

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL B. COLEMAN,

Defendant-Appellant.

UNPUBLISHED
February 11, 2000

No. 212135
Wayne Circuit Court
Criminal Division
LC No. 97-502868

Before: Jansen, P.J., and Collins and J. B. Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of involuntary manslaughter with a motor vehicle, MCL 750.321; MSA 28.553, and felonious driving, MCL 752.191; MSA 28.661. He was sentenced to concurrent prison terms of six to fifteen years for each of the involuntary manslaughter convictions, and one to two years for the felonious driving conviction. Defendant appeals as of right and we affirm.

Defendant argues that the trial court erred in denying his motion for a directed verdict because his actions amounted, at most, to only ordinary negligence, not gross negligence. See *People v Olson*, 181 Mich App 348, 350; 448 NW2d 845 (1989).

In reviewing a trial court's decision on a motion for directed verdict, we review the record de novo and consider the evidence presented by the prosecutor up until the time the motion was made in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the elements of the offense were proved beyond a reasonable doubt. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn from that evidence are sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997).

To establish that defendant was guilty of involuntary manslaughter with a motor vehicle, the prosecutor was required to prove that defendant committed an unlawful act in a grossly negligent, wanton, or reckless manner, causing the death of another. *People v Datema*, 448 Mich 585, 606; 533 NW2d 272 (1995); *People v Rettelle*, 173 Mich App 196, 199; 433 NW2d 401

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

(1988). As with involuntary manslaughter, a conviction of felonious driving requires proof of gross negligence. *People v McCoy*, 223 Mich App 500, 502; 566 NW2d 667 (1997). To establish that defendant was guilty of felonious driving, the prosecutor was required to prove that defendant drove his vehicle on a street or highway, in a grossly negligent manner, that defendant's gross negligence was a substantial cause of an accident that injured the complainant, and that the injury was crippling. CJI2d 15.10.

To establish gross negligence, the following elements must be proven:

(1) Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.

(2) Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

(3) The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. [*McCoy, supra* at 503 (citations omitted).]

In *Datema, supra* at 604, the Supreme Court explained:

[C]riminal intention anchors one end of the spectrum and negligence anchors the other. Intention . . . “emphasiz[es] that the actor seeks the proscribed harm not in the sense that he desires it, but in the sense that he has chosen it, he has decided to bring it into being.” Negligence, lying at the opposite end of the spectrum, “*implies inadvertence, i.e., that the defendant was completely unaware of the dangerousness of this behavior although actually it was unreasonably increasing the risk of occurrence of an injury.*”

Criminal negligence, also referred to as gross negligence, lies within the extremes of intention and negligence. As with intention, *the actor realizes the risk of his behavior and consciously decides to create that risk.* As with negligence, however, the actor does not seek to cause harm, but is simply “recklessly or wantonly indifferent to the results.” [Citations omitted; emphasis added.]

In this case, a trier of fact could properly infer that defendant knew that the act of driving requires ordinary care and diligence to avert injury to others. Similarly, there is no question that a trier of fact could properly infer, under these facts, that defendant had the ability to avoid the harm that occurred by exercising ordinary care and diligence, but failed to do so. In other words, defendant could have chosen not to enter the intersection after the light turned red in order to avoid injury to the victims. Two eyewitnesses, who were traveling immediately behind defendant, testified that defendant had ample time to stop after the traffic light turned yellow. The traffic engineer also testified that defendant had ample time to stop if he was traveling at the speed limit of 45 miles per hour. The two eyewitnesses testified that the traffic light was clearly red before defendant entered the intersection, and that defendant made no effort to slow down. In fact, one witness testified that defendant actually accelerated to enter the intersection, while the other witness testified that it seemed as if defendant sped up and that he was passing vehicles using the shoulder of the road before he entered the intersection. A rational trier of fact could properly find that defendant's act of proceeding into the intersection after the light turned red was likely to prove disastrous to another. Having viewed the evidence in a light most favorable to the prosecutor, we conclude that a rational trier of fact could find that defendant's conduct amounted to gross negligence, which caused the death of two individuals and seriously injured a third person. Therefore, the trial court properly denied defendant's motion for a directed verdict.

To the extent that defendant argues that he is entitled to a new trial because the verdict is against the great weight of the evidence, we note that defendant did not move for a new trial in the lower court on this basis. In any event, a new trial is not warranted on this basis because the evidence does not preponderate heavily against the

verdict, nor would a serious miscarriage of justice otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). The trial court's verdict is entirely supportable by a rational view of the evidence.

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Joseph B. Sullivan