STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 28, 2004
v	No. 248542 Kalamazoo Circuit Court
RODNEY LEE CONKLIN, Defendant-Appellant.	LC No. 02-001823-FH

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for failing to stop at the scene of an accident resulting in serious injury to or death of a person, MCL 257.617(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent was killed when his bicycle collided with a vehicle. The police determined that the vehicle involved in the accident had been driven by defendant. Defendant testified that on the night of the accident an object came from the passenger side of his vehicle, hit the front of the vehicle, and shattered the windshield. He maintained that, at the time, he assumed he had struck a deer. Defendant denied that he saw a bicycle or a person on the road on the night of the accident.

The jury found defendant guilty of failing to stop at the scene of an accident resulting in serious injury to or death of a person.[1] Over defendant's objection, the trial court scored offense variable (OV) 3, MCL 777.33, physical injury to victim, at 100 points on the ground that the victim was killed and homicide was not the sentencing offense. MCL 777.33(2)(b). The trial court sentenced defendant as a fourth habitual offender to six to twenty years in prison.

Defendant argues that the evidence produced at trial was insufficient to support his conviction because it did not show that at the time of the accident he knew or had reason to know that the accident resulted in serious injury to or the death of a person. We disagree.

[1] Defendant pleaded guilty of driving while license suspended or revoked, MCL 257.904(1).

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Id.; People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

To establish the offense of failing to stop at the scene of an accident resulting in serious injury to or death of a person, a prosecutor must show that: (1) the defendant was the driver of a motor vehicle; (2) the motor vehicle driven by the defendant was involved in an accident; (3) the defendant knew or had reason to know that he or she was involved in an accident that resulted in serious injury or death; (4) the defendant knew or had reason to know the accident occurred on a public road or property open to travel by the public; and (5) the defendant failed to immediately stop his or her vehicle at the scene in order to give assistance and provide information as required by law. MCL 257.617(1); CJI2d 15.14. The prosecutor must show that the defendant knew or had reason to know that the accident resulted in serious injury to or the death of a person. *People v Lang*, 250 Mich App 565, 572; 649 NW2d 102 (2002).

Defendant's contention is that there is no evidence to support that at the time of the accident he knew or had reason to know the accident resulted in serious injury or death of a person. A defendant's knowledge can be inferred from the facts and circumstances surrounding the incident, and reasonable inferences drawn from the evidence. *Id*. at 576-577. Defendant testified that the object he hit rolled onto the hood of his vehicle and shattered the windshield, and then rolled off the vehicle. This evidence supported an inference that defendant was able to see the object, albeit briefly, to realize that he had struck a human being rather than a deer, and to conclude that the incident resulted in serious injury to or the death of the person. Defendant found no animal fur or parts on his vehicle following the accident. Furthermore, following the accident, defendant removed the grill from his vehicle and discarded it, parked the vehicle behind a building, and concealed it under a tarp. The evidence, and the reasonable inferences drawn therefrom, when viewed in a light most favorable to the prosecution, supported defendant's conviction. *Wolfe*, *supra*; *Milstead*, *supra*; *Lang*, *supra*.

Defendant argues that he is entitled to resentencing on the ground that the trial court erred in scoring OV 3 at 100 points for the death of the victim. We disagree.

We review a question of statutory interpretation and application de novo. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). Homicide, i.e., the death of a human being, MCL 777.1(c), is not an element of the failing to stop offense. A person can commit the offense of failing to stop at the scene of an accident without causing the death of another person. MCL 257.617(3) is a penalty provision, and does not make homicide an element of the failing to stop offense. The trial court did not err by scoring OV 3 at 100 points. *Webb*, *supra*. Defendant is not entitled to resentencing.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra