

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RITA ANN RUHANA,

Defendant-Appellant.

UNPUBLISHED

October 27, 1998

No. 203938

Charlevoix Circuit Court

LC No. 96-009609 FH

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from her convictions for operating a motor vehicle while under the influence causing death, MCL 257.625(4); MSA 9.2325(4), and manslaughter with a motor vehicle, MCL 750.321; MSA 28.553. She was sentenced to three to fifteen years' imprisonment for each conviction, to be served concurrently. We affirm.

Defendant first argues that the prosecution presented insufficient evidence of gross negligence to support her conviction of manslaughter with a motor vehicle.¹ Involuntary manslaughter is an unlawful act, committed with the intent to injure or in a grossly negligent manner, that proximately causes death. *People v Datema*, 448 Mich 585, 606; 533 NW2d 272 (1995). Our Supreme Court has described "gross negligence" as follows:

Criminal negligence, also referred to as gross negligence, lies between the extremes of intention and negligence. As with intention, the actor realizes the risk of his behavior and consciously decides to create that risk. As with negligence, however, the actor does not seek to cause harm, but is simply "recklessly or wantonly indifferent to the results." [*Id.* at 604, citing *People v Campbell*, 237 Mich 424, 429; 212 NW 97 (1927).]

Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence existed to permit a jury to find defendant guilty of involuntary manslaughter. A witness testified that the van driven by defendant passed him on the right shoulder of the road at over seventy miles per hour, and that defendant drove erratically, continuously driving on and off the shoulder of the road and

failing to maintain a constant rate of speed. Another witness testified that defendant was driving erratically for approximately ten minutes at high speeds. Also, defendant's blood test results taken within two hours after the accident indicate that defendant had a blood alcohol level of .20. We find that in light of the high rate of speed at which defendant drove, the fact that defendant had been drinking, the fact that defendant was engaged in an argument with the deceased at the time of the accident, the fact that defendant continuously tried to pass other vehicles on the gravel shoulder of the road, and the fact that defendant did not stop the van because she thought it was better to try and make it to her destination, a reasonable trier of fact could conclude that defendant acted with gross negligence. Therefore, we hold that sufficient evidence existed to sustain defendant's conviction of involuntary manslaughter.

Defendant also argues that prosecutorial misconduct deprived her of her right to a fair trial. However, because defendant did not object at trial to the prosecutor's statements, appellate review is precluded absent a miscarriage of justice or unless a cautionary instruction could not have cured the prejudicial effect of the challenged remarks. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). After carefully reviewing each of defendant's allegations of prosecutorial misconduct, we find that any misconduct that may have occurred was not so egregious that a curative instruction could not have cured any resultant prejudicial effect. Accordingly, our failure to further review defendant's claims of misconduct would not result in manifest injustice.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff

¹ Defendant does not challenge the sufficiency of the evidence supporting her conviction of operating a motor vehicle while under the influence causing death.