order to convict a defendant of first-degree premeditated murder, "the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). First-degree felony murder requires the killing of a human being with an intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, while committing or attempting to commit any of the enumerated felonies found in MCL 750.316(1)(b). *Carines, supra* at 759. Thus, for purposes of aiding and abetting and first-degree premeditated murder, defendant must have intended the commission of a killing or had knowledge that Bowman intended the commission of a killing at the time aid and encouragement were given. *Id.* at 768. We also note our Supreme Court's ruling in *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006), in which the Court stated that "a defendant is liable for the crime the defendant intends to aid and abet as well as the natural and probable consequences of that crime."

On the basis of the facts and reasons recited above in regard to the first issue, there was sufficient evidence, when viewing it in a light most favorable to the prosecution, showing that defendant knew that Bowman had intent to kill when defendant provided aid and assistance. Bowman's demand that defendant "finish" Rich and Bowman's attempt to hang Rich, which according to defendant left Rich gasping and wheezing, clearly communicated that Rich was going to be killed, and defendant assisted thereafter and prior to the death by kicking Rich in the ribs. Further, given that minimal circumstantial evidence is necessary to prove intent and considering the reasonable inferences arising from the evidence described above, there was sufficient evidence indicating that defendant himself had an intent to kill. The evidence was

likewise sufficient for purposes of first-degree felony murder under an aiding and abetting theory. Moreover, the evidence would support a rational juror in finding that defendant himself intended to inflict great bodily harm on Rich or intended to create a very high risk of death or great bodily harm. Indeed, defendant makes no appellate argument that the evidence was insufficient with respect to these two forms of intent. Additionally, under the evidence and circumstances presented at trial, the natural and probable consequence of the crime that defendant was intending to aid and abet was Rich's death. Reversal is unwarranted.

Next, defendant argues that the trial court erred in failing to instruct the jury that it was required to render a unanimous verdict as to each theory supporting the first-degree murder charge (premeditated killing and killing during the commission of a felony) and the conspiracy charge (murder and kidnapping). We disagree.

The trial court gave a general unanimity instruction, without delineating between the various underlying theories. "In order to protect a defendant's right to a unanimous verdict, it is the duty of the trial court to properly instruct the jury regarding the unanimity requirement." *People v Cooks*, 446 Mich 503, 511; 521 NW2d 275 (1994). With respect to defendant's particular argument concerning first-degree murder, the United States Supreme Court in *Schad v Arizona*, 501 US 624; 111 S Ct 2491; 115 L Ed 2d 555 (1991), upheld a first-degree murder conviction without requiring jury unanimity on whether the verdict was based on the theory of premeditation and deliberation or based on a felony-murder theory. In regard to Michigan constitutional law, this Court in *People v Smielewski*, 235 Mich App 196, 205-206; 596 NW2d 636 (1999), interpreted *People v Olsson*, 56 Mich App 500; 224 NW2d 691 (1974), a case involving a comparable question to that posed to us today, and in which the Court reversed the murder conviction. The *Smielewski* panel ruled:

A careful review of the panel's decision in *Olsson*, however, reveals that the determinative factor for the *Olsson* majority was the insufficiency of evidence that the defendant committed the underlying felony of robbery, and therefore, the instruction regarding the theory of felony murder should not have been submitted to the jury in the first place. . . . Accordingly, we are not convinced that *Olsson* supports the general proposition that reversal is required when a jury is instructed with regard to two theories of guilt, but charged that it need not unanimously agree on a single theory in order to convict, unless, like in *Olsson*, the evidence was also insufficient to justify the submission of one of the two theories to the jury. [*Smielewski, supra* at 205-206.]

Here, as ruled earlier in this opinion, there was sufficient evidence to support a conviction of first-degree murder under both the theory of premeditation and deliberation and the theory of felony murder. Accordingly, reversal is unwarranted. We would also note that, because the jury unanimously found that defendant committed the crimes of felony kidnapping and first-degree murder, the jury necessarily unanimously found that, at a minimum, felony murder had been proven beyond a reasonable doubt, given that any finding that first-degree premeditated murder occurred would fulfill the requisite malice element of felony murder.

With respect to the underlying theories of conspiracy, i.e., murder and kidnapping, MCL 750.157a provides for criminal punishment when "[a]ny person . . . conspires together with 1 or more persons to commit an offense prohibited by law[.]" In *People v Gadowski*, 232 Mich App

24, 31-32; 592 NW2d 75 (1998), this Court, addressing a unanimity argument relative to criminal sexual conduct, stated that the “defendant would have been properly convicted of CSC I even if some of the jurors believed that he committed the offense solely on the basis of one aggravating circumstance, while the rest of the jurors believed that he committed the offense solely on the basis of another one of the aggravating circumstances.” Applying the rationale from *Gadomski* to the facts here by analogy, we conclude that there was no error in failing to instruct the jury relative to unanimity on two conspiracy theories. Further, there was sufficient evidence to support both theories.

Defendant’s final argument on appeal is that the trial court erred in admitting into evidence at trial the statements of defendant’s co-defendants made to a detective and the statement of Robert Hills to his sister. Although defense counsel objected on *Miranda*<sup>2</sup> grounds to the statements made by defendant during the videotaped interview with law enforcement, no objection was made to the statements purportedly made by defendant’s co-defendants as relayed by the detective. Therefore, a challenge to these statements is unpreserved for our review, and we thus review for plain error affecting defendant’s substantial rights. *Carines, supra* at 763-764. A challenge to the statement made by Hills to his sister was preserved; therefore, we review the trial court’s decision to admit the evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Preliminary legal issues underlying the decision to admit the evidence, however, are reviewed de novo. *Id.*

Assuming that the statements of defendant’s co-defendants offended the Confrontation Clause, US Const, Am VI, and *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), reversal is not warranted under the plain-error test. In *Carines, supra* at 763-764, this Court stated:

To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. “It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.” Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “‘seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.” [Citations omitted.]

Given the brief and vague references by the detective in the videotape to the statements claiming defendant’s active involvement, which came across as more of a tool used to further the police interrogation, and the strong evidence of defendant’s guilt, including his acknowledgment that he kicked Rich after being instructed to “finish” Rich, we cannot conclude that defendant

---

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

has met his burden of persuasion to show prejudice. Moreover, we cannot conclude, on the basis of the record, that defendant was actually innocent or that the integrity of the judicial proceedings was seriously affected. Accordingly, reversal is unwarranted.

With respect to the statement made by Hills to his sister, it was non-testimonial; therefore, there was no Confrontation Clause violation if the prosecution established that the witness was unavailable, which was met, and the statement bore an adequate indicia of reliability, or fell within a firmly rooted hearsay exception. *People v Shepherd*, 263 Mich App 665, 676; 689 NW2d 721 (2004), rev'd on other grounds 472 Mich 343 (2005). We find that the statement, which reflected Hills' then existing state of mind as to intent, bore an adequate indicia of reliability and fell within a firmly rooted hearsay exception, MRE 803(3). Reversal is unwarranted.

Affirmed.

/s/ Peter D. O'Connell  
/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald