

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUTHIE WEAKS,

Defendant-Appellant.

UNPUBLISHED

September 27, 1996

No. 183697

LC No. 93-011730

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial convictions of involuntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to one and one-half to fifteen years' imprisonment for the manslaughter conviction and the mandatory two-year term for the felony-firearm conviction. We affirm.

Defendant asserts that insufficient evidence was presented to support her involuntary manslaughter conviction based on her failure to perform a legal duty as there is no specific legal duty to "safeguard, control and prevent the discharge of a loaded firearm." We disagree.

To support a conviction of involuntary manslaughter, the omission of a legal duty must amount to gross negligence. *Wayne County Prosecutor v Recorder's Court Judge*, 117 Mich App 442, 446; 324 NW2d 43 (1982). Gross negligence requires:

1. Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.
2. Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

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

3. The omission to use such 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 Zak*, 184 Mich App 1, 7; 457 NW2d 59 (1990) (quoting *People v Orr*, 243 Mich 300, 307; 220 NW 777 (1928)).]

Defendant need not be personally aware of the danger, nor must he knowingly and consciously create the danger. Instead, the danger must only be apparent to the ordinary mind. *People v Maghzal*, 170 Mich App 340, 345; 427 NW2d 552 (1988). Additionally, the common law imposes a high degree of care on all persons using firearms in the immediate vicinity of others, no matter how lawful or necessary such use may be. *Clark v Braham*, 386 Mich 53, 56; 191 NW2d 352 (1971); *Felgner v Anderson*, 375 Mich 23, 29; 133 NW2d 136 (1965).

Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence for a rational trier of fact to find that the essential elements of the crime were established beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). This conclusion is based on testimony that defendant had a loaded gun in her hand as she tried to let herself in the house, that the victim was only a few feet away from defendant, and that the gun somehow fired, hitting the victim in the face. Sufficient evidence was presented so that the jury could have inferred that it would be apparent to the ordinary mind that failure to perform a legal duty to safeguard, control and protect the loaded gun was likely to prove disastrous to the victim.

Affirmed.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello