

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 9, 2012

v

AARON MICHAEL PRYOR,

Defendant-Appellant.

No. 302014
Ingham Circuit Court
LC No. 10-000151-FC

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

A jury convicted defendant of involuntary manslaughter, MCL 750.321c, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to prison terms of 9-1/2 to 15 years for the manslaughter conviction and two years for the felony firearm conviction. Defendant appeals as of right, challenging only the sufficiency of the evidence. We affirm.

Defendant's convictions arose from the death of Jamelah Davis. At the time, defendant was living with several people, including Davis. Throughout the day on January 5, 2010, defendant and several friends played with a gun by loading and unloading it, dry firing it, and cocking and uncocking it. In the early morning hours of January 6, 2010, defendant had a gun in his lap as he was sitting on a couch downloading movies with his laptop. Somehow the power cord to the laptop became unplugged. Defendant and Davis, who had been sitting on the couch at the time, argued over the unplugged laptop. Defendant took a bullet from his pocket and loaded the gun. During the argument defendant told Davis that "If you would have f__ed up my download, I would have f__ed you up." Witnesses testified that the remark appeared to have been made in a joking manner, but shortly thereafter Davis said, "Nigger, if you gonna shoot me, shoot me." Witnesses testified that the gun was pointed at Davis and that defendant then shot Davis.

Defendant admitted possessing the gun, loading it during the argument with Davis, and cocking the gun into the ready position, but denied intentionally shooting the gun. He testified that his argument with Davis was a playful one and that after the argument ended he began playing with the gun, loading it, spinning the cylinder, and snapping it into place. He stated that he successfully cocked and uncocked the gun several times. Davis then told defendant that he "wouldn't be able to shoot it in the air if it was a basketball," and told him "if you can shoot it,

shoot me.” According to defendant, he jokingly said “okay” and that while he was trying to uncock the gun his finger slipped and the gun fired. He denied pointing the gun at Davis.

Michigan State Police Special Sergeant Pope testified as an expert and identified the gun as a .38 caliber Colt revolver. He explained that the gun was both a single action and double action revolver, meaning that the gun could be fired by pulling the trigger or by cocking the gun and then pulling the trigger. Pope testified that the cocked gun could be uncocked by pulling the trigger and firing the gun, or by applying slight pressure to the trigger and slowly lowering the hammer. The latter method is utilized when a person does not want to fire the weapon.

Defendant argues that the evidence was insufficient to support his conviction for involuntary manslaughter. He asserts that the shooting was accidental and that he lacked the requisite mens rea to be convicted of involuntary manslaughter. We disagree. “The test for determining the sufficiency of the evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

Involuntary manslaughter under a gross-negligence theory requires proof that the defendant (1) knew of “a situation requiring the use of ordinary care and diligence to avert injury to another,” (2) had the ability to “avoid the resulting harm by ordinary care and diligence in the use of the means at hand,” and (3) failed to “use 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.” *People v Albers*, 258 Mich App 578, 582; 672 NW2d 336 (2003). Stated otherwise, “a defendant who does not seek to cause harm, but is simply reckless or wantonly indifferent to the results, is grossly negligent.” *People v Lanzo Const Co*, 272 Mich App 470, 477; 726 NW2d 746 (2006).

Viewed in the light most favorable to the prosecution, the evidence was sufficient to enable a reasonable juror to find beyond a reasonable doubt that defendant acted with gross negligence. Even if the jury had believed defendant’s testimony that he was trying to uncock the gun when the hammer slipped and that the shooting was accidental, the act of uncocking a loaded weapon while it is pointed in the general direction of a person is not acting with ordinary care and diligence. The prosecutor presented sufficient evidence to support a conviction of involuntary manslaughter under a gross negligence theory.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray