

IN THE COURT OF APPEALS OF IOWA

No. 9-526 / 08-1134
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW ALLEN GARLICK,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson,
Judge.

Matthew Alan Garlick appeals from the judgment and sentence entered
following his conviction of homicide by vehicle. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney
General, John P. Sarcone, County Attorney, and Steve Fortiano and Jaki
Livingston, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

Matthew Alan Garlick appeals from the judgment and sentence entered following his conviction of homicide by vehicle, in violation of Iowa Code section 707.6A(2) (2005). He contends the district court erred in denying his motion for directed verdict because there was insufficient evidence to support his conviction. Because the evidence shows Garlick acted recklessly, we affirm.

I. Background Facts and Proceedings. On the evening of June 5, 2007, Garlick was driving his motorcycle around the Des Moines area with several friends. With a passenger on his motorcycle, Garlick performed a “wheelie,” a stunt where the driver raises the front wheel of the motorcycle and rides only on the back wheel. Garlick performed this stunt three to four times with Rachel Thomas riding on the back of the motorcycle. Thomas testified that each time, the wheelie lasted approximately fifteen to twenty seconds. They were traveling in excess of fifty to fifty-five miles per hour when the stunt was performed, and Thomas testified she was “very scared.” Thomas asked Garlick to stop the motorcycle, and she found another ride home.

At approximately midnight, Garlick went to the home of Casey Sellner, along with Jennifer Reynolds, Morgan Ostendorf, and Robbie Wilson. Garlick told both Sellner and Wilson that his contact lenses “blew out” while they were riding. When asked if he needed to return home for a new pair, Garlick replied that he was “fine,” but couldn’t see “real far, far away.”

After about half an hour, Garlick left Sellner’s residence with Reynolds riding on the back of his motorcycle. Wilson also left, driving his motorcycle with

Ostendorf on the back. They were driving in a residential area with a speed limit of twenty-five miles per hour when Garlick's motorcycle surged past Wilson's. Garlick was performing a wheelie at the time, with the front wheel of his motorcycle raised approximately five feet off the ground. When Garlick lowered the front wheel, it struck a curb, propelling Reynolds from the rear of the motorcycle. She struck a wooden mailbox post and died at the scene. Ostendorf estimated Garlick's rate of speed to be approximately fifty miles per hour at the time of the crash. Wilson estimated Garlick was traveling between sixty-five and seventy miles per hour compared to the thirty-eight miles per hour Wilson was traveling. Accident reconstructionists estimated Garlick was driving between forty-eight and sixty miles per hour when he struck the curb.

On September 7, 2007, Garlick was formally charged with vehicular homicide. He pled not guilty, and a jury trial was held in April 2008. At the close of the State's evidence, Garlick moved for judgment of acquittal, arguing there was insufficient evidence to establish he acted recklessly. The motion was denied. Garlick renewed the motion at the close of all the evidence, and the motion was again denied. The jury returned a verdict, finding him guilty of vehicular homicide. The court sentenced Garlick to an indeterminate term of imprisonment, not to exceed ten years. Garlick appeals. He contends the district court erred in finding there was sufficient evidence to submit this matter to the jury because he did not act recklessly.

II. Scope and Standard of Review. Our review of a ruling on a motion for judgment of acquittal is for corrections of errors at law. *State v. Corsi*, 686

N.W.2d 215, 218 (Iowa 2004). We will uphold a finding of guilt where the verdict is supported by substantial evidence. *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). Substantial evidence is evidence that would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* at 75-76.

We view the evidence in the light most favorable to the State. *Id.* at 76. We consider all the evidence—that which detracts from the verdict, as well as that supporting the verdict. *Id.*

The State must prove every element of the crime with which the defendant is charged. *Id.* “The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” *Id.*

III. Sufficiency of the Evidence. In order to convict Garlick of vehicular homicide, the State had to prove Garlick was “[d]riving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.” Iowa Code § 707.6A.2(a). Section 321.277 states in pertinent part, “Any person who drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving.” Garlick contends there was insufficient evidence to prove he was driving recklessly.

The jury instructions included the following definition of “reckless”:

A person is “reckless” or acts “recklessly” when he willfully disregards the safety of persons or property. It is more than a lack of reasonable care which may cause unintentional injury. Recklessness is conduct which is consciously done with willful disregard of the consequences. For recklessness to exist, the act must be highly dangerous. In addition, the danger must be so obvious that the actor knows or should reasonably foresee that harm will more likely than not result from the act. Though

recklessness is willful, it is not intentional in the sense that harm is intended.

Garlick argues the evidence does not show he acted with a wanton or willful disregard for the safety of others, claiming he had “mastered” performing wheelies and had successfully completed several with Thomas on the back of his motorcycle earlier in the evening.

In order to prove Garlick guilty of vehicular homicide, “the State must prove the defendant engaged in conduct fraught with a high degree of danger, conduct so obviously dangerous that the defendant knew or should have foreseen that harm would flow from it.” *State v. Dalton*, 674 N.W.2d 111, 116 (Iowa 2004). For recklessness to exist

the act must be fraught with a high degree of danger. In addition the danger must be so obvious from the facts that the actor knows or should reasonably foresee that harm will probably—that is, more likely than not—flow from the act.

State v. Sutton, 636 N.W.2d 107, 111 (Iowa 2001) (quoting *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993)). In other words, a person acts recklessly when the person’s actions are not merely unreasonable but “highly” unreasonable; not merely a departure from ordinary care but an “extreme” departure. *Id.*

Viewing the evidence in the light most favorable to the State, we conclude substantial evidence shows Garlick was driving recklessly at the time of the crash. Accident reconstructionists and eyewitnesses estimate Garlick was traveling at least twice the posted speed limit and as much as thirty-five miles per hour over the twenty-five mile per hour limit. It was after midnight, and Garlick was not wearing his contact lenses. Furthermore, Garlick was performing a stunt

in which his front wheel was raised approximately five feet in the air, further limiting his line of sight. The combination of these factors resulted in a crash that threw Reynolds seventy-eight feet from the point of impact and caused the motorcycle to skid approximately 180 feet. Traveling at such an extreme rate of speed at night, with impaired vision, on one wheel, with a passenger, can be categorized by a reasonable factfinder as an extreme departure from ordinary care. Accordingly, the motion for judgment of acquittal was properly denied, and we affirm Garlick's conviction.

AFFIRMED.