STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 17, 2016
v	No. 329446 Wayne Circuit Court
BRYCE EAN KERN, Defendant-Appellant.	LC No. 15-003351-FH

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of reckless driving causing death, MCL 257.626(4), reckless driving causing serious impairment of a body function, MCL 257.626(3), failing to stop at the scene of an accident resulting in death, MCL 257.617, and failing to stop at the scene of an accident resulting in serious impairment of a body function, MCL 257.617. Defendant was resentenced to 4 to 15 years' imprisonment for the reckless driving causing death conviction, two to five years' imprisonment for the reckless driving causing serious impairment of a body function conviction, and one to five years for each of the failing to stop convictions.[1] We affirm.

This case arises from a motor vehicle accident involving defendant and two motorcyclists. Defendant was speeding and ran a red light, which resulted in the motorcyclists hitting the side of his car after they were unable to stop.[2] One motorcyclist died, and the other

[1] Following his original sentencing, on February 11, 2016, defendant filed a motion for resentencing, arguing that Offense Variable 3 was incorrectly scored for reckless driving causing death. The trial court granted defendant's motion on March 10, 2016. On April 19, 2016, defendant was resentenced from 4 ½ to 15 years' imprisonment to 4 to 15 years' imprisonment for the reckless driving causing death conviction, two to five years' imprisonment for the reckless driving causing serious impairment of a body function conviction, and one to five years for each of the failing to stop convictions.

[2] There is conflicting testimony as to whether the motorcycles hit the car, or the car hit the motorcycles. The record as a whole supports that the motorcycles hit the car.

suffered severe brain damage. The passenger in defendant's car testified that defendant was dazed and confused at the time of the accident. After the accident, defendant fled the scene on foot after a friend of the motorcyclists assaulted defendant. Defendant failed to report the accident to the police until almost 15 hours after the accident.

Defendant argues that there was insufficient evidence to support his convictions. Sufficiency of the evidence challenges are reviewed de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). This Court will review the evidence in a light most favorable to the prosecution when determining whether a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *People v Smith-Anthony*, 494 Mich 669, 676; 837 NW2d 415 (2013). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A conviction for reckless driving causing death requires proof that defendant (1) "operate[d] a vehicle upon a highway . . . or other place open to the general public," MCL 257.626(2), (2) operated that vehicle "in willful or wanton disregard for the safety of persons or property," and (3) by the operation of that vehicle " 'cause[d] the death of another person. . . .' " *People v Jones*, 497 Mich 155, 166; 860 NW2d 112 (2014), quoting MCL 257.626(33) and (4). Likewise, "[a]nyone who violates MCL 257.626(2), and in doing so causes serious impairment of a body function to another person, is guilty of a felony." *People v Russell*, 297 Mich App 707, 723; 825 NW2d 623 (2012), citing MCL 257.626(3).

Defendant argues that, because there was evidence that he was dazed or incoherent just prior to the accident, he could not have acted willfully or wantonly, and thus, there was insufficient evidence to support his reckless driving convictions. There is no dispute that defendant was operating a motor vehicle upon a highway or other public place. It also appears that defendant does not dispute that he caused the death of Reiger Brown and serious impairment of a body function to Reginald Mills.

The second element—which is challenged by defendant—requires proof that defendant operated the vehicle in a "willful or wanton disregard for the safety of persons or property." MCL 257.626(2). The statute does not define "willful or wanton," and this Court has not defined this phrase in a published opinion in the reckless driving context. However, in *People v Goecke*, 457 Mich 442, 466-467; 579 NW2d 868 (1998), a second-degree murder case, our Supreme Court explained that one may have a willful and wanton disregard for death or bodily harm when, although not intending harm, he or she acted under circumstances where there was a "plain and strong likelihood" that harm might result.

Both Ashley Jackson and Hakim Hare testified that defendant drove through a red light on Hubbell at McNichols at an estimated speed of 60 miles per hour. The speed limit on Hubbell is 30 miles per hour. Jackson and Hare confirmed that the motorcycles had a green light. Speeding and running red lights constitute reckless driving and indicate willful and wanton disregard for the safety of persons or property. See *People v Miller*, 198 Mich App 494, 496-497; 499 NW2d 373 (1993).

