

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE J. HAMILTON,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 217121

Wayne Circuit Court

Criminal Division

LC No. 98-000843

Before: Bandstra, C.J., and Fitzgerald and D.B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions of second-degree murder, MCL 750.317; MSA 28.549, and felonious driving, MCL 752.191; MSA 28.661, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in connection with a motor vehicle accident that killed one person and injured a second person. The testimony at trial showed that a police chase ensued after defendant ran a red light. Two officers testified that during their pursuit of defendant's vehicle, defendant ran another red light, drove at a high rate of speed, and drove over the center line. The officers testified that they ended the chase because defendant's driving was reckless and constituted a danger to others. Defendant did not object to this testimony. The collision occurred after the officers discontinued the pursuit. The jury found defendant guilty as noted above. The trial court sentenced defendant to concurrent terms of fifteen to thirty years and one to two years, with credit for 356 days, for the convictions of second-degree murder and felonious driving, respectively.

Defendant argues that the trial court created manifest injustice when it allowed the officers to testify to an ultimate conclusion that was solely within the province of the jury, i.e., whether he drove in a reckless manner. We disagree. Because defendant did not preserve this issue by objecting to the testimony at trial, our review is limited to a determination of whether presentation of the evidence resulted in manifest injustice. *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998). MRE 701 allows opinion testimony by a lay witness if the

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

testimony is rationally based on the direct perception of the witness, and is helpful to a clear understanding of a fact in issue. *People v Hanna*, 223 Mich App 466, 475; 567 NW2d 12 (1997). The officers' testimony was relevant in that it described defendant's manner of driving shortly before the accident occurred. The testimony helped give the jury a clear understanding of a fact in issue. *People v Daniel*, 207 Mich App 47, 57; 523 NW2d 830 (1994). The officers' testimony neither informed the jurors of the applicable law, nor told them how to decide the case. Presentation of the testimony did not result in manifest injustice.

Defendant argues that his minimum term of fifteen years for the conviction of second-degree murder is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree. Defendant's minimum term was within the guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant drove in a reckless, high-speed manner in an attempt to elude the police, and in doing so caused a collision that resulted in death. The factors cited by defendant, his lack of a prior record and his work history, do not overcome the presumption that his minimum term is proportionate. *Daniel*, *supra* at 54.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber