IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ETHAN RUIZ,

Appellant,

v. Case No. 5D18-3402

STATE OF FLORIDA,

Appellee.
_____/

Opinion filed November 22, 2019

Appeal from the Circuit Court
for Marion County,
Anthony M. Tatti, Judge.

Bryan C. Hugo, Maitland, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kaylee D. Tatman, Assistant Attorney General, Daytona Beach, for Appellee.

CALDERON, L., Associate Judge.

Ethan Ruiz was driving his niece, Charisma Francisco, in a green Honda Del Sol when his vehicle veered off the road and crashed into a light pole, killing Francisco. The State subsequently charged Ruiz with vehicular homicide.[1]

At trial, several witnesses testified that they observed Ruiz's vehicle and an unidentified, black vehicle moments prior to and immediately after the crash, but no

[1] § 782.071(1)(a), Fla. Stat. (2016).

witnesses testified that they observed the crash. Ruiz moved for judgment of acquittal following the State's case and renewed his motion at the close of his case. The trial court denied both motions, and the jury found Ruiz guilty as charged. The trial court sentenced Ruiz to twelve years in prison.

On appeal, Ruiz contends that the trial court erred in denying his motions for judgment of acquittal, claiming that the State merely presented evidence that he drove at an excessive speed, which was insufficient to establish the required element of recklessness under the vehicular homicide statute. Alternatively, Ruiz argues that even if the State presented sufficient evidence that he raced the black vehicle at one point, which would have been sufficient to establish the reckless driving element, there was no evidence to support a finding that the race was still in progress at the time he crashed.

"A trial court's denial of a motion for judgment of acquittal is reviewed de novo to determine solely if the evidence is legally sufficient." Durousseau v. State, 55 So. 3d 543, 556 (Fla. 2010) (citing Jones v. State, 790 So. 2d 1194, 1196–97 (Fla. 1st DCA 2001)).

> A motion for judgment of acquittal is designed to challenge the legal sufficiency of the evidence. If the State presents competent evidence to establish each element of the crime, a motion for judgment of acquittal should be denied. The court should not grant a motion for judgment of acquittal unless the evidence, when viewed in light most favorable to the State, fails to establish a prima facie case of guilt. In moving for a judgment of acquittal, a defendant admits not only the facts stated in the evidence, but also every reasonable conclusion favorable to the State that the fact-finder might fairly infer from the evidence.

Bufford v. State, 844 So. 2d 812, 813 (Fla. 5th DCA 2003) (citations omitted).

"'Vehicular homicide' is the killing of a human being, . . . caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great

bodily harm to, another." § 782.071, Fla. Stat. (2016). In order to sustain a vehicular homicide conviction, the State was required to present competent substantial evidence that Ruiz operated his vehicle in a reckless manner. See D.E. v. State, 904 So. 2d 558, 561 (Fla. 5th DCA 2005) (explaining that, by definition, vehicular homicide cannot be proved without also proving elements of reckless driving). Reckless driving is driving with a willful or wanton disregard for safety. § 316.192(1)(a), Fla. Stat. (2016). "'Willful' means 'intentional, knowing, and purposeful,' and 'wanton' means with a 'conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.'" D.E., 904 So. 2d at 561 (quoting W.E.B. v. State, 553 So. 2d 323, 326 (Fla. 1st DCA 1989)).

Because the State presented competent substantial evidence that Ruiz was racing at the time of the crash, Ruiz's argument that his speeding alone was insufficient to prove recklessness is inapposite. Evidence that a defendant was racing at the time of an accident is a sufficient basis to find that the defendant was operating his vehicle in a reckless manner.[2] See Velazquez v. State, 561 So. 2d 347, 350 (Fla. 3d DCA 1990) ("[W]e have no trouble in concluding that the [reckless driving] element of this offense is

[2] A "race" is

> [T]he use of one or more motor vehicles in competition, arising from a challenge to demonstrate the superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles . . . .

§ 316.191(1)(c), Fla. Stat. (2016).

clearly established on this record. Plainly, the defendant operated a motor vehicle in a reckless manner, likely to cause death or great bodily harm to another, in that (a) he participated in a highly dangerous 'drag race' with the deceased on a public road in which both lanes were used as a speedway, and (b) he drove his vehicle at the excessive speed of 98 m.p.h. during the 'drag race.'").

At trial, three witnesses testified to Ruiz's vehicle and the black vehicle engaging in conduct consistent with racing. The road Ruiz crashed on had a posted speed limit of 45 m.p.h. One eyewitness, Daniel Bizell, observed the vehicles travelling approximately 70 to 75 m.p.h., side-by-side, and then quickly passing other vehicles in the right lane. Bizell lost sight of Ruiz's vehicle for "a second" where the road curved, but upon coming around the curve, observed Ruiz's crashed vehicle. Bizell testified that he was sure the vehicles' movements were consistent with racing.

Another eyewitness, Imari Williams, observed the two vehicles pass her vehicle in the left lane, at about 60 to 75 m.p.h. Williams described that the two vehicles drove in the same lane, one in front of the other, with less than an arm's length between them. She stated that the vehicles accelerated as they passed her vehicle and were 'zigzagging' in one lane, as if one was trying to pass the other.

Additionally, Corporal Wallace Dill investigated the crash scene and testified that, according to his calculations, Ruiz's vehicle was travelling at 90.99 m.p.h. when it began making skid marks on the road prior to the crash.

The testimony regarding the vehicles' driving patterns, attempts to pass one another, acceleration, and high rates of speed was competent substantial evidence that Ruiz and the driver of the black vehicle were racing, sufficient to prove the element of

reckless driving. Additionally, contrary to Ruiz's alternative argument that the race ended prior to the crash, the evidence established that Ruiz's vehicle accelerated from approximately 75 m.p.h. when it was last observed by Bizell to more than 90 m.p.h. when it began to skid off the road. The acceleration of Ruiz's vehicle reasonably supported the conclusion that the race was still in progress when Ruiz lost control of his vehicle.

We therefore conclude that the State presented competent substantial evidence to establish each element of vehicular homicide, and the trial court properly denied both motions for judgment of acquittal.

AFFIRMED.

EDWARDS and GROSSHANS, JJ., concur.