

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 1387

STATE OF LOUISIANA

VERSUS

MICHAEL A. WATSON

Judgment Rendered: December 23, 2009.

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On Appeal from the
16th Judicial District Court,
in and for the Parish of St. Mary
State of Louisiana
District Court No. 165,136

The Honorable Lori A. Landry, Judge Presiding

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Michael A. Watson

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

J.P. Pettigrew, J. DISSENTS and assigns Reason.

CARTER, C.J.

The defendant, Michael A. Watson, was charged by grand jury indictment with two counts of negligent homicide, in violation of La. R.S. 14:32. The defendant entered a plea of not guilty. He waived his right to a jury trial and, following a bench trial, was found guilty as charged on both counts. The defendant was sentenced to five years at hard labor. The sentence was suspended, and he was placed on supervised probation for five years with various conditions of probation. As a condition of probation, he was ordered to serve six months imprisonment in the parish jail.

On appeal, the defendant challenged the sufficiency of the evidence to support his convictions; however, finding a sentencing error under La. Code Crim. P. art. 920(2), this court pretermitted consideration of the merits of the appeal. This court found that the trial court improperly imposed a single sentence for both counts of negligent homicide. Accordingly, the sentence was vacated, and the matter was remanded to the trial court for resentencing. See State v. Watson, 2008-1667 (La. App. 1 Cir. 2/13/09), 5 So.3d 313 (unpublished).

Subsequently, on April 28, 2009, the defendant was resentenced to five years at hard labor for each count of negligent homicide. The sentences were ordered to run concurrently. The sentences were suspended, and the defendant was placed on supervised probation for five years with various conditions of probation, namely those conditions that were stated in full when the defendant was initially sentenced. As a condition of probation, he was ordered to serve six months imprisonment in the parish jail.

The defendant now appeals. In his single assignment of error, he argues the evidence was insufficient to support his convictions for negligent homicide. We affirm the convictions and sentences.

FACTS

On May 4, 2004, the defendant was driving west in an eighteen-wheeler on U.S. Hwy. 90 in St. Mary Parish. Remus Tardy was driving south in a Buick Park Avenue on La. Hwy. 318.¹ Riding with Tardy were Raymon Hudson in the front passenger seat, and Robert Nathan and Derrick Green in the backseat. At about 6:10 p.m., near the middle of the intersection of U.S. Hwy. 90 and La. Hwy. 318 in Sorrel (known as the Four Corners), the defendant's eighteen-wheeler struck the Tardy vehicle near the left-rear side. Nathan and Green were ejected from the vehicle and killed.

Trial testimony and exhibits established that there were traffic lights for both U.S. Hwy. 90 westbound traffic and La. Hwy. 318 southbound traffic. On U.S. Hwy. 90, about one-tenth of a mile east and west of the intersection, there were yellow caution lights and signs stating, "PREPARE TO STOP WHEN FLASHING." Just before the traffic light on U.S. Hwy. 90 was to turn red, the caution lights began blinking to warn motorists to stop shortly ahead. There were no such caution lights on La. Hwy. 318. According to Master Trooper Dennis Pellerin with the Louisiana State Police, Troop I, and the lead investigator of the accident, the traffic light and caution light cycles were working properly on the day of the accident. Trooper Dexter Bourque with the Louisiana State Police, Troop I, also testified the lights worked properly. According to Trooper Bourque, when

¹ Tardy was driving his mother's vehicle.

the traffic light in the westbound lane of U.S. Hwy. 90 was green, the caution lights were off. When the caution lights began blinking, the U.S. Hwy. 90 westbound green light remained green for five seconds. After five seconds, the green light turned amber for six seconds, then turned red. While the traffic light was amber, the caution lights continued to blink. Therefore, it took eleven seconds for the traffic light to go from green to red. The speed limit on U.S. Hwy. 90 east of the intersection was 70 m.p.h., and the speed limit on La. Hwy. 318 was 55 m.p.h. Trooper Pellerin indicated in his report that Tardy was traveling 25 m.p.h. as he entered the intersection. Trooper Pellerin testified the defendant told him that he (defendant) was traveling 60 m.p.h. as he entered the intersection.

Trooper Pellerin testified that he obtained an oral statement from the defendant. The defendant told him that his light was green as he went through the intersection. Trooper Pellerin issued the defendant a ticket for disregarding a red light. Tardy was not cited. Both drivers were tested for drugs and/or alcohol in their systems. The defendant tested negative for both drugs and alcohol. Tardy had a .05 BAC level.

There were several eyewitnesses to the accident. The testimony of Kenneth Wise, Jr., was taken by oral deposition because he was a resident of Texas. A transcript of the testimony was filed into the record for the trial court to read, and the parties agreed the deposition would be considered as trial testimony. According to the Wise deposition, on May 4, 2004, Wise and the defendant were truck drivers for Ace Transportation. Wise did not know the defendant on a personal level, but only through a working relationship. On the day of the accident, Wise and the defendant were

running together, both heading back to Texas from Fourchon with “Super Sacs” loads. They were traveling west on U.S. Hwy. 90. Wise was about 100 yards behind the defendant. It was a clear evening, and there was still daylight. They were in the left lane. As they approached the intersection of U.S. Hwy. 90 and La. Hwy. 318, the caution lights were not blinking. The defendant entered the intersection, and Wise witnessed the crash. At impact, the defendant’s light was green. Wise did not give a statement to any of the police at the scene. Wise gave a statement only to an Ace Transportation safety person who arrived at the scene.

Dondraneke Lofton testified at trial that she was traveling west at about 75 or 80 m.p.h. in the left lane on U.S. Hwy. 90, two to three car lengths behind the defendant. She observed the caution lights flashing as the defendant approached them. Her traffic light was red. As she began to slow down to stop at the red light, she observed the defendant run the red light. She heard the screeching of the defendant’s tires followed by the noise of the collision. She stopped at the red light, and about two or three seconds passed before the light turned green. While she was driving west on U.S. Hwy. 90 prior to the accident, she did not recall seeing another eighteen-wheeler behind her.

Stephen Theunissen testified at trial that he was traveling east on U.S. Hwy. 90. About a quarter of a mile from the intersection, he observed the caution lights flashing. He was between one-fourth and one-tenth of a mile from the intersection and slowing down to stop at the red light when the accident occurred. He had observed the Tardy vehicle coming into the intersection from his left. He stated that his (Theunissen’s) “traffic light was

red at the time the accident occurred.” Theunissen did not remember any cars behind the eighteen-wheeler. He did state, however, that it seemed there was one car stopped at the light on the right side of the eighteen-wheeler.

Oliver Tallmore testified at trial that he was traveling west on U.S. Hwy. 90. He was in the right lane. Tallmore observed in his rearview mirror that the defendant also was in the right lane about two car lengths behind him. Tallmore observed the caution lights blinking as he passed them. As Tallmore was preparing to stop at the red light, the defendant, who was in the right lane behind him, switched lanes to go around Tallmore. The defendant continued to drive through the red light before crashing into the Tardy vehicle.

Douglas Tellman testified at trial that he was traveling east on U.S. Hwy. 90. He observed the caution lights flashing. About 50 to 100 yards from the caution lights, he saw the caution lights stop flashing. Almost immediately after they stopped flashing, Tellman observed debris flying in the air at the intersection. Tellman did not witness the actual impact and did not see the color of his traffic light.

Gary Richardson testified at trial that he was traveling east on U.S. Hwy. 90. He was about one-eighth of a mile from the caution lights, which were not flashing, when he saw the accident. He did not notice the color of his own traffic light. However, at the time of the impact, his caution lights were not flashing.

Hudson, a survivor from the Tardy vehicle, testified at trial that Tardy had the green light as they drove through the intersection. Hudson stated

that, as Tardy was approaching the traffic light, it was red. Tardy slowed down. By the time Tardy got to the red light, it had turned green. Hudson testified he never saw the eighteen-wheeler that hit them.

Tardy testified at trial that he had picked up Hudson, Nathan, and Green, each from their homes in Baldwin before heading to his (Tardy's) girlfriend's house. Prior to picking them up, Tardy consumed three beers over the course of the afternoon. He did not consume any alcohol while driving. Tardy traveled south on La. Hwy. 318, and as he approached the intersection, his traffic light was red. Tardy began slowing down. His traffic light then turned green, and he proceeded into the intersection. The only thing Tardy saw just before the collision was the bumper of the eighteen-wheeler. The police report indicated Tardy was traveling 25 m.p.h. at the time of impact, but Tardy testified he was traveling slower than that. Tardy had a prior DWI conviction.

