

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA GLENN CHITTLE,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 244313
Genesee Circuit Court
LC No. 02-009374-FC

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of second-degree murder, MCL 750.317, two counts of operating a motor vehicle under the influence causing death, MCL 257.625(4), two counts of first-degree fleeing a police officer, MCL 750.479a(5), two counts of operating a motor vehicle while license suspended causing death, MCL 257.904(4), operating a motor vehicle under the influence causing serious injury, MCL 257.625(5), second-degree fleeing a police officer, MCL 750.479a(4)(a), and operating a motor vehicle while license suspended causing serious injury, MCL 257.904(5). On appeal as of right, defendant maintains that he is entitled to a new trial because the jury selection portion of the transcript cannot be produced and that insufficient evidence was introduced to support his second-degree murder convictions. We conclude that defendant's claims are without merit and we affirm.

At trial, the evidence established that a motorist suspected that defendant was operating a motor vehicle while intoxicated and reported his observations to police. A state trooper responded, also observed defendant driving in an erratic manner, and stopped defendant. But as the trooper approached defendant's vehicle, defendant accelerated away at a high rate of speed. Defendant fled at speeds greater than 100 mph and disregarded traffic control devices. Less than two miles from the location where the trooper had stopped him, defendant lost control of his vehicle, struck a utility pole, and then slammed into the passenger side of another vehicle, killing two of its occupants and severely injuring a third. Subsequent tests of defendant's blood alcohol confirmed that defendant was intoxicated.

Defendant's first claim stems from the fact that the transcript of the first day of trial, during which jury selection took place, cannot be produced because the electronic and video records of the proceeding for that day were deleted before a backup copy of the record had been made. Defendant does not question that the loss of the record was inadvertent.

After being informed of the situation, defendant brought a motion in the trial court for a new trial. The trial court proceeded in conformity with MCR 7.210(B)(2) and conducted a hearing to produce a settled record of the proceedings for the day for which no transcript was available. Ultimately, the trial court denied defendant's motion for a new trial.

Defendant argues on appeal that the trial court abused its discretion in denying his motion for a new trial because the transcript of the jury selection cannot be produced. We disagree. The trial court's decision to grant or deny a motion for new trial is reviewed for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). A defendant in a criminal case may be granted a new trial on any ground that would support appellate reversal of the conviction or because the verdict resulted in a miscarriage of justice. MCR 6.431(B); *People v Crear*, 242 Mich App 158, 167; 618 NW2d 91 (2000). See also MCL 770.1.

In this case, a settled record of proceeding was produced in accordance with MCR 7.210(B)(2) for the day that the record of proceeding was deleted. Defendant does not claim that the settled record is inaccurate, nor does he assert a claim of error that occurred during jury selection that he cannot substantiate on appeal due to absence of a verbatim transcript. Indeed, he only speculates that error may exist in the record and therefore he should be awarded a new trial. We have reviewed the transcript of the hearing conducted by the trial court and the settled record produced from that hearing and are convinced that defendant will not suffer a miscarriage of justice because a transcript of the jury selection cannot be produced. Nothing noteworthy occurred during jury selection and defendant did not exercise all of his allotted peremptory challenges. Under these circumstances, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Defendant also argues that the evidence at trial was insufficient to convict him of second-degree murder. In his brief on appeal, defendant essentially admits that his driving while fleeing the stop made by the trooper that ended in a crash causing two deaths established the elements for second-degree murder. See *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). But defendant maintains that the trooper's high-speed pursuit of defendant as he fled "was an intervening circumstance which contributed to the fatal accident. Without [the trooper's] involvement it is doubtful a death would have resulted." However, defendant merely announces his position and offers no analysis or support. Consequently, defendant has abandoned this issue. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.").

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot