STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 23, 2007
v	No. 271790 Oakland Circuit Court
ISAAC DARNELL BURRIS, Defendant-Appellant.	LC No. 2005-205927-FH

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of reckless driving, MCL 257.626(1), but acquitted of third-degree fleeing and eluding, MCL 750.479a(3). Defendant appeals as of right. We affirm.

Defendant was charged and convicted after he was stopped by Officer Jeffery Jagielski for operating a motorcycle at a speed of 100 miles per hour on 8 Mile Road in Oakland County. After receiving two citations from Jagielski, defendant drove off at a high rate of speed and forced a pedestrian to "dance" around him to avoid being hit. Jagielski again pursued defendant, and he estimated defendant's speed to be 100 miles per hour. Defendant turned down a side street, which led to Henry Ford High School. Upon reaching Henry Ford High School, defendant stopped his bike and took off his helmet. Defendant then saw Jagielski turn the corner onto the side street to Henry Ford High School. Defendant was thereafter detained.

Defendant claims that his conviction for reckless driving is not supported by sufficient evidence because there was no evidence that he knowingly disregarded the safety of persons or property. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that all of the elements of the crime were proven beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

To be convicted of reckless driving, a defendant must have operated a vehicle with "willful or wanton disregard for the safety of persons or property." MCL 257.626(1). MCL 257.626(1) does not define the phrase "willful or wanton disregard." However, in *Jennings v Southwood*, 446 Mich 125, 139; 521 NW2d 230 (1994), our Supreme Court concluded that "wilful and wanton misconduct" is a different standard than "wilful misconduct" because the phrases "possess distinct meanings." According to the Court, "'[w]illful means intentional.'" *Id.*

at 139-140, quoting *McKimmy v Conductors Protective Assurance Co*, 253 Mich 521, 523; 235 NW 242 (1931). It involves design and purpose. *Id*. at 139.

> Wilful and wanton misconduct, on the other hand, describes conduct that is *either* wilful–i.e., intentional, *or* its effective equivalent. "[W]illful and wanton misconduct is made out only if the conduct alleged shows an intent to harm or, *if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does*" [*Id*. at 140, quoting *Burnett v Adrian*, 414 Mich 448, 455; 326 NW2d 810 (1982).]

Our Supreme Court further stated that, although the phrase "wanton and willful disregard" is often used instead of "willful or wanton disregard," "it is nevertheless apparent that only one of the two types of misconduct are required." *Id*. at 141. Thus, based on the definition of willful or wanton misconduct in *Jennings*, *supra*, a defendant can be convicted of reckless driving if he intentionally disregarded the safety of persons or property or if he acted with indifference as to the whether his conduct would endanger the safety of persons or property. See also *People v Goecke*, 457 Mich 442, 464-467; 579 NW2d 868 (1998), where the Court indicated, in discussing the malice element of second-degree murder, that malice may be proved by proving that the defendant acted in wanton and willful disregard of the likelihood that the act would cause harm. The Court explained that a person may be guilty of acting in wanton and willful disregard when, although he did not intend harm, he acted under circumstances giving rise to a "plain and strong likelihood" that harm will occur. *Id.*

In the present case, Jagielski testified that, after he issued two citations to defendant, defendant drove his motorcycle at a speed of 100 miles per hour on 8 Mile Road. The posted speed limit on 8 Mile Road was 45 miles per hour and there were crosswalks. According to Jagielski, a pedestrian crossing 8 Mile Road was forced to "dance" out of defendant's way to avoid being hit. Defendant acknowledged that he did not see any pedestrian. Viewing this evidence in the light most favorable to the prosecution, *Hunter*, *supra*, at 6, there was sufficient evidence to enable the jury to find beyond a reasonable doubt that defendant engaged in a willful or wanton disregard for the safety of persons or property. Defendant's conviction for reckless driving is supported by sufficient evidence.

In reaching our conclusion, we note that defendant argues that Jagielski was not credible. In reviewing the sufficiency of the evidence, however, we defer to the credibility choices of the jury in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant also argues that the jury's verdict was inconsistent. We disagree. To establish third-degree fleeing and eluding, the prosecution had to show, in part, that a law enforcement officer ordered the defendant to stop, the defendant was aware he was ordered to stop, and the defendant refused to obey the order by trying to flee from the officer or to avoid being caught. *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999). Defendant testified that, after Jagielski gave him two citations, he did not see Jagielski again until Jagielski turned onto the side street where Henry Ford High School was located. By acquitting defendant of third-degree fleeing and eluding, the jury obviously believed defendant's testimony that he was unaware that he had been ordered to stop the second time. However, by convicting defendant of reckless driving, the jury chose not to believe defendant's testimony that he did not accelerate to more than 40 miles per hour. The jury chose to believe Jagielski who testified that defendant drove at

a speed of 100 miles per hour. Because it is the jury's task to assess the credibility of witnesses, *People v Cain*, 238 Mich App 95, 119; 605 NW2d 28 (1999), and because we will not interfere with the jury's credibility determinations, *People v Williams*, 268 Mich App 416, 421; 707 NW2d 624 (2005), we cannot conclude that the jury's verdict was inconsistent.

Even if the jury had returned an inconsistent verdict, the result would not have required us to reverse defendant's conviction. *People v Vaughn*, 409 Mich 463, 465-466; 295 NW2d 354 (1980). Our Supreme Court has stated that "[c]onsistency in the verdict is not necessary" because "[e]ach count in an indictment is regarded as if it was a separate indictment." *Id*. at 465.

Affirmed

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood