STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 29, 2002
v	No. 228542 Wayne Circuit Court
ROBERT BROOKS, Defendant-Appellant.	LC No. 99-004987

Before: Jansen, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of one count of involuntary manslaughter, MCL 750.321, one count of first-degree fleeing and eluding, MCL 750.479a(5), and two counts of second-degree fleeing and eluding, MCL 750.479a(4)(a). We affirm.

This case arose when defendant attempted to flee police and drove his vehicle into the back of a semi-truck, killing one passenger and injuring himself and two other passengers. Defendant first challenges the admission of evidence concerning a prior flight defendant had from another police officer. Although the lower court's decision to admit evidence is normally reviewed under the abuse of discretion standard, this Court need not reach the propriety of the lower court's decision if the alleged error is harmless. *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001). In this case, even if the evidence regarding defendant's prior flight was improperly admitted, defendant has not met his burden of establishing that "it was more probable than not that the alleged error affected the outcome of trial." *Id*. at 427. As our Supreme Court stated in *Whittaker*:

> In order to overcome the presumption that a preserved nonconstitutional error is harmless, a defendant must persuade the reviewing court that it is more probable than not that the error in question was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). An error is deemed to have been "outcome determinative" if it undermined the reliability of the verdict. See *People v Snyder*, 462 Mich 38, 45; 605 NW2d 831 (2000), citing *Lukity*, *supra* at 495-496. In making this determination, the reviewing court should focus on the nature of the error in light of the weight and strength of the untainted evidence. See *Lukity*, *supra* at 495; *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996). [*Id.* at 427, citing *People v Elston*, 462 Mich 751, 766; 614 NW2d 595 (2000).]

In the present case, there was strong evidence of defendant's guilt. There was overwhelming testimony by police officers, the passengers in defendant's vehicle and bystanders who witnessed the accident, that defendant fled the police at a grossly excessive rate of speed, disobeyed traffic signals, and wove through traffic, thereby causing the instant accident. Testimony of the passengers in the vehicle also established that defendant knew the police were pursuing him and that the passengers pleaded with defendant to stop – but he would not. In light of the strength of the prosecution's case at trial, we hold defendant has not established that it was more probable than not that the other act evidence, even if erroneously admitted, affected the outcome of the jury's verdict.

Defendant also argues that the lower court erred in denying his motion for directed verdict on the second-degree murder charge despite the jury's ultimate verdict finding defendant not guilty of second-degree murder. When reviewing the trial court's decision on a motion for directed verdict, this Court reviews the record de novo to determine whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Defendant cites *People v Vail*, 393 Mich 460; 227 NW2d 535 (1975), for the proposition that where the evidence is legally insufficient to support the higher charge, error requiring reversal occurs despite the fact that the jury convicts the defendant of the lesser crime. However, our Supreme Court overruled the automatic reversal rule of *Vail* in *People v Graves*, 458 Mich 476; 581 NW2d 229 (1998).

Defendant does not dispute on appeal that the involuntary manslaughter charge was properly submitted to the jury. Accordingly, error, if any, from the submission of the second-degree murder charge to the jury was rendered harmless when the jury acquitted defendant of that charge. *Graves*, *supra*; *People v Moorer*, 246 Mich App 680, 682; 635 NW2d 47 (2001).

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin