

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH W. WRIGHT,

Defendant-Appellant.

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UNPUBLISHED

June 28, 2002

No. 231400

Wayne Circuit Court

LC No. 00-000797

Before: Zahra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of receiving and concealing stolen property in excess of \$20,000, MCL 750.535(2)(a), involuntary manslaughter with a motor vehicle, MCL 750.321, and leaving the scene of a serious personal injury accident, MCL 257.617. He was sentenced to concurrent terms of two to five years for the stolen property conviction, five to fifteen years for the manslaughter conviction, and two to five years for the leaving the scene conviction. Defendant appeals as of right, and we affirm.

I

Defendant first argues that the evidence was insufficient to support his conviction of manslaughter because there was no evidence that he was driving in a grossly negligent manner at the time he struck the decedent's car. We disagree.

When assessing whether sufficient evidence was presented to support a conviction, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Wolfe, supra* at 514.

To establish that defendant was guilty of involuntary manslaughter with a motor vehicle, the prosecutor was required to prove that defendant committed an unlawful act in a grossly negligent, wanton, or reckless manner, causing the death of another. *People v Datema*, 448 Mich

585, 606; 533 NW2d 272 (1995); *People v Rettelle*, 173 Mich App 196, 199; 433 NW2d 401 (1988). To establish gross negligence, the following elements must be proven:

(1) Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.

(2) Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

(3) The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. [*People v McCoy*, 223 Mich App 500, 503; 566 NW2d 667 (1997) (citations omitted).]

In *Datema*, *supra* at 604, our Supreme Court explained:

[C]riminal intention anchors one end of the spectrum and negligence anchors the other. Intention . . . “emphasiz[es] that the actor seeks the proscribed harm not in the sense that he desires it, but in the sense that he has chosen it, he has decided to bring it into being.” *Negligence*, lying at the opposite end of the spectrum, “*implies inadvertence, i.e., that the defendant was completely unaware of the dangerousness of this behavior although actually it was unreasonably increasing the risk of occurrence of an injury.*”

Criminal negligence, also referred to as gross negligence, lies within 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.” [Citations omitted; emphasis added.]

In this case, a trier of fact could properly infer that defendant knew that the act of driving requires ordinary care and diligence to avert injury to others. Similarly, a trier of fact could properly infer, under these facts, that defendant had the ability to avoid the harm that occurred by exercising ordinary care and diligence, but failed to do so. In other words, defendant could have chosen not to drive at an excessive speed, with obstructed vision. Defendant admitted that he was driving the stolen Jeep at a speed of 35 to 40 miles-per-hour in a 25-mile-per-hour zone in an attempt to escape the police. He also admitted that his vision was hindered because he could only see out of a small area in the bottom of the fogged windshield. Ultimately, defendant ran a final stop sign and struck the decedent’s car broadside, causing her death. A rational trier of fact could properly find that defendant’s act of driving through a residential neighborhood at excessive speeds, with obstructed vision, and disregarding traffic signs was likely to prove disastrous to another. Viewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented to sustain defendant’s conviction of involuntary manslaughter with a motor vehicle.

## II

Next, defendant argues that he is entitled to resentencing because the trial court impermissibly departed upward from the sentencing guidelines' recommended minimum sentence range of twelve to twenty-four months for the manslaughter conviction without a substantial and compelling reason to do so, contrary to MCL 769.34(3). The court sentenced defendant to a minimum term of five years.

Because defendant committed the offenses in December 1999, the legislative sentencing guidelines were properly applied. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). Under the sentencing guidelines statute, the trial court must impose a minimum sentence in accordance with the calculated guidelines range, MCL 769.34(2), and may not depart from the recommended range unless it "has a substantial and compelling reason for th[e] departure and states on the record the reasons for departure." MCL 769.34(3); *People v Hegwood*, 465 Mich 432, 438; 636 NW2d 127 (2001); *People v Babcock*, 244 Mich App 64, 72; 624 NW2d 479 (2000). Substantial and compelling reasons are to be found only in "exceptional" cases. *People v Fields*, 448 Mich 58, 67-68; 528 NW2d 176 (1995). The reasons for departure should "keenly and irresistibly grab" the court's attention and should be recognized as being of considerable worth in deciding the length of the sentence. *Babcock*, *supra* at 75, quoting *Fields*, *supra*. The trial court's stated reasons for departure must also be objective and verifiable, *Babcock*, *supra* at 78, which is defined as "actions or occurrences which are external to the minds of the judge, defendant and others involved in making the decision . . . [that are] capable of being confirmed." *Fields*, *supra* at 66 (quotation omitted).

On review, this Court must first determine as a matter of law whether the trial court's stated reason for departure is objective and verifiable. *Babcock*, *supra* at 78. The existence or nonexistence of a particular factor is a factual determination that this Court will review for clear error. The trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the guidelines is reviewed for abuse of discretion. *Id.* at 75-76. An abuse of discretion exists if the result was so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, and the exercise of passion or bias. *Id.* at 76.

We find that the trial court relied on certain factors in this case that are objective and verifiable, and that the court did not abuse its discretion in finding that there were substantial and compelling reasons to depart from the sentencing guidelines. The trial court found that the recommended guidelines range did not adequately account for defendant's behavior, noting that the circumstances of this case could rise to the level of second-degree murder. The court's stated reasons for departure included the fact that defendant was in a stolen car, which he drove at excessive speeds while unable to see where he was going, and that the length of the police pursuit was long enough for defendant to reconsider his actions and stop the car. The court's stated reasons also included defendant's familiarity with the residential neighborhood where the police pursuit occurred, his knowledge that an elementary school was in the area, the fact that school children were likely to be in the area given the time of the pursuit, and the fact that the fatal accident occurred directly outside of the elementary school. Because the factors considered by the court are objective and verifiable and constituted substantial and compelling reasons to depart from the twelve to twenty-four-month guidelines' range, resentencing is not required.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Helene N. White