STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL DWAYNE SIMPSON,

Defendant-Appellant.

UNPUBLISHED
September 20, 2002

No. 233207
Wayne Circuit Court
LC No. 99-012699

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

After a bench trial, defendant was convicted on four separate counts: involuntary manslaughter, MCL 750.321, first-degree fleeing and eluding a police officer, MCL 750.479a(5), second-degree fleeing and eluding a police officer, MCL 750.479a(4)(a), and driving with a suspended license, MCL 257.904(1). On appeal, defendant challenges only the involuntary manslaughter conviction, arguing insufficiency of the evidence. We affirm.

When reviewing a sufficiency claim, this Court must view the evidence in the light most favorable to the prosecution and determine whether any 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); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Involuntary manslaughter is an "unlawful act, committed with the intent to injure or in a grossly negligent manner, that proximately causes death." *People v McCoy*, 223 Mich App 500, 502; 566 NW2d 667 (1997). Defendant argues that the evidence was insufficient to support his conviction on this charge because he acted only with ordinary negligence, not gross negligence. In order to show criminal gross negligence, the following elements must be established:

> (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. [*Id.* at 503, quoting *People v Lardie*, 452 Mich 231, 251-252; 551 NW2d 656 (1996).]

As in *McCoy*, *supra* at 503, there is no question in this case that the trier of fact could have properly inferred that defendant knew that the act of driving requires the exercise of ordinary care and diligence to avert injury to another. Similarly, there is no question that the trier of fact could have properly inferred, under these facts, that defendant had the ability to avoid the harm that occurred by exercising ordinary care and diligence, but defendant failed to do so. *Id*. Therefore, the only question that remains is whether, to the ordinary mind, it must have been apparent that the result of defendant's conduct was "likely to prove disastrous to another." *Id*.

Defendant admits that he was driving at a speed of forty-eight miles per hour, in a twenty-five mile per hour zone, at the time of impact. However, defendant argues that mere speeding is simply evidence of ordinary negligence, not gross negligence. It is true that a "violation of the speed limit, by itself, is not adequate to establish the element of gross negligence." *Id*. at 504. However, we must not limit our review to the fact that defendant was speeding. Rather, we must examine the "totality of the circumstances" to determine whether the prosecutor presented sufficient evidence of gross negligence. *Id*.

The evidence presented at trial indicated that defendant fled from a marked patrol car, leading police on a high-speed chase through a residential neighborhood. Defendant reached speeds of at least sixty-six miles per hour, then slammed on his brakes, skidded for ninety-seven feet, collided with another car, and struck two children who were walking home from school. Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that defendant acted with gross negligence.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder