STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 20, 2001
v	No. 221757 Ogemaw Circuit Court
ERNEST ROBERT JOHNSON, Defendant-Appellant.	LC No. 99-001489-FH

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a jury trial, of negligent homicide, MCL 750.324. The trial court sentenced defendant to forty-five days in jail, a term of eighteen months' probation, and fined him $3,060. We affirm.

Defendant's conviction arose from an accident that occurred on July 11, 1998. At approximately 10:00 p.m. on that evening, the decedent, David Charlesworth and his girlfriend Cheryl Rys were traveling south on M-30 on Charlesworth's motorcycle. The two were on their way to a motel having attended a nearby Harley-Davidson motorcycle show. Charlesworth and Rys were accompanied by their friends James and Sandra Dixon, and the Dixon's four children. Sandra Dixon led the group in a van, while James Dixon, Charlesworth and Rys followed behind on motorcycles.

According to the evidence at trial, at one point a dog ran across the road, and Charlesworth swerved to avoid it. After the motorcycle swerved, Charlesworth and Rys fell off the motorcycle and were left in the middle of the road. Shortly afterward, defendant's vehicle, traveling south on M-30, struck both Rys and Charlesworth, and Charlesworth was fatally injured.[1]

[1] According to Rys' testimony at trial, Charlesworth was conscious after the motorcycle accident, and he managed to sit up, but she observed blood flowing from his face.

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

On appeal, defendant argues that the trial court erred in denying his motion for directed verdict of acquittal. In defendant's view, the evidence at trial was insufficient to prove that his misconduct caused the decedent's fatal injuries. We disagree.

Challenges to the sufficiency of the evidence are reviewed pursuant to the following well-settled standard:[2]

> The test for determining the sufficiency of the evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.
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> The standard of review is deferential; a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. [*People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).]

In *People v Tims*, 449 Mich 83, 94-95; 534 NW2d 675 (1995), our Supreme Court observed that the law governing the element of causation in a charge of negligent homicide is drawn from common-law principles.

> The common-law causation element is comprised of two components, cause-in-fact or proximate/legal cause. In order to convict a defendant of a criminal negligence offense, the prosecutor must prove beyond a reasonable doubt that the defendant's conduct was a factual cause of the fatal accident. *Current Michigan practice is to instruct the jury that a defendant's conduct must be "a substantial cause,"* which appears to combine two verbal formulas employed in other jurisdictions: that a defendant's negligence must be a "but for" cause, or that it must be a "substantial factor."
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> Although a cause-in-fact relationship is often sufficient, cases arise in which the death is so remote from the defendant's conduct that it would be unjust to permit conviction. In such a case, the question for the jury is whether the defendant's conduct was the proximate or legal cause of the decedent's death. [*Id.* at 95 (footnote and citations omitted) (emphasis supplied); see also *People v Moore*, ___ Mich App ___; ___ NW2d ____ (Docket No. 220596, issued 5/22/01), slip op 2.]

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[2] A defendant's challenge to the sufficiency of the evidence implicates due process concerns. *People v Hawkins*, 245 Mich App 439, 457; ___ NW2d ___ (2001). Therefore we review de novo defendant's challenge to the sufficiency of the evidence. *Id.*

In *Tims, supra*, and its companion case, *People v Kneip*, the defendants argued that they could only be convicted of a criminal negligence offense if their conduct was "the" cause of the decedent's death. *Tims, supra* at 95. Our Supreme Court expressly rejected this argument, and made the following pertinent observations.

> The phrase "the proximate cause" is a legal colloquialism reflecting the reality that, particularly in homicide cases, there is one *culpable* act that could be considered a direct cause. . . . The phrase does not imply that a defendant is responsible for harm only when his act is the sole antecedent. [*Id.* at 96 (emphasis in original.]

In our opinion, the record contained ample evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant's misconduct was a proximate cause of Charlesworth's death. *Nowack, supra* at 399-400; *Tims, supra* at 96. The prosecutor presented the testimony of pathologist James Hall, M.D., who testified that Charlesworth suffered severe "compression" type injuries, including a flailed chest and rib fractures. Dr. Hall further indicated that Charlesworth's ultimate cause of death was internal bleeding consistent with being struck by an automobile.

In our view, the jury's verdict reflects that it drew reasonable inferences from this testimony, properly considering it as circumstantial evidence that defendant's misconduct was a proximate cause of Charlesworth's death. See generally *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (reasonable inferences arising from circumstantial evidence are sufficient to prove elements of a crime). Because the record demonstrates that defendant's actions were a proximate cause of Charlesworth's fatal injuries, the trial court properly denied defendant's motion for directed verdict.

Defendant also claims that his conviction for negligent homicide should be reversed because the prosecutor did not proffer sufficient evidence of negligent conduct. For instance, defendant asserts that because he was not traveling at a speed in excess of the proscribed limit, his conduct does not fall within the confines of MCL 750.324. However, as the prosecutor aptly observes in his brief on appeal, negligence as contemplated by MCL 750.324 can result from a driver's failure to reduce his speed according to the surrounding conditions, not only for violating the speed limit. See MCL 750.326.[3] Further, a plain reading of MCL 750.324 demonstrates that a person may be found guilty of negligent homicide without regard to the rate of speed, because the statute attributes negligence to those driving "at an immoderate rate of speed *or* in a careless, reckless or negligent manner. . . ." (emphasis supplied).

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[3] MCL 750.326 provides:

> In any prosecution under [MCL 750.324], whether the defendant was driving at an immoderate speed shall not depend upon the rate of speed fixed by law for operating such vehicle.

Moreover, as our Supreme Court observed in *People v Traughber*, 432 Mich 208, 217; 439 NW2d 231 (1989), "the applicable standard of care in negligent homicide cases is that of a reasonable person." The *Traughber* Court, relying on CJI 16:5:02(1), articulated the applicable standard of care in the following manner:

> For negligent homicide the prosecution must prove beyond a reasonable doubt that the defendant was guilty of ordinary negligence. . . . [O]rdinary negligence is defined as want of reasonable care; that is, failing to do what an ordinarily sensible person would have done under the conditions and circumstances then existing. [*Id.* at 217 (citation and internal quotation marks omitted).]

Viewing the record evidence in the light most favorable to the prosecution, we believe there was sufficient evidence from which a rational trier of fact could reasonably infer that defendant failed to exercise reasonable care under the circumstances. *Nowack*, *supra* at 400. During trial, the prosecutor presented the testimony of Sheila and Alan Hoard, who were traveling on M-30 at approximately 10:00 p.m. on July 11, 1998. The Hoards indicated that as they traveled south on M-30 that night, they slowed down when they observed motorcycle lights at the side of the road. The Hoards also testified that they observed Charlesworth and Rys sitting in the middle of the road. Realizing that an accident had taken place, they pulled over to the side of the road, and Sheila Hoard activated her car's flashers and called 911.

Meanwhile, Alan Hoard, seeing a car approaching the accident scene from the north, got out of the car and stood in the middle of the road, attempting to flag the car down. According to Alan Hoard, although it was dark, the headlights of the Hoard car were shining on him as he stood in the middle of the road. Alan Hoard testified that defendant's car, traveling south on M-30, was moving at "a good rate of speed," and that he had to jump out of the way to avoid being hit by defendant. Seconds later defendant's car struck Charlesworth and Rys.[4]

Further, Sandra Dixon also testified that she pulled her vehicle alongside the fallen motorcycle, and turned her flashers on. When she saw defendant's vehicle approaching, she waved her arms and began yelling in an attempt to flag defendant's vehicle down. Viewing the record evidence in the light most favorable to the prosecution, we are satisfied that a rational trier

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[4] Defendant's contention that his liability is mitigated because Charlesworth and Rys were wearing dark clothing and lying in the middle of the road is without merit. A victim's alleged contributory negligence is not a defense to a charge of negligent homicide. *Tims*, *supra* at 97. Rather, it is a factor the jury may consider in determining whether the defendant's negligence was a cause of the victim's death. *Id.*

of fact could conclude beyond a reasonable doubt that defendant acted negligently.[5]

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert J. Danhof

[5] Likewise, we reject defendant's assertion that he was presented with an emergency situation to the extent that he was not negligent. See *Traughber, supra* at 222. A review of the record does not indicate that defendant was presented with "a sudden and unexpected event." *Id.* at 220. For example, defendant testified that when he was a quarter of a mile away from the accident scene, he observed a vehicle traveling north in the southbound lane. Evidence at trial revealed that the vehicle defendant observed was driven by Sandra Dixon, who turned around after she observed the motorcycle accident. Defendant further testified that he chose not to stop when the Hoard van pulled over because he assumed the vehicles were congregated for a family gathering. During cross-examination, defendant also indicated that he accelerated to pass the Hoard van as it pulled over to the side of the road.