

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER FRANK KRUPINSKI, JR.,

Defendant-Appellant.

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UNPUBLISHED  
September 3, 1996

No. 178241  
LC No. 94-050178-FH

Before: Hoekstra, P.J., and M.J. Kelly and J.M. Graves, Jr.,\* JJ.

PER CURIAM.

Following a jury trial in the Genesee Circuit Court, defendant was convicted of negligent homicide, MCL 750.324; MSA 28.556. The trial court sentenced defendant to twenty-four months' probation with conditions. Defendant appeals as of right, and we affirm.

On September 19, 1993, defendant was involved in a fatal automobile/motorcycle collision near Flint. Defendant told a police officer at the scene that he was traveling westbound on Dodge Road with his headlights on and that as he turned left on Lewis Road, he heard a loud bang. Defendant's vehicle had collided with a motorcycle driven by the deceased. Defendant also stated that he looked both ways before turning, but did not recall a motorcycle approaching. In addition, a Michigan State Police Trooper testified at trial that defendant said, "Oh, oh, my god. . . I'm really sorry. I didn't see them coming."

The police investigation further revealed that there was a functioning traffic signal above the intersection. The signal light was flashing red for traffic traveling on Dodge Road and yellow for traffic traveling on Lewis Road. Neither the police investigator nor defendant's expert concluded that defendant was speeding immediately prior to the accident. Furthermore, defendant's expert stated that there was nothing from his investigation that revealed defendant had made an improper left-hand turn.

Defendant first argues that his conviction should be reversed because there was insufficient evidence to prove that he was negligent or that his actions were the substantial cause of the accident.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

We disagree. In reviewing a claim of insufficient evidence following a jury trial, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Lee*, 212 Mich App 228, 258-259; 537 NW2d 233 (1995). The elements of negligent homicide are: (1) that the defendant drove a vehicle on a public highway; (2) that the defendant was negligent in the operation of the vehicle; (3) that the defendant's negligence caused an accident; and (4) that as a result of the accident, someone received injuries causing death. *People v Paulen*, 327 Mich 94, 99; 41 NW2d 488 (1950); *People v Jones*, 12 Mich App 677, 679; 163 NW2d 266 (1968). The type of negligence necessary to sustain a conviction is ordinary negligence. *People v Traugher*, 432 Mich 208, 217; 439 NW2d 231 (1989). Viewed in a light most favorable to the prosecution, the record reveals that defendant made an improper left-hand turn in front of the motorcycle when the motorcycle had the right of way and defendant had a duty to keep a proper lookout that required him to yield to oncoming traffic before turning. From this evidence, the jury could have found that defendant was negligent. MCL 257.650; MSA 9.2350. Therefore, the evidence was sufficient to support defendant's conviction for negligent homicide.

Defendant also contends that the evidence was insufficient to show that his actions were the substantial cause of the accident. However, our Supreme Court recently held that the defendant's action need only be *a* cause of the accident in a negligent homicide case, not *the* cause. *People v Tims*, 449 Mich 83, 94-95; 534 NW2d 675 (1995). We have already determined that there was sufficient evidence presented to find that defendant's actions were a cause of the accident. Accordingly, defendant's argument has no merit.

Next, defendant contends that his conviction should be reversed because the prosecutor made two improper comments during his closing argument. However defendant did not object at trial to these comments. In the absence of an objection, our review is precluded unless a miscarriage of justice would result or a curative instruction could not have eliminated the prejudicial effect of the comments. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). After reviewing the record, we find that no miscarriage of justice will occur if we decline to review defendant's claim that the prosecution demeaned the role of defendant's counsel because the allegedly improper comment was not improper.

We agree the prosecutor's comment that defendant's expert was paid for his testimony was improper since there was no testimony regarding any fee. *People v Tyson*, 423 Mich 357, 376; 377 NW2d 738 (1985). However, unlike in *Tyson*, the prosecutor here did not engage in an egregious personal attack on defendant's expert. There was merely one isolated improper comment. Thus, there is no miscarriage of justice. See *People v Miller*, 182 Mich App 482, 486; 453 NW2d 269 (1990) (reversal not warranted based upon on improper isolated comment). Furthermore, the trial court's instruction that the jury was not to consider the lawyer's statements as evidence served to cure any prejudicial effect. *People v Chatfield*, 170 Mich App 831, 834-835; 428 NW2d 788 (1988).

Next, defendant argues that his trial counsel was ineffective for failing to object to the comments reviewed above. We first note that since defendant did not request a *Ginther* hearing, any error in this regard must be apparent from the record. *People v Harris*, 201 Mich App 147, 154; 505 NW2d 889

(1993). In order for us to find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, the defendant must show that his counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). Here, we are unable to find that the result of the proceeding would have been different had counsel objected to the comments, one of which was not improper, and the prejudicial effect of the other having been cured by the trial court's instructions.

Finally, defendant contends that his constitutional right to confrontation was violated when the trial court failed to admit evidence that the deceased's license had been suspended due to his failure to pay a reinstatement fee. However, defendant's right was not implicated since the deceased was not a witness in this case. Furthermore, we find that the court's ruling excluding this evidence did not rise to the level of an abuse of discretion. *People v Davis*, 199 Mich App 502, 516; 503 NW2d 457 (1993). The proffered evidence could not have rebutted any testimony regarding the deceased's propensity to drive carefully. Thus, the evidence was not relevant. MRE 401.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.