Defense witness Robert Swint was accepted by the trial court as an expert in accident reconstruction. In investigating the accident scene, Swint videotaped all of the traffic lights at the intersection, as well as the caution lights, to determine the light sequencing. He made a drawing of the accident site, and reviewed police reports and depositions. He also measured the various skid marks left by braking of both the defendant's tractor and trailer. Based on his calculations, Swint concluded that at the time of impact the defendant had a green light and Tardy had a red light or, at a minimum, a yellow light. There were 144 feet of skid marks from the defendant's eighteen-wheeler prior to the intersection. After impact, the defendant traveled another 204 feet. Even if the defendant had tried to turn his truck to

avoid impact, he would not have been able to do so. Once the brakes were locked up, the defendant would have moved in a straight direction without the ability to change that direction. Swint's calculations were based on speeds of about 60 to 70 m.p.h. for the defendant and about 20 to 25 m.p.h. for the Tardy vehicle, and on the testimony of Richardson and Tellman. However, on cross-examination, Swint agreed that Tellman's testimony could suggest the defendant ran a red light:

Q. So you would agree that under Mr. Tellman's testimony, where he says he sees the lights stop flashing -- he watches the lights stop flashing and immediately sees debris --

A. Yes.

Q. -- that Mr. Watson is not making a proper stop for a red light, if he is running into the intersection and the light is turning green as he is striking the Tardy vehicle, right?

A. You can make that assumption, yes.

The defendant was a truck driver who lived in Clute, Texas. On the day of the accident, he was driving an eighteen wheeler for Ace Transportation. He was traveling west on U.S. Hwy. 90 pulling a twenty-ton load to Galveston, Texas. The defendant testified at trial that he was in no rush because he had until the next morning to get the load to Galveston. He had not consumed any alcohol or medication and had plenty of sleep. According to the defendant, after passing the Baldwin exit, he drove in the left lane. Wise traveled behind him, and from the Baldwin exit to the U.S. Hwy. 90 - La. Hwy. 318 intersection, there was never a car between them. As he headed toward the intersection, the caution lights were not flashing. His traffic light was green. His speed was about 60 m.p.h. because, near the intersection, the speed limit dropped to 65 m.p.h., and it was his practice to travel five m.p.h. under the speed limit. As the defendant passed under the caution lights, Wise was within a truck length behind him. Prior to entering

the intersection, he scanned both sides of the highway to make sure the intersection was going to be clear. His light was green, and he proceeded. He did not see the Tardy vehicle until it was entering the intersection. Wise called the defendant on his CB radio and told him to watch out for the white car. When the defendant saw the Tardy vehicle, he engaged all of his brakes and tried to steer to the right to get behind the vehicle. According to Swint, following the impact, the Tardy vehicle traveled 91 feet before coming to rest.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the evidence was insufficient to support the convictions for negligent homicide. Specifically, the defendant contends the evidence shows, at best, that he ran a red light and that such a traffic violation constitutes only ordinary negligence and does not rise to the level of criminal negligence.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). See also La. Code Crim. P. art. 821B; **State v. Ordodi**, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for

reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the fact finder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See State v. Patorno, 2001-2585 (La. App. 1 Cir. 6/21/02), 822 So.2d 141, 144.

Negligent homicide is the killing of a human being by criminal negligence. La. R.S. 14:32A. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence. La. R.S. 14:32B. Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances. La. R.S. 14:12.

The defendant cites several cases for the proposition that a traffic violation, alone, does not rise to the level of criminal negligence. See State v. Moak, 387 So.2d 1108 (La. 1980); State v. Jones, 298 So.2d 774 (La. 1974); State v. Garrett, 525 So.2d 1235 (La. App. 1st Cir. 1988); State v. Crawford, 471 So.2d 778 (La. App. 2d Cir. 1985). None of the cases cited by the defendant involved the traffic violation of running a red light. Our review of the jurisprudence reveals there also are cases where a defendant was convicted of negligent homicide for traffic violations only. See State v. Coleman, 236 La. 629, 638-639, 108 So.2d 534, 537-538 (1959) (defendant speeding); State v. Wilcox, 26,126 (La. App. 2 Cir. 6/22/94), 639 So.2d 385, 387-389, writ denied, 94-1961 (La. 12/16/94), 648 So.2d 386 (defendant passing on the left and speeding); State v. Rock, 571 So.2d 908, 909-910 (La. App. 5th Cir. 1990), writ denied, 577 So.2d 49 (La. 1991)

(defendant crossed center line on a two-lane bridge marked “Do Not Pass”). Moreover, in **State v. Hammontree**, 363 So.2d 1364, 1372 (La. 1978), the Louisiana Supreme Court addressed the law of criminal negligence as it related to traffic violations:

Reasonably careful men are expected to obey safety laws, and it is within the province of the legislature to permit the inference that one who violates a safety law and thereby injures another is guilty of criminal negligence; and if it is proved beyond a reasonable doubt that the criminal negligence was the cause of death, the perpetrator may be guilty of criminal homicide.

