

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE NATHAN STAFFNEY,

Defendant-Appellant.

UNPUBLISHED

March 23, 2004

No. 244516

Saginaw Circuit Court

LC No. 01-020862-FJ

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of two counts of involuntary manslaughter, MCL 750.321; felonious driving, MCL 752.191; first-degree fleeing and eluding, MCL 750.479a(5); two counts of unlawfully driving away an automobile (UDAA), MCL 750.413; breaking and entering, MCL 750.110; and conspiracy to commit breaking and entering, MCL 750.157a. Defendant was sentenced to 120 to 180 months' imprisonment for his involuntary manslaughter convictions, 12 to 24 months' imprisonment for felonious driving, 24 to 180 months' imprisonment for fleeing and eluding, 24 to 60 months' imprisonment for his UDAA convictions, 24 to 120 months' imprisonment for breaking and entering, and 24 to 120 months' imprisonment for conspiracy. We affirm.

Defendant first argues that the trial court erred in denying his motion for a directed verdict on the second-degree murder and felonious driving charges, contending that the evidence was insufficient for a finding of malice. This Court reviews de novo a trial court's decision regarding a motion for a directed verdict. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). The evidence presented up to the time the motion was made is reviewed in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998).

Second-degree murder consists of the following elements: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). Malice is defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. "Malice may be inferred from evidence that a defendant intentionally set in motion a

force likely to cause death or great bodily harm.” *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998).

The prosecution presented sufficient evidence to prove malice. Defendant led police in a high-speed chase, driving at excessive speeds through a residential area and reaching speeds of 80 to 90 miles per hour, more than triple the speed limit. He then ran a stop sign, narrowly missed a vehicle in the intersection, and lost control of his vehicle which ran onto a lawn and struck three people, two of whom died. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant undertook his behavior in wanton and wilful disregard of the likelihood that it might naturally cause death or great bodily harm. *Goecke, supra* at 467.

In addition, defendant argues, citing *People v Vail*, 393 Mich 460, 464; 227 NW2d 535 (1975), that the second-degree murder charge led the jury to compromise its verdict. However, our Supreme Court in *People v Graves*, 458 Mich 476, 486-487; 581 NW2d 229 (1998), overruled *Vail* and held that reversal is proper only in cases where there is insufficient evidence to support a charge. As just explained, there was sufficient evidence presented to submit the second-degree murder charge to the jury.

Defendant next argues that the trial court improperly sentenced him as an adult. To determine whether a defendant should be sentenced as an adult or a juvenile, the trial court must consider the six statutory factors in MCL 769.1(3), giving greater weight to the seriousness of the alleged offense and the juvenile’s prior record of delinquency. MCL 769.1(3). The trial court is to consider the following:

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (b) The juvenile’s culpability in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (c) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (d) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.
- (e) The adequacy of the punishment or programming available in the juvenile justice system.
- (f) The dispositional options available for the juvenile. [MCL 769.1(3).]

As described above, the deadly offense in this case was very serious. Defendant's prior record of delinquency includes criminal sexual conduct, gang membership, theft, drug use, and possession of weapons. Defendant's previous programming history included two unsuccessful foster home placements and behavioral problems while at Boysville. In addition, the trial court noted that psychological evaluation indicated that defendant would not benefit from therapy. Considering this evidence under the statute, the trial court did not abuse its discretion in deciding to sentence defendant as an adult.

Finally, defendant argues that the trial court did not state substantial and compelling reasons for departing from the statutory guidelines. The offense in this case occurred on September 28, 2001; therefore, the statutory sentencing guidelines apply. MCL 769.34(1). The trial court must impose a minimum sentence within the guidelines' range unless a departure from the guidelines is permitted. MCL 769.34(2). A court may depart from the guidelines if it has substantial and compelling reasons for that departure and states the reasons on the record. MCL 769.34(3). Any factor relied on by the trial court in departing from the statutory sentencing guidelines must be objective and verifiable, and this Court reviews the trial court's determination of the existence of any such factor for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). Whether a particular factor is objective and verifiable is reviewed as a matter of law. *Id.* The trial court's determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for an abuse of discretion. *Id.* at 264-265. Substantial and compelling reasons justifying departure should "keenly" and "irresistibly" grab the court's attention, must be "of considerable worth" in determining the length of a sentence, and "exist only in exceptional cases." *Id.* at 257, quoting *People v Fields*, 448 Mich 58, 62, 67-68; 528 NW2d 176 (1995) (internal quotation marks omitted).

The trial court departed from the minimum sentencing guidelines range of 43 to 86 months and set the minimum at 120 months. Explaining the deviation, the trial judge stated:

Well, the maximum – in regard to the two motor vehicle [sic], the maximum penalty is 15 years, and the minimum I'm setting at 10. This is a deviation. I'm taking into account your former juvenile record. Furthermore, in this case, the minimum guideline, with the – you need only 75 points only to achieve that, and we had 110 here. Further, I don't think the guidelines adequately reflect the situation. You have multiple deaths and injuries, plus there were at least three people involved here. You put at risk others.

Defendant argues that the trial court's reasons for departing were not substantial and compelling because they were already taken into account by the guidelines. The trial court may not "base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight." MCL 769.34(3)(b). Defendant claims that he already received two points for his juvenile record under prior record variable 4. Defendant also argues that the multiple deaths in this case were already taken into account by offense variable 9, for which defendant was given one hundred points.

We disagree. The trial court did not base its departure on characteristics already taken into account. Defendant's extensive record of delinquency was not taken into account by the guidelines. Similarly, although the number of victims who were actually killed or injured by defendant's behavior was already scored in the guidelines, the court properly found that scoring of victims inadequate based upon the nature of the dangers presented in this case. Defendant led police on a chase at 80 to 90 miles per hour in a residential area, placing many other residents and police officers at risk. The trial court did not abuse its discretion in determining that there were substantial and compelling reasons to justify the departure sentence that it imposed.

We affirm.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra