STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 7, 2000
v	No. 211355 Recorder's Court
DAVID F. EASTERLY, Defendant-Appellant.	LC No. 97-008165

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and leaving the scene of a personal injury accident, MCL 257.617; MSA 9.2317. Defendant was sentenced to ten to thirty years in prison for the murder conviction and to time served for his conviction of leaving the scene of a personal injury accident. Defendant appeals as of right and we affirm.

Defendant raises two issues on appeal, contending that there was insufficient evidence presented to sustain his conviction for second-degree murder, and that his minimum sentence of ten years is disproportionately severe. We disagree with both arguments and affirm.

Defendant first contends that there was insufficient evidence to support his conviction for second-degree murder. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Specifically, defendant argues that the prosecutor presented insufficient evidence of malice to support his conviction, claiming that his actions were merely grossly negligent. For second-degree murder, malice is defined as the intent to kill, or the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Goeke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Here, the trial court found that defendant intended to do an act in wanton and wilful disregard of the

likelihood that the natural tendency of the behavior was to cause death or great bodily harm. Defendant, however, relies on *People v Vasquez*, 129 Mich App 691; 341 NW2d 873 (1983), to contrast his own actions with that amounting to malice. In *Vasquez, id.* at 694, this Court found that sufficient evidence had been presented to sustain a finding of malice where the defendant caused an accident after driving at a "grossly excessive speed, in summary disregard of traffic signals, after nightfall, on a main traffic artery of general access." The prosecutor argues that defendant's actions were so similar to those in *Vasquez* as to justify defendant's conviction.

Taken in a light most favorable to the prosecution, there was sufficient evidence to sustain the trial court's finding of malice. The evidence showed that the incident occurred on September 18, 1997, at approximately 7:00 p.m. in the city of Highland Park. Police officers Theodore Cadwell and Jeffrey Czarnicki noticed a black truck without a license plate that fit the description of a truck that had been reported as stolen. The police officers followed the truck and activated the emergency lights on their vehicle to effect a stop. However, the truck increased its speed and turned onto another street. The truck drove through a flashing red light at an intersection and hit a news van. The truck turned onto another street, and increased its speed to between sixty and sixty-five miles an hour. The truck drove through two more stop signs before it hit another vehicle. Additionally, while attempting to elude the police, the truck drove on a sidewalk and the wrong way down a one-way street. The truck proceeded onto Woodward Avenue, and witnesses testified that the truck was traveling at a speed of between seventy and eighty miles an hour on Woodward. The truck drove through another red light and hit a vehicle at the intersection of Woodward and Calvert. The driver of that vehicle ultimately died as a result of the injuries she sustained when she was hit by the truck driven by defendant.

After colliding with two other vehicles, running numerous traffic signals, driving on the sidewalk and the wrong way on a one-way street, hitting two vehicles before the fatal crash, and driving at an excessive rate of speed while being pursued by a police vehicle, the trial court properly found that defendant acted with the intent necessary to find him guilty of second-degree murder. Here, the trial court properly inferred that defendant acted in wanton and wilful disregard of the likelihood that the natural tendency of his behavior would cause death or great bodily harm.

Defendant also argues that the police officers' conduct in this case was unreasonable and should mitigate his actions.[1] This argument is meritless. There is sufficient evidence in the record that defendant's actions alone were the proximate cause of decedent's death. Most of the testimony placed the police vehicle between one and five blocks behind the truck. Also, before driving onto Woodward, the police officers stopped to check on the driver of the second vehicle that defendant hit while defendant continued driving. Finally, at the time of the impact, the police car was stopped at red light and was two or more blocks away from the collision. The evidence was sufficient to sustain the trial court's finding of malice necessary for a conviction of second-degree murder. *Goeke, supra* at 466-467.

Next, defendant argues that his sentence was disproportionately severe. The trial court sentenced defendant to a minimum ten-year term, which was at the low end of the guidelines range of ten to thirty years. Thus, defendant's sentence is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-55; 408 NW2d 789 (1987). Although a sentence within the guidelines range may

violate the principle of proportionality, *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990), to overcome the presumption of proportionality, the defendant must articulate unusual circumstances to show that the sentence is disproportionate. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Such unusual circumstances are not present in this case.

Contrary to defendant's contention that the ten-year minimum sentence is not proportionate to the offense because the collision and resulting death were the result of a "tragic accident" and that he did not intend to cause the death, the prosecutor presented sufficient evidence of malice in this case and defendant was properly convicted of second-degree murder. Further, defendant's youth and family support are not mitigating factors so as to overcome his presumptively proportionate sentence in this case. Finally, defendant's argument that the sentencing court should have considered his personal history when imposing the sentence is not supported by the record as the record indicates that the court specifically addressed defendant's past conduct, including his efforts in school, and his previous police contacts.

Accordingly, defendant has failed to overcome the presumption of proportionality and the record indicates that the trial court in no way abused its discretion in sentencing defendant as it carefully articulated its reasons for imposing the sentence of ten to thirty years. The sentence is proportionate to the offense and the offender.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kathleen Jansen

[1] Defendant's reliance on *Rogers v Detroit*, 457 Mich 125; 579 NW2d 840 (1998), is misplaced inasmuch as that case addresses potential civil liability for injuries sustained by a person struck by a vehicle involved in a police pursuit. *Rogers* does not apply to a criminal matter.