

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN THOMAS MASLEY,

Defendant-Appellant.

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UNPUBLISHED

September 24, 1999

No. 209333

Otsego Circuit Court

LC No. 97-002200 FH

Before: Bandstra, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of negligent homicide, MCL 750.324; MSA 28.556. He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to twelve months' imprisonment in the county jail, followed by three years of probation. Defendant appeals as of right and we affirm.

Defendant's sole argument on appeal is that the trial court erred in refusing to allow evidence regarding the decedent's use or non-use of a seat belt at the time of the collision between defendant's pickup truck and the decedent's automobile. We review a trial court's decision to admit or exclude evidence for abuse of discretion. *People v Adair*, 452 Mich 473, 485; 550 NW2d 505 (1996).<sup>1</sup>

It is well-settled that a decedent's contributory negligence is not a defense to a charge of negligent homicide; however, the conduct of the decedent may be considered by the jury as it might bear on the question of a defendant's negligence or proximate cause. *People v Clark*, 295 Mich 704; 295 NW 370 (1940); *People v Campbell*, 237 Mich 424; 212 NW 97 (1927); *People v Burt*, 173 Mich App 332, 333; 433 NW2d 366 (1988); *People v Richardson*, 170 Mich App 470, 472; 428 NW2d 698 (1988); *People v Phillips*, 131 Mich App 486; 346 NW2d 344 (1984). A decedent's failure to wear a seat belt does not bear on the criminal conduct of the defendant; it is the criminal conduct that the statute was designed to punish. *Richardson, supra* at 473. Thus, evidence that the decedent was or was not wearing a seat belt at the time of an accident is irrelevant to the criminal conduct of the defendant and is properly excluded. *Id.*; *Burt, supra* at 334.

As in *Richardson*, the decedent in the present action would probably be alive today if not for the fact that on April 5, 1997 defendant drove down a fog-shrouded hill at forty-three to forty-four miles an hour and struck the rear of the decedent's car. Whether the decedent was wearing a seat belt did not bear on defendant's criminal negligence. *Richardson, supra* at 473. Because it was defendant's conduct that had to be considered by the jury to be a substantial cause of the accident, seat belt usage by the decedent was irrelevant. *People v Clark*, 171 Mich App 656, 661; 431 NW2d 88 (1988).

Defendant's argument that Michigan's seat belt law, MCL 257.710e; MSA 9.2410(5), alters the rule of law set forth in *Burt*, *Clark*, and *Richardson* is without merit. The language of the seat belt statute makes it clear that it is not mandatory to always consider a failure to wear a seat belt as evidence of negligence. Moreover, even if the decedent's failure to wear a seat belt constituted contributory negligence, as we discussed above, that would not reduce defendant's criminal liability for his own negligence. *People v Bailey*, 451 Mich 657, 678; 549 NW2d 325 (1996) (the contributory negligence of a decedent will not exonerate a defendant of criminal responsibility where the defendant's negligence is a proximate cause of the decedent's death). Also, if a defendant's negligent driving causes a collision, that driving is a proximate cause of a directly ensuing death even if the decedent's failure to wear a seat belt was also a proximate cause of death. *People v Tims*, 449 Mich 83, 96; 534 NW2d 675 (1995) (a defendant's conduct need only be a proximate cause of death).<sup>2</sup> Further, the statute was intended to apply to civil cases only. *Clark, supra* at 659-660. Therefore, evidence of seat belt use by the decedent was irrelevant to whether defendant's conduct was a substantial cause of the accident and thus to whether he was guilty of negligent homicide.

Accordingly, the trial court did not abuse its discretion in excluding evidence of the decedent's failure to use a seat belt.

Affirmed.

/s/ Richard A. Bandstra

/s/ Kathleen Jansen

/s/ William C. Whitbeck

<sup>1</sup> We note that it is unclear from the record whether defendant properly preserved this issue for appeal. There is nothing in the record indicating the defendant actually sought to introduce evidence regarding whether the decedent was wearing her seat belt at the time of the accident. Appellate counsel cites two off-the-record bench conferences noted in the trial transcripts. Obviously, we are unable to verify that this was the issue raised. Because the prosecutor does not contend that the issue is forfeited, we will review the merits of the admissibility of the evidence.

<sup>2</sup> We additionally note that the trial court properly instructed the jury that the defendant's negligence had to be a substantial cause of the accident resulting in injuries to the decedent.