In the instant matter, at least five eyewitnesses testified Tardy had the green light, while three eyewitness testified the defendant had the green light. The trial court chose to believe those witnesses who testified Tardy had the green light at the time of the crash over those witnesses, including the defendant’s expert witness, who maintained the defendant had the green light at the time of the crash. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness, including an expert. **State v. Ducksworth**, 496 So.2d 624, 634 (La. App. 1st Cir. 1986). Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact’s determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a fact finder’s determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1 Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a “thirteenth juror” in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence that conflicts with the

testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

The trial court also found that the defendant's actions under these circumstances rose to the level of criminal negligence. We see no reason to disturb this legal finding. We agree, as well, with the implicit finding of the trial court that Tardy's .05 BAC level was not a contributing factor to the accident. There is nothing in the record to suggest that Tardy was negligent in his driving. Even had the record been suggestive of some negligence by Tardy, it seems the defendant's culpability would not be diminished. A victim's own negligence does not negate a finding of criminal negligence on the part of the defendant. See State v. Desoto, 2007-1804 (La. 3/17/09), 6 So.3d 141, 148.

The record establishes that the defendant was driving eastbound in the right lane on U.S. Hwy. 90. The speed limit on U.S. Hwy. 90, east of the intersection where the accident occurred, was 70 m.p.h. The defendant testified that it is his practice to drive 5 m.p.h. below the speed limit and that he was driving about 60 m.p.h. Lofton, who also was traveling west on La. Hwy. 90, approximately two to three car lengths behind the defendant, testified that she was traveling 75 to 85 m.p.h. As the defendant approached the intersection of U.S. Hwy. 90 and La. Hwy. 318, his traffic light was red. The defendant switched to the left lane because Tallmore, who was in the right lane in front of the defendant, had begun to slow down to stop at the red light. The Tallmore vehicle appears to be the vehicle referred to by Theunissen when he testified that he remembered a car was stopped at the

light on the right side of the eighteen-wheeler. After changing to the left lane, the defendant proceeded to run the red light. The defendant was not even aware of the Tardy vehicle until, allegedly, Wise's exhortation by CB. The defendant testified that, at the time of the accident, he had held a commercial driver's license for about two or three years. The entirety of the evidence established that, given his familiarity and experience with driving eighteen-wheelers, the defendant's actions in running a red light at a relatively high rate of speed—in a 40,000-pound semitrailer that could not readily stop, slow, or turn once the brakes were engaged—constitutes criminal negligence. Since the defendant's criminal negligence caused the deaths of Robert Nathan and Derrick Green, the trial court's guilty verdicts will not be disturbed.

After a thorough review of the record, we find the evidence supports the trial court's judgment. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence that the defendant was guilty of two counts of negligent homicide.

The assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.

STATE OF LOUISIANA

NUMBER 2009 KA 1387

VERSUS

COURT OF APPEAL

MICHAEL A. WATSON

FIRST CIRCUIT

STATE OF LOUISIANA

BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

PETTIGREW, J., DISSENTS, AND ASSIGNS REASONS.

I must respectfully dissent.

As it pertains to the instant case, La. R.S. 14:32 defines negligent homicide as the killing of a human being by "criminal negligence." La. R.S. 14:32(A)(1). "The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence." La. R.S. 14:32(B).

Criminal negligence is defined in La. R.S. 14:12 as follows:

Criminal negligence exists when, although neither specific nor general criminal intent is present, there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances.

Evidence that only shows ordinary negligence is not sufficient to prove negligent homicide. **State v. Jones**, 298 So.2d 774, 776 (La. 1974).

In my humble opinion, the State only proved ordinary negligence on the part of the defendant. Therefore, defendant's conviction should be reversed.