

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMIAH JOHNSON,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 300538

Wayne Circuit Court

LC No. 09-026848-FC

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Following his bench trial, the trial court convicted¹ defendant Jeremiah Johnson of second-degree murder,² failure to stop at the scene of an accident resulting in death when at fault,³ and failure to stop at the scene of an accident resulting in serious impairment or death.⁴ The trial court sentenced Johnson to 25 to 40 years' imprisonment for second-degree murder, 5 to 15 years' imprisonment for failure to stop at the scene of accident resulting in death when at fault, and one to five years' imprisonment for failure to stop at the scene of an accident resulting in serious impairment or death. Johnson appeals as of right. We affirm.

I. FACTS

This case arises from a car crash that occurred on the night of October 4, 2009, in Detroit, Michigan. On that evening, Johnson and his girlfriend, Iesha Thomas, went to a club in Detroit. They arrived sometime before midnight. Before they got there, they each had already drunk a half pint of "1800" liquor. They were at the club for approximately half an hour when Thomas left in Johnson's blue Dodge Ram pickup truck to go buy more liquor. She could not find a store to buy liquor, so she returned to the club and attempted to park on a side street. But before she got out of the truck, someone approached her and informed her that she could not park there. She called Johnson, who was still in the club, to come out and move the truck.

¹ The prosecution also charged Johnson with manslaughter with a motor vehicle, MCL 750.321, and aggravated domestic violence, MCL 750.81a(2), but Johnson was acquitted of those charges.

² MCL 750.317.

³ MCL 257.617(3).

⁴ MCL 257.617(2).

When Johnson came outside, the couple began yelling and fighting. According to Thomas, Johnson accused her of having sex with the man who told her to move the truck. Thomas testified that Johnson hit her in the face two or three times with a closed hand, and she began to hit him back. Thomas then walked away from Johnson and went to a BP gas station down the street. Johnson followed her. While inside the station, the couple continued to fight and hit each other. They then left the gas station, and Johnson's friends, Rick and Dee,⁵ who had driven the truck to the gas station, tried to get Thomas to go in the truck with Johnson. She refused and walked away toward the service drive of the Chrysler freeway. Johnson again followed her and began hitting her and kicking her.

Eyewitness Roderick Simpson testified that he and a couple friends were at the BP station at about 11:30 p.m. on October 4, 2009. The men saw the Johnson and Thomas fighting on the Southfield service drive, right next to the BP station. Simpson then saw a Dodge Ram pickup truck pull out of the gas station parking lot and drive over to the couple. The driver walked away, and Johnson pulled or pushed Thomas into the truck. The truck drove off down the service drive, but when it went around the overpass it hit the guardrail and stopped. Thomas then jumped out of the truck and ran out into the street. A white car stopped at the light where Thomas was running, and she banged on the window of the car and the driver let her in and then drove away. Johnson then backed his truck away from the guardrail, drove over the sidewalk, and sped off on Plymouth Road toward the white car.

Another eyewitness, Michael Austin, was walking on Mansfield about 11:30 p.m. on October 4, 2009. He saw the blue Dodge Ram truck driving fast and "ramming" the smaller white car. He testified that the truck was "pushing" the white car "with soft little taps." The truck tapped the car at least once from the back, then swerved to the left before swerving back to the right and hitting the white car again. The white car crashed into an electrical pole, and the pole fell down on the vehicle. The blue truck then continued driving away from the scene and did not return to the site of the accident.

Detroit Police Officer Raymond Diaz testified that there was extensive damage to the white car. Detroit Police Officer Gayle Bowden testified that the occupants of the white car were Iesha Thomas and Anthony Jackson, who were both taken to the hospital before her arrival at the scene.

Jackson, the driver, was killed as a result of the accident. Dr. Carl Schmidt, a forensic pathologist who works as a medical examiner for Wayne County, performed a postmortem examination on Jackson on October 5, 2009. He found that Jackson had a six-inch laceration on the back side of his head which caused extensive hemorrhaging of the soft tissues in the scalp, as well as a fracture of the skull which caused a brain injury by distorting the brain stem. Dr. Schmidt testified he had received a report that Jackson's car had been "rammed by another vehicle, deliberately," so he certified Jackson's death as a homicide.

Tara Mitchell is the mother of three of Johnson's children. She testified for the prosecution, albeit unwillingly, about past events involving Johnson's driving. According to

⁵ The record does not disclose these individuals' surnames.

Mitchell, on May 19, 2008, she was driving a vehicle when Johnson pulled up beside her in his vehicle and attempted at least twice to cut her off. He also pulled in front of her, put his car into reverse, and backed up in an effort to run her off the road. Then on January 28, 2009, Mitchell was in a vehicle with her husband, Charlie Wright, and at least five, possibly as many as eight, children. There were snow drifts all over the road. Johnson pulled up next to them, yelling at them, and swerving toward them to run them into the snow banks. Johnson then pulled in front of them and slammed on his brakes, causing them to rear-end Johnson's vehicle. Mitchell testified, however, that if the brakes on her vehicle had been better, the car would have been able to stop before hitting Johnson's vehicle. Charlie Wright also testified regarding this incident and admitted assaulting Johnson later at the police station.

Johnson did not testify at trial, but he had given statements to police officers during the investigation, which were recorded on video and played at trial.

