

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY 1995 SESSION

FILED

January 29, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLANT,)
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)
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 v.)
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 TIMOTHY GOSE,)
)
 APPELLEE.)

No. 03-C-01-9406-CR-00244

Knox County

Ray L. Jenkins, Judge

(Vehicular Homicide)

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Judge

OPINION

The State of Tennessee appeals as of right from a judgment of the trial court setting aside a conviction for vehicular homicide and granting Timothy Gose's post-trial motion for judgment of acquittal. The state contends that "[t]he evidence adduced at trial was sufficient to find the defendant guilty of vehicular homicide." This Court finds that the evidence contained in the record is insufficient, as a matter of law, to support a finding by a rational trier of fact that Gose was guilty of vehicular homicide beyond a reasonable doubt. Therefore, the judgment of the trial court is affirmed.

On the morning of November 10, 1992, Gose asked his roommate to drive him to work. The roommate told Gose to drive his Ford Bronco to work that morning. Gose subsequently went to work in the Bronco.

Gose and Thomas J. Kelley left their place of employment at 10:15 a.m. en route to Kelley's residence. When they got to a hill on Deane Hill Drive, Gose told Kelley to "check out the passing gear." Gose then stepped on the gas pedal causing the passing gear to engage. The speed of the vehicle accelerated rapidly. The right wheels of the Bronco went off the roadway. The right mirror struck a mailbox. Gose attempted to correct the direction of the vehicle so that the right wheels would be back on the pavement. The brakes locked and the Bronco "fishtailed." Gose attempted to correct the direction of the Bronco as it slid sideways, but the vehicle would not respond. The Bronco slid across the centerline and struck a dump truck that was travelling in the opposite direction at the crest of the hill. The dump truck fell on its right side. The driver of the truck, Flavil "Dee" McGee, was killed instantly.

Kelley testified that Gose applied the brakes when he hit "wet grass" or something similar. As a result, the Bronco began to slide or swerve. Gose "went to correct it, and I guess he just over corrected." The brakes locked and the Bronco slid across the centerline striking the dump truck.

Gose testified that he saw a lit cigarette on the floorboard out of the corner of his eye. He thought Kelley, who admitted that he was smoking a cigarette, had dropped the cigarette. When he looked down, the right wheels of the Bronco went off the roadway.

The right mirror struck a mailbox. As he attempted to pull the right wheels onto the roadway, the Bronco fishtailed. He tried to correct the direction of the Bronco, but it would not respond. The brakes had locked when he tried to stop the Bronco. The vehicle crossed the centerline and struck the dump truck.

An independent witness who was sitting at an intersection on the west side of the hill, stated that the driver of the Bronco "jerked the wheel" real hard immediately before impact. According to this witness, the Bronco crossed the centerline "very suddenly."

The posted speed limit on Deane Hill Drive was 40 miles per hour. Kelley testified that the speed of the Bronco was between 50 and 53 miles per hour. On cross-examination Kelley was asked about a statement he had given to the police approximately one year prior to the trial. In the statement, Kelley stated that the speed of the Bronco was between 45 and 50 miles per hour. Kelley responded that the latter speed was "close" to the speed of the Bronco. Kelley sued Gose for the personal injuries he sustained in the collision after giving the statement to the police.

The driver of the vehicle travelling immediately behind the dump truck stated that she first saw the Bronco as it crossed the centerline. She immediately pulled into a private driveway and onto a front lawn. She did not see the vehicles collide. Although the witness testified that Gose was going "above the speed limit," she did not estimate the speed that he was travelling. It is obvious that this witness only saw the Bronco for a split second.

A motion for judgment of acquittal raises a question of law for the trial court's determination. State v. Hall, 656 S.W.2d 60, 61 (Tenn. Crim. App.), per. app. denied (Tenn. 1983). In resolving this question, the trial court's only concern is the legal sufficiency of the evidence. Hall, 656 S.W.2d at 61. The trial court is not permitted to weigh the evidence in reaching its determination.

In determining whether the evidence is sufficient to sustain a conviction post-trial, the trial court must consider the evidence in the light most favorable to the State of Tennessee. State v. Thompson, 549 S.W.2d 943, 946 (Tenn. 1977); Hall, 656 S.W.2d at 61; State v. Stowe, 634 S.W.2d 674, 675 (Tenn. Crim. App. 1982). In addition, the trial court must afford the State of Tennessee all reasonable and legitimate inferences that may be drawn from the evidence adduced in favor of the state's theory. Thompson, 549

S.W.2d at 946; Hall, 656 S.W.2d at 61; Stowe, 634 S.W.2d at 675. The trial court must also disregard any countervailing evidence that the accused may have introduced during the trial. As this Court said in Hall: "[I]f . . . there is any dispute as to any material determinative evidence, or any doubt as to the conclusion to be drawn from the evidence of the State, the trial judge should . . . overrule the motion. . . ." 656 S.W.2d at 61.

An appellate court must apply the same standard as a trial court when resolving issues predicated upon the grant or denial of a motion for judgment of acquittal.

Before an accused can be convicted of vehicular homicide due to recklessness, the State of Tennessee must prove beyond a reasonable doubt that (a) the accused killed the victim while operating a motor vehicle, (b) the killing was done recklessly, and (c) the killing was "the proximate result of conduct creating a substantial risk of death or serious bodily injury." Tenn. Code Ann. § 39-13-213(a)(1). The term "reckless" is defined by Tenn. Code Ann. § 39-11-106(a)(31) in the following manner:

Reckless refers to a person who acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.

In other words, an accused is not guilty of vehicular homicide if the evidence establishes that the accused's conduct merely constituted a want of due care, inadvertence, or inattention.

When the evidence is considered in the light most favorable to the State of Tennessee along with all reasonable inferences that can be drawn from these facts, the conduct of Gose does not constitute "a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances when viewed from" Gose's viewpoint. The mainstay of the state's case was speed. Kelley testified that Gose was going anywhere from 45 to 53 miles per hour. While this exceeded the posted speed, it did not, standing alone, constitute gross negligence or recklessness. Rather, it constituted a want of due care, inadvertence, and inattention.

JOE B. JONES, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

WALTER C. KURTZ, SPECIAL JUDGE