

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DEON CALVIN LARKINS,

Defendant-Appellee.

UNPUBLISHED

October 7, 2010

No. 292799

Wayne Circuit Court

LC No. 09-006223-FH

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals as of right from an order dismissing negligent homicide charges without prejudice against defendant. Because the circuit court did not err in finding that there was insufficient evidence to support a bind over for negligent homicide, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was a driver involved in a motor accident in the area of I-96 and I-94 on October 30, 2008. The accident resulted in a fatality and defendant was charged with negligent homicide, a violation of MCL 750.324. To prove negligent homicide, the prosecution must show: (1) defendant was operating a motor vehicle; (2) defendant was operating the vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner; (3) defendant's negligence was a substantial cause of an accident resulting in injuries to the victim; and, (4) those injuries caused the victim's death. *People v Tims*, 449 Mich 83, 95, 99, 103-104; 534 NW2d 675 (1995). There is no need for the prosecution to prove that defendant's acts were intentional, reckless, or grossly negligent; rather, proof of ordinary negligence is sufficient to allow for prosecution under the statute. *People v Clark*, 171 Mich App 656, 659; 431 NW2d 88 (1988). Ordinary negligence is the failure to take reasonable care under the circumstances. *People v Traugher*, 432 Mich 208, 217; 439 NW2d 231 (1989).

Probable cause that the defendant has committed the crime is established by evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003); *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). To establish that a crime has been committed, a prosecutor need not prove each element beyond a reasonable doubt, but he must present some evidence of each element. *Yost*, 468 Mich at 126; *Henderson*, 282 Mich App at 312. "Circumstantial evidence and reasonable inferences from the evidence can be sufficient." *Henderson*, 282 Mich App at 312. Although the magistrate may weigh the

credibility of the witnesses, if the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for resolution of the questions by the trier of fact. *Yost*, 468 Mich at 128; *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998); *Henderson*, 282 Mich App at 312.

The prosecution's evidence was lacking at the preliminary examination. All that was shown was that a multi-vehicle accident occurred and another driver, Brian Melville, died. There was no evidence concerning defendant's alleged negligence. Defendant told Officer Gregory Primeau that he was traveling behind the victim's vehicle, which was traveling behind a tractor-trailer. Officer Primeau reported the following about his discussion with defendant: "The tanker was stopped and the vehicle that was directly in front of [defendant's] vehicle ran into the back of the tanker. After that, he said as a result of that first crash or first initial collision, he said that he struck the other vehicle." Contrary to the prosecution's argument on appeal, defendant did not "say anything about brakes." Defendant was not sure how fast he was driving but claimed to have three vehicle lengths between his car and the victim's car.

Officer Lamarr Johnson admitted that he was not an accident reconstructionist and that the only specialized training he received was a two-week course in accident investigation, including estimating the parties' speeds. Johnson, however, offered absolutely no evidence regarding defendant's rate of speed at the time of the accident. He readily admitted that he did not know. Still, based on hearsay statements he received from the truck driver, Johnson made the ultimate conclusion that the accident resulted from defendant's vehicle rear-ending the victim's vehicle and forcing it into the tractor-trailer. Johnson concluded, "[t]here were two impacts but the semi truck driver says only one impact, leaving me to believe that Mr. Larkins ran into Mr. Melville, pushing him into the semi." Johnson testified that there was no physical evidence in terms of skid marks that defendant made any attempt to brake.

These bold conclusions are troubling, especially in light of the absence of any eyewitness testimony. For whatever reason, the truck driver was not called as a witness. There were no other witnesses presented who may have been traveling in the area and could have testified about the degree of care defendant was using while driving. It is undisputed that the tractor-trailer was at a complete stop in front of the victim's vehicle. However, there was no definitive answer regarding whether Melville's vehicle was at a complete stop behind the tractor-trailer, as the prosecution would allege, or whether it was moving and ran into the tractor-trailer first, as defendant contends. Melville's vehicle suffered extensive damage to both the front and rear of the vehicle. Further complicating the situation was the fact that Melville was not wearing a seat belt. The medical examiner could not say whether the first impact would have caused the victim's injuries, or the second. In any event, Officer Johnson's testimony regarding the cause of the accident was insufficient to bind defendant over on a charge of negligent homicide. Defense counsel asked Officer Johnson:

Q. Without any interview and without looking at the ground or anything on the ground, just by looking at the accident, you can't tell which vehicle hit which vehicle first, could you?

A. No.

Beyond the fact that there was an accident and a dead driver there was simply no evidence to conclude that defendant was driving at an immoderate rate of speed or in a negligent manner. The prosecutor asks the court to draw too many inferences and assume too much. The prosecution's duty was to present at least a modicum of evidence with regard to each element of negligent homicide, which it failed to do. For these reasons, the district court judge abused her discretion in binding defendant over on the charge. The circuit court properly dismissed the case.

Affirmed.

/s/ Patrick M. Meter

/s/ Pat M. Donofrio