As stated, the trial court convicted and sentenced Johnson for second-degree murder, failure to stop at the scene of an accident resulting in death when at fault, and failure to stop at the scene of an accident resulting in serious impairment or death. Johnson now appeals his second-degree murder conviction.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Johnson argues that there was insufficient evidence presented at trial to support his second-degree murder conviction. Specifically, he asserts that the evidence did not show he had the requisite mental state to satisfy the "malice" element of the crime. This Court reviews de novo a claim of insufficient evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find the elements of the crime were proved beyond a reasonable doubt.⁶ However, this Court generally will not disturb the fact-finder's determinations of the credibility of witnesses or the weight of the evidence.⁷

B. LEGAL STANDARDS

The elements of second-degree murder are: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse."⁸ Malice may consist of intent to kill or do great bodily harm, or intent to commit an act "in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm."⁹ This is also known as "depraved-heart" murder, and requires only general, rather than

⁶ *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

⁷ *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

⁸ *People v Roper*, 286 Mich App 77, 84; 777 NW2d 483 (2009), quoting *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999).

⁹ *Roper*, 286 Mich App at 84, quoting *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998).

specific, intent to fulfill the malice element.¹⁰ To satisfy this type of malice, a defendant need not intend the harm that results from his actions; rather, he must merely commit an act “in obvious disregard of life-endangering consequences.”¹¹ “Malice may be inferred from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.”¹²

C. APPLYING THE LEGAL STANDARDS

The evidence showed that Johnson and his girlfriend, Thomas, had been engaged in a domestic dispute on the night of the accident. They were first arguing outside a nightclub. Then, when Thomas tried to go into a gas station, Johnson followed her in, and they continued to argue and were hitting each other inside the gas station. Finally, when they went back outside, Johnson further abused Thomas, hitting her and kicking her in the street. After Johnson forced her into his pickup truck and tried to drive away, Thomas escaped, ran into the street, and banged on the window of Jackson’s car, which was stopped at a light nearby. Jackson let Thomas in and drove away quickly. Johnson sped after them in his truck and ran into Jackson’s car from behind, then pulled up next to the car and swerved away from it, then swerved back into it, causing it to crash. Jackson died and, on the basis of his examination and reports of the incident, the medical examiner certified Jackson’s death as a homicide.

The evidence of Johnson’s ill will toward Thomas and intentional striking of Jackson’s vehicle shows that Johnson engaged in willful and wanton conduct in satisfaction of the malice element for second-degree murder. Johnson’s actions, at a minimum, meet the standard for obvious disregard of life-endangering consequences.¹³ It is clear that the act of intentionally repeatedly ramming a moving vehicle with one’s own moving vehicle would have the natural tendency or likelihood to cause death or great bodily harm.¹⁴

Johnson cites *People v Goecke* for the proposition that drunk driving alone will not support a conviction for second-degree murder. Johnson also cites *People v Werner*,¹⁵ a case in which a defendant was found guilty of second-degree murder because he drove drunk with actual knowledge that drinking heavily had caused him to black out in the recent past and, therefore, knew driving drunk could result in blacking out and causing an accident.

We first note that *Goecke* and *Werner* are distinguishable because, although the record includes evidence that Johnson was intoxicated, he makes no argument that his ability to form the necessary intent was negated by his intoxication, which was at issue in both of those cases.

¹⁰ *Goecke*, 457 Mich at 464.

¹¹ *Id.* at 466.

¹² *Roper*, 286 Mich App at 84 (quotation marks and citations omitted).

¹³ See *Goecke*, 457 Mich at 466.

¹⁴ See *id.*; *Roper*, 286 Mich App at 84.

¹⁵ *People v Werner*, 254 Mich App 528, 531; 659 NW2d 688 (2002).

Further, in *Goecke*, the Michigan Supreme Court stated that, in the three cases consolidated for appeal in that action, the defendants' second-degree murder convictions were justified by behavior that rose to a level of culpability beyond that demonstrated by driving while intoxicated.¹⁶ Johnson fails to realize his own culpability likewise rises to a level beyond that of a drunk driver. In the *Goecke* cases, the defendants were engaging in such conduct as excessive speeding, narrowly avoiding other cars, and running stoplights.¹⁷ These are the actions that took the defendants' conduct into the realm of fault for second-degree murder.¹⁸ Here, Johnson was not only driving fast, he also deliberately rammed into Jackson's vehicle. Under the *Goecke* framework, Johnson's conduct illustrates a level of intent that supports a conviction for second-degree murder.

With respect to *Werner*, Johnson attempts to argue the corollary of its holding in his favor, stating that because his prior experiences of deliberately hitting other cars never resulted in injury to anyone, he had no reason to believe that hitting another car with his truck would cause death or serious injury. Johnson's argument is without merit; it is unreasonable to believe that Johnson could legitimately think that causing an automobile accident is not likely to be a life-endangering action.

Regardless, the Court in *Goecke* held that it is "only a highly unusual case" that requires a determination of a defendant's subjective intent—a case in which the defendant is "more absent-minded, stupid, or intoxicated than the reasonable man."¹⁹ Johnson, despite some intoxication, appeared to retain the usual faculties, obviating the need for a consideration of his subjective intent. It is basic common knowledge that hitting another car could result in death or injury, and it can be inferred that anyone who does so purposely is setting in motion a destructive and life-threatening force. Thus, given Johnson's intentional acts of hitting Jackson's car, and the knowledge that such action is inherently and obviously dangerous to life, we can easily infer the element of malice.

In sum, we conclude that there was sufficient evidence presented at trial to support Johnson's second-degree murder conviction.

We affirm.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher

¹⁶ *Goecke*, 457 Mich at 469.

¹⁷ *Id.* at 448-449, 451.

¹⁸ *Id.* at 469.

¹⁹ *Id.* at 464, 464 n 25, citing 2 LaFave & Scott, Substantive Criminal Law, § 7.4b, p 205.