While there was evidence presented that defendant may have been incoherent at the time of the accident, the only evidence admitted in support of this theory was the testimony of Jackson. However, there was evidence that Jackson may not have been a credible witness,[3] and this Court has maintained that it "does not interfere with a jury's credibility determinations." *People v Noble*, 238 Mich App 647, 657; 608 NW2d 123 (1999); see also *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009) ("The credibility of witnesses and the weight accorded to evidence are questions for the jury, and any conflict in the evidence must be resolved in the prosecutor's favor.") The jury determined that defendant acted in a willful and wanton manner, despite Jackson's testimony that defendant was dazed and incoherent, and there was independent evidence to support that conclusion. See *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

A conviction for failing to stop at the scene of an accident requires proof that (1) the defendant knew or had reason to believe that he was in an accident on property traveled by the public, and (2) that he either (a) failed to immediately stop and remain at the scene "until the requirements of section 619 are fulfilled," or (b) failed to "immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of 619(a) and (b)" if defendant reasonably and honestly believed "that remaining at the scene would result in further harm." MCL 257.617. See also *People v Feezel*, 486 Mich 184, 194; 783 NW2d 67 (2010). MCL 257.619 requires the defendant to provide his name, address, and vehicle registration and present his driver's license to the police or other driver or occupant from the other vehicle(s) involved in the accident. MCL 257.619(a) and (b). If there is no harm to the defendant and he chooses to remain on scene, the defendant must also help get medical assistance or provide transportation to anyone who is injured in the accident. MCL 257.619(c). Lastly, for these specific charges, the prosecution had to prove that the defendant caused the accident resulting in the death and the serious impairment of a body function. MCL 257.617(2) and (3). See also *Feezel*, 486 Mich at 194 ("[t]he statute imposes criminal liability if an individual fails to stop 'following an accident caused by that individual and the accident results in death of another . . .' " (emphasis omitted)).

Defendant argues that there was insufficient evidence to find him guilty of either failing to stop charge because (1) he reported the accident to the detectives handling the case after leaving an unsafe accident scene, and (2) the evidence failed to establish that he knew that the accident resulted in death or serious impairment.

[3] When Jackson testified at trial that the defendant may have been traveling at a speed of 30 to 60 miles per hour at the time of the accident, the prosecutor impeached Jackson with her preliminary examination statement that the car was going 60 miles per hour. When Jackson testified that she never told defendant to slow down but maybe to stop, the prosecutor impeached Jackson with her preliminary examination statement that she had asked defendant more than once to slow down. Jackson also told Officer Rhonda Lewis, who was at the scene of the accident, that she told defendant to slow down.

As to the first element, defendant argues that there was insufficient evidence that he knew that he had killed or seriously injured anyone. However, the statute requires a driver to stop if he "knows or . . . has reason to believe that he or she has been involved in an accident," not only if he knew that he had killed or seriously impaired someone. MCL 257.617. And, the prosecution submitted sufficient evidence for the jury to reasonably infer that defendant knew that he was in an accident. Hare testified that defendant stopped and tried to get out of his vehicle after the accident occurred, while detective Enrique Jackson testified that defendant was supposed to meet him on the next day to discuss the accident. Further, Jemeka Jackson testified that defendant was going to turn himself in, and Bryan Chance testified that defendant had decided to turn himself in after a phone call to a family friend. Last, multiple witnesses testified that the accident occurred on a public roadway, specifically the intersection of Hubbell and McNichols in Detroit. Therefore, there was sufficient evidence to establish that defendant knew that he was in an accident upon property traveled by the public.

As to the second element, the evidence establishes that Hare physically attacked defendant after the accident, which resulted in defendant fleeing the scene. This was sufficient evidence for the jury to find that it was unsafe for defendant to remain at the accident scene. However, the evidence also established that defendant first reported the accident nearly 15 hours later, through a voicemail left with Detective Jackson. Although defendant may have attempted to contact the police a few hours prior to that voicemail, there is no evidence that any of the information required under MCL 257.619 was provided to any police officer prior to that time. Further, the testimony of Chance established that defendant had ample opportunity to contact the police shortly after the accident, but defendant instead chose to call Chance, defendant's mother, and a family friend. Defendant was also able to travel to Ypsilanti, return to Detroit to pick up his belongings, and then travel back to Ypsilanti before he attempted to make a report of the accident. Defendant needed to make contact with the police and provide his name, address, registration number, and driver's license. MCL 257.619. Defendant had the opportunity to make a report of the accident both by phone and in person within a couple hours, if not minutes, of the accident, but failed to do so. Therefore, while the jury could reasonably infer that defendant felt unsafe remaining at the scene of the accident, it could also reasonably infer that defendant did not immediately report the accident as soon as he was able.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello