

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL DEAN YOUNG,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 212679
Ottawa Circuit Court
LC No. 97-021341 MY

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of negligent homicide, MCL 750.324; MSA 28.556, for which he was sentenced to eighteen months' probation. We affirm.

This case arises out of an automobile accident. On July 11, 1997, defendant was driving eastbound on I-196 in Ottawa County. About one mile before the accident site, two large orange signs had been posted warning of potential slowed or stopped traffic ahead due to road construction. After seeing the signs, defendant turned to look at a group of four people in the grassy median near the other side of the freeway who were attempting to replace a canoe that had fallen off the top of their vehicle. When he turned his attention back to his lane of traffic, the cars in front of him had come to a complete stop. Defendant was unable to brake and hit the car in front of him, killing its driver. At the time of the accident, defendant's cruise control was engaged and set at approximately seventy miles per hour.

Defendant first argues that there was insufficient evidence presented at trial to support his conviction. Specifically, defendant argues that his actions were reasonable and prudent under the circumstances. In support of this position, he asserts that the evidence adduced at trial established that he was driving the same speed as others around him and that other drivers were also distracted by the incident in the median. After reviewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find beyond a reasonable doubt that defendant was criminally negligent. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985). Even though the warning signs indicated that traffic could be stopped on the road, there is no evidence that defendant took any actions to prepare for a such a potentiality. Defendant did not reduce his speed or disengage his cruise control. As for the incident involving the canoe, the evidence establishes that it did not present any

danger to defendant. While such a site may be distracting, we believe it is reasonable to conclude that a prudent person traveling on a highway at a high rate of speed, who had been warned of a possible sudden stoppage of traffic, would choose not to divert his attention from the road ahead by such a distraction.¹

Defendant also argues that the failure of the prosecutor to include in the felony information the prosecution's theory that defendant was negligent in driving with faulty brakes prejudiced his defense at trial. Again, we disagree. The record shows that defendant was made aware through the preliminary examination that the brakes would be an issue. Indeed, defendant was sufficiently prepared both at the preliminary examination and at trial to elicit information on cross-examination regarding the condition of the brakes. We see no error requiring reversal. See *People v Traughber*, 432 Mich 208, 216-217; 439 NW2d 231 (1989).

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

¹ Because we find sufficient evidence to support defendant's conviction on this theory of the case, we need not address the prosecution's alternate theory regarding the condition of the brakes in defendant's vehicle. See *People v Konrad*, 449 Mich 263, 277; 536 NW2d 517 (1995).