

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID SPENCER RATHBUN,

Defendant-Appellant.

UNPUBLISHED

December 10, 1996

No. 174311

Saginaw County

LC No. 93-7709-FH

Before: Markman, P.J., and McDonald and M. J. Matuzak*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of manslaughter with a motor vehicle, MCL 750.321; MSA 28.553 and failure to stop at the scene of a serious personal injury accident, MCL 257.617; MSA 9.2317 and resulting prison sentences of from 8 to 15 and 3 to 5 years respectively. We affirm.

The prosecution presented sufficient evidence to support defendant's conviction of involuntary manslaughter. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992). A reasonable juror could find defendant was grossly negligent where defendant was aware he was diabetic and that he needed to take certain precautions or exercise ordinary care and diligence related to it yet chose not to take the precautions. It was certainly foreseeable that having a diabetic reaction while behind the wheel of a semi-truck in a heavily traveled area could prove disastrous. *People v Zak*, 184 Mich App 1; 457 NW2d 59 (1990).

The trial court did not abuse its discretion in permitting the admission of the contested testimony regarding the requirement that a driver obtain a medical certificate in order to operate a commercial vehicle, that a medical certificate would not be issued to an insulin dependent diabetic, and that defendant failed to disclose his diabetes at the time of his physical examination. *People v Crump*, 216 Mich App 210; 549 NW2d 36 (1996). This information was relevant to the question whether defendant knew his failure to care for his condition might be disastrous to another person.

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

We decline to review defendant's claim of improper argument by the prosecutor because he failed to object to the argument at trial and no miscarriage of justice will result from our failure to review the claim. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994).

Finally, we find defendant's sentence to be proportionate to both the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant's sentence was within the guidelines' sentence recommendation and defendant has failed to raise any unusual circumstances sufficient to overcome the presumption of proportionality. *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987); *People v Daniel*, 207 Mich App 47; 523 NW2d 830 (1994).

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Michael J. Matuzak