

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY PAUL BAY,

Defendant-Appellant.

UNPUBLISHED

November 16, 2006

No. 266739

Ingham Circuit Court

LC No. 05-000286-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious driving, MCL 257.626c. Defendant was sentenced to 12 months probation, community service, and restitution. Defendant appeals as of right. We affirm. This case is being decided without oral argument under MCR 7.214(E).

I. FACTS

On October 27, 2004, Molly Wiersema was struck by defendant's motorcycle as she attempted to cross Wilson Road at the Farm Lane intersection on the campus of Michigan State University. The evidence produced at trial established the following: (1) defendant was driving his motorcycle between 25 and 35 mph; (2) the speed limit through the intersection was 25 mph; (3) the intersection was busy with vehicular and pedestrian traffic; (4) as he approached the intersection, the motorcycle engine's rpm revved; (5) no eyewitness observed defendant either increase or decrease his speed at any time; (6) defendant did not stop at the intersection, even though the light was red; (7) Wiersema waited for the crosswalk signal to change to the walk sign, looked left toward defendant, and took one or two steps into the crosswalk; (8) there were other people standing behind Wiersema at the intersection; (9) as he approached Wiersema, defendant's "eyes got very large"; and (10) defendant did not stop, slow down, or swerve to avoid hitting Wiersema.

Defendant's sole argument on appeal is that the evidence presented at trial was insufficient to convict him. Specifically, defendant argues that the prosecution failed to present evidence that he was driving his motorcycle in a grossly negligent manner. We disagree.

II. STANDARD OF REVIEW

We review a claim of insufficient evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004). We do not interfere with the jury's role in determining the weight of the evidence or the credibility of witnesses. *Id.* at 561.

III. ANALYSIS

To obtain a conviction for felonious driving, the prosecution is required to produce proof of gross negligence. *People v McCoy*, 223 Mich App 500, 502; 566 NW2d 667 (1997). The following elements are required to establish gross negligence:

“(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.” [*Id.* at 503, quoting *People v Lardie*, 452 Mich 231, 251-252; 551 NW2d 656 (1996), quoting *People v Orr*, 243 Mich 300, 307; 220 NW2d 777 (1928).]

Here, a jury could reasonably infer that defendant had “[k]nowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another” because “a jury could properly infer that defendant knew that the act of driving requires the exercise” of such care. *Id.* Likewise, the jury could reasonably infer that defendant had the ability to avoid hitting Wiersema with his motorcycle by exercising “ordinary care and diligence,” but failed to do so. *Id.* For example, there is no evidence that defendant could not have stopped at the red light, could not have slowed down through the intersection, and could not have steered his motorcycle away from Wiersema.

Finally, a jury could reasonably infer that it must have been apparent to the ordinary mind that the result of defendant failing to exercise ordinary care and diligence in this situation was “likely to prove disastrous to another.” *Id.* *McCoy* concluded that this element was satisfied when the defendant drove his van at 55 mph in a 35 mph zone (a speed described as “significantly faster than the average speed” of 40 to 45 mph on the road) through heavy traffic and struck two women who had been standing in the same place for several seconds. *Id.* at 504. We stated that “[t]he fact that defendant did not slow down or swerve in an attempt to avoid striking [the women] . . . suggests that he was traveling at a reckless speed.” *Id.* Similarly, here, a jury could reasonably find that defendant drove recklessly because he was traveling at up to 10 mph over the speed limit through an intersection that was busy with vehicular and pedestrian traffic, and he failed to either slow down or swerve in an attempt to avoid striking Wiersema. In addition, defendant increased his motorcycle engine's rpm before entering the intersection, which a jury could reasonably infer signaled an attempt by defendant to accelerate through the red light.

Therefore, when viewing the evidence in the light most favorable to the prosecution, we hold that a rational fact-finder could conclude beyond a reasonable doubt that defendant was grossly negligent in driving his motorcycle.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette