

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSE EUGENE BRIDGEWATER,

Defendant-Appellant.

UNPUBLISHED

March 29, 2002

No. 221483

Oakland Circuit Court

LC No. 97-155375-FH

Before: Holbrook, Jr., P.J., and Cavanagh and Gribbs*, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of two counts of vehicular manslaughter, MCL 750.321, and one count of felonious driving, MCL 725.191. Defendant was sentenced to two to fifteen years' imprisonment for the manslaughter convictions and to one to two years' imprisonment for the felonious driving conviction. We affirm.

Defendant's convictions stem from a traffic accident that occurred in the morning of June 21, 1997. Defendant, who has epilepsy, was driving a Dodge Caravan when he struck a Ford Taurus that was driven by Montoi Floyd. Floyd and her seven-year-old daughter, Mink Smith, were killed. Defendant claimed that he had a seizure at the time of the accident and could not recall the incident. The prosecution theorized that defendant was grossly negligent in driving a vehicle on the day in question because he recently experienced seizures and his doctor in the past had instructed him to not drive for six months after experiencing a seizure. The prosecutor further theorized that defendant was grossly negligent because he was not appropriately taking his medication, which had been prescribed by his doctor to control his seizures.

Defendant first argues that the trial court abused its discretion in admitting oral and written statements made by his wife, Charlotte Bridgewater, to Officer Rennie Gobeyn. These statements were made at the hospital shortly after the accident. According to Gobeyn's testimony, he asked Charlotte if she knew about defendant's seizures and how many he had experienced in the past year. Charlotte responded that defendant had at least seven or eight, and that he had seizures three days, one week, and approximately five weeks prior to the accident.

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

Prior to trial, the prosecution filed a notice of intent to introduce Charlotte's written and oral statements pursuant to MRE 803(24), the residual hearsay exception, or MRE 804(b)(6).¹ Defendant objected, arguing that the statements did not have the required circumstantial guarantees of trustworthiness, that the admission of the statements would violate his constitutional right of confrontation, and that admission was barred by the statutory spousal privilege. The trial court ruled that the statements were admissible pursuant to MRE 803(24).

On the first day of trial, defendant waived spousal privilege. Thereafter, he argued that MRE 803(24) no longer applied because Charlotte was now available to testify, and therefore subsection (B) of MRE 803(24) was no longer satisfied. The prosecution argued that the availability of Charlotte was immaterial. The court ruled that Charlotte's oral and written statements were not admissible until Charlotte was called to testify by the prosecution. The court further ruled that if Charlotte denied or disputed what was in these two statements, the statements would be admissible as substantive evidence under MRE 803(24).

Charlotte was called as a witness by the prosecution. She testified that defendant had two seizures after she returned from California in May 1997. She claimed, however, that she only told defendant about one of them, and that she did not think defendant heard her in any event. She further testified that she could not recall speaking to Gobeyn or composing the written statement. Gobeyn then testified about Charlotte's oral statement. During his testimony, the trial court indicated that Charlotte's written statement was also admissible pursuant to MRE 803(5).

MRE 803(24) provides that the following type of statement is not excluded by the hearsay rule, even though the declarant is available as a witness:

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

On appeal, defendant contends that the statements did not have the necessary circumstantial guarantee of trustworthiness and that the requirements of (B) and (C) were not established. We disagree.

First, we find that the totality of the circumstances surrounding the making of the statements indicate that the statements possessed the requisite particularized guarantees of trustworthiness. See *People v Lee*, 243 Mich App 163, 178-180; 622 NW2d 71 (2000); *People v Welch*, 226 Mich App 461, 467-468; 574 NW2d 682 (1997). Although the statements were not spontaneous, they were made shortly after Charlotte Bridgewater arrived at the hospital. Thus, it

¹ Charlotte not being available for purposes of MRE 804(b)(6) because of spousal privilege, MCL 600.2162.

is less likely she had an opportunity to fabricate or “color the truth,” as defendant claims, about the number and timing of defendant’s seizures. Furthermore, there is no indication that Gobeyn did not believe defendant’s claim about his epilepsy or experiencing a seizure while the accident occurred, or that he conveyed this impression to Charlotte Bridgewater. Therefore, it is less likely that she would believe she needed to exonerate her husband by exaggerating his condition. We also note that defendant had not been formally accused or charged with any criminal act when the statements were made. Additionally, although she claimed that she was taking several medications that affected her memory, the detail and consistency of the statements made at the hospital do not indicate that her memory about defendant’s previous seizures was impaired. Finally, we note that “the degree of reliability necessary for admission is greatly reduced where, as here, the declarant is testifying and is available for cross-examination, thereby satisfying the central concern of the hearsay rule.” *United States v McPartlin*, 595 F2d 1321, 1350-1351 (CA 7, 1979), cert denied, 444 US 833; 100 S Ct 65; 62 L Ed 2d 43 (1979).

Second, we believe that subsections (B) and (C) of the evidentiary rule were satisfied. The statements were more probative as to the precise time defendant had experienced prior seizures in relation to the accident. In her testimony, Charlotte Bridgewater could only recall at trial that the seizures occurred after she returned from California. Furthermore, we believe that the interests of justice were served by introducing the statements. Accordingly, the trial court properly admitted the statements.²

Next, defendant argues that the trial court erred in denying his motion for a directed verdict. We disagree. “When reviewing a trial court’s decision on a motion for directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crimes charged were proven beyond a reasonable doubt.” *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

“An unlawful act committed with the intent to injure or in a grossly negligent manner that proximately causes death is involuntary manslaughter.” *People v Datema*, 448 Mich 585, 606; 533 NW2d 272 (1995). “As with involuntary manslaughter, a conviction for felonious driving requires proof of gross negligence.” *People v McCoy*, 223 Mich App 500, 502; 566 NW2d 667 (1997). On appeal, defendant contends that his conduct did not constitute grossly negligent conduct. Specifically, defendant claims that there was insufficient evidence to establish that he knowingly drove within six months of experiencing a seizure. We disagree.

In order to show gross negligence, the following elements must be established:

“(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.

² In light of our ruling, we need not address defendant’s arguments relating to the admission of the written statement pursuant to MRE 803(5).

(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.” [Id. at 503, quoting *People v Lardie*, 452 Mich 231, 251-252; 551 NW2d 656 (1996), quoting *People v Orr*, 243 Mich 300, 307; 220 NW 777 (1928).]

Charlotte Bridgewater testified that defendant experienced two seizures shortly before the accident. She also admitted that she told defendant about one of them, but then explained that she was not certain whether defendant actually understood or heard her. However, the jury could infer that defendant indeed was aware of the recent seizures, rather than believe her testimony that defendant did not understand or hear her. Moreover, there was testimony from defendant’s doctor, Dr. William Sharp, that he repeatedly told defendant at office visits that he should not drive a motor vehicle for six months after experiencing a seizure. Because this evidence established that defendant did not use care and diligence to avert the danger of having a seizure while driving, we find that the trial court did not err in denying the motion for directed verdict.

Next, defendant argues that he was denied a fair trial by prosecutorial misconduct. Defendant argues that the prosecutor improperly stated the standard of reasonable doubt to the jury. Because defendant failed to object to the alleged improper statements, defendant must show plain error that affected his substantial rights. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

We conclude that had defendant objected, a curative instruction would have eliminated any prejudice caused by the alleged improper remarks. *Id.* Moreover, the trial court’s subsequent instruction that the attorney’s arguments were not evidence, combined with a proper instruction regarding reasonable doubt, effectively eliminated any alleged prejudice or confusion. See *People v Schutte*, 240 Mich App 713, 721-722; 613 NW2d 370 (2000). Finally, we also believe that the remarks were an appropriate response to defense counsel’s characterization of reasonable doubt as being “up through the ceiling” and repeated emphasis on this high standard during his closing argument. *Watson*, *supra* at 593.

Defendant’s final argument that the trial court erred in refusing to give the requested standard instruction regarding impeachment of a prior inconsistent statement, CJI2d 4.5, is without merit. Because the statements made by Charlotte Bridgewater were properly admitted under the hearsay exceptions, the jury could consider them as substantive evidence.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

/s/ Roman S. Gribbs