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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 11-9841-01

JOSEPH WEEKLEY,

Defendant.

_____ /

JURY TRIAL

BEFORE THE HONORABLE CYNTHIA GRAY HATHAWAY, CIRCUIT JUDGE,

Detroit, Michigan - Friday, October 3, 2014

APPEARANCES:

For the People:

ROBERT MORAN, P46346
MARK HINDELANG, P72770
Assistant Prosecuting Attorney
1441 St. Antoine
Detroit, Michigan 48226
(313) 224-5777

For Defendant Weekley:

STEVEN FISHMAN, P23049
615 Griswold, #1125
Detroit, Michigan 48226

REPORTED BY: Melissa T. Harding, CSR 7138
Certified Shorthand Reporter
(313) 224-6950

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WITNESSES: PEOPLE

PAGE

None.

WITNESSES: DEFENDANT

None.

EXHIBITS:

IDENTIFIED

ADMITTED

None.

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Detroit, Michigan
Friday, October 3, 2014
9:36 a.m.

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THE CLERK: This is case number 11-009841, the State of Michigan versus Joseph Weekley, before the Court today for a jury trial in progress.

Appearances, please.

MR. MORAN: Good morning, your Honor.

May it please the Court, Robert Moran, assistant prosecutor.

MR. HINDELANG: Good morning, your Honor. Mark Hindelang on behalf of the People.

MR. FISHMAN: Steve Fishman on behalf of Officer Weekley.

THE COURT: Good morning, gentlemen. Are we ready to proceed?

MR. FISHMAN: We are.

MR. MORAN: Yes, Judge.

THE COURT: All right. Mr. Fishman?

MR. FISHMAN: I'm asking the Court to grant a directed verdict as to Count One, the count of involuntary manslaughter, and I'm asking the Court to look at three of our instructions because I think that they dictate that that count should be dismissed.

1 The first instruction is 16.10, that's the
2 standard jury instruction about involuntary manslaughter,
3 and it says, subsection three, that in order to convict of
4 involuntary manslaughter one of the elements is that the
5 act that caused the deceased death has to be done when the
6 Defendant acted in a grossly negligent manner. I'm
7 highlighting grossly negligent because we would next term,
8 the second instruction would be CJI2d 16.18, that's the
9 instruction on gross negligence which says at subsection
10 one, gross negligence means more than carelessness, and
11 here's the sentence that I'm highlighting, it means
12 willfully disregarding the results to others that might
13 follow from an act or failure to act.

14 There is more to the instruction but I think
15 that is the relevant part.

16 Then I'm going to ask the Court to instruct,
17 but for purposes of this motion I think you should
18 consider a third instruction, which is CJI2d 11.22. And,
19 you know, the word willfully, when we say that to jurors,
20 of course, they don't know what it means in a legal sense
21 and the authors of the instructions define it for us in
22 that instruction, 11.22. And if you look at that section
23 one, 11.22 subsection one says as follows, and this is a
24 quote.

25 Willfully means that the Defendant knowingly

1 created the danger and intended to cause injury. That's
2 the definition of willfully.

3 And I suggest to the Court that there is
4 absolutely no evidence, none that's in the least bit
5 credible, that Officer Weekley either knowingly created a
6 danger, but more importantly, intended to cause injury.

7 The only testimony we have in this case that
8 indicates that Officer Weekley intended to cause injury
9 would be Mertilla Jones' claim that he essentially
10 assassinated Aiyana. Everybody knows, including Mr. Moran
11 conceded it in his voir dire, that that didn't happen. We
12 have the testimony of the medical examiner and just common
13 sense tells us that that didn't happen.

14 So if that -- and you're not required for
15 purposes of a directed verdict, you're not required to
16 accept everything that any witness says. You have to make
17 the determination. I think People versus Hampton said
18 that a reasonable jury could find guilt beyond a
19 reasonable doubt based on the evidence.

20 In this case the only evidence that points to
21 any kind of knowingly creating a danger or intending to
22 cause injury, the only testimony is that of Mertilla
23 Jones, which is, by its nature and by a comparison to the
24 other testimony, including the medical examiner, is
25 completely and totally unbelievable.

1 So without any evidence that says that Officer
2 Weekley, he had to do both things, because it's and, not
3 or. Officer Weekley had to knowingly created a danger and
4 intended to cause injury. I just think that the Court
5 needs to take that count away from the jury.

6 Obviously I'm going to listen to Mr. Moran who
7 tells me where there is something in there that is in this
8 evidence that is the least bit believable that this
9 officer intended to cause injury. And, therefore, I think
10 the Court should dismiss that count and allow the second
11 count, the careless use count to go to the jury.

12 THE COURT: Response?

13 MR. MORAN: The Court knows the standard better
14 than I do, the standard is People against Hampton which
15 basically says that the Court should take the evidence in
16 the light most favorable to the people, the nonmoving
17 party, to decide whether there is any evidence on the
18 elements of the crime sufficient to give that to the jury,
19 and the Court is to resolve all credibility issues and all
20 fact issues in favor of the People in this case.

21 I'm asking the Court to do that. That's the
22 standard.

23 And as I said in my opening and I said during
24 voir dire and I'm going to say in my closing, this is not
25 an intentional crime. We're not saying that the Defendant

1 intended to go in there and hurt someone, we never said
2 that.

3 The definition of gross negligence is a legal
4 definition. It means gross negligence is more than
5 ordinary negligence, it's more than slight negligence,
6 it's a gross negligence, it's a high standard. The law
7 has defined that as what amounts to a willful violation of
8 one's duty, in essence.

9 What Mr. Fishman does not talk about are the
10 elements of gross negligence. And there are three
11 elements.

12 That's the definition of what gross negligence
13 is. I don't have to prove the definition. The Court
14 instructs the jury that I have to prove the elements of
15 the crime. And that's what I told them in my voir dire, I
16 told them in my opening, the Court told them in voir dire
17 and the Court will tell them at the end of the day.

18 The elements of gross negligence are three.

19 One, Defendant knew ordinary care was required
20 to avoid injury to another.

21 Two, the Defendant could have avoided injuring
22 another by using ordinary care.

23 And three, the Defendant failed to use ordinary
24 care when serious injury was apparent.

25 And that's right from the jury instruction

1 16.27, I think.

2 MR. HINDELANG: 18.

3 MR. FISHMAN: 18.

4 MR. MORAN: 18. Yes, .18.

5 Those are the elements of the crime. And so
6 I'm going to be able to ask the jury to find whether we've
7 proven those elements beyond a reasonable doubt. The
8 definition of gross negligence does not matter. That's a
9 legal definition. That's beyond the purview of the jury.
10 The jury's purview are the elements of the crime, nothing
11 else. And in order to find gross negligence, which the
12 law defines as a willful violation, the jury has to look
13 at those three elements, and I have to prove those
14 elements and nothing else beyond a reasonable doubt.

15 And that's what the definition of gross
16 negligence is. The law has said those three things.

17 So Defendant knew ordinary care was required,
18 Defendant could have avoided injury by using ordinary
19 care, and he failed to use ordinary care and serious
20 injury was apparent. Those are the elements and that's
21 what the Defendant did.

22 He knew what the standard was, he knew what
23 ordinary care was required because they go in there with
24 all this very powerful equipment, an MK6 submachine gun, a
25 ballistic shield, vest, whatever the case may be, they're

1 trained how to use it, they're trained the proper way to
2 use it. He could have avoided injury if he had followed
3 his training, he didn't. As a result of not following his
4 training and not following the mandates of ordinary care,
5 someone was killed.

6 So the jury can find those elements, your
7 Honor, and I would submit that there is ample evidence and
8 the Court should deny the motion for directed verdict.

9 MR. FISHMAN: Judge, let me say this in
10 response. The Court tells the jury repeatedly that they
11 are to take the instructions as a whole and they are not
12 to highlight one any more than the other, they are all
13 taken as a whole.

14 The instruction contains the definition that I
15 read. The instruction that you are going to give the jury
16 says gross negligence means more than carelessness, it
17 means willfully disregarding the results to others that
18 might follow from an act or failure to act. Once that
19 word willfully is used, it seems to me the Court would
20 have to instruct itself for purposes of this motion, and
21 the jury if the motion fails, as to the instruction in
22 11.22, which says willfully means the Defendant knowingly
23 created a danger and intended to cause injury. And there
24 is no evidence to support those things.

25 I agree with Mr. Moran that part of the

1 instruction 16.18 includes the three things he talked
2 about, but we should not assume, nor would a Court of
3 Appeals assume, nor would the Supreme Court assume that
4 the first paragraph in the gross negligence instruction is
5 supposed to be ignored. It is in there for a reason and
6 it uses the word willfully for a reason. And willfully is
7 defined in the other instruction, 11.22 for a reason, so
8 the jurors know what willfully means.

9 I just don't see how you separate one part of
10 the instruction from the other when we are told over and
11 over again and you tell jurors over and over again all of
12 the instructions are to be taken as a whole.

13 There is no evidence that Officer Weekley did
14 anything willful, and there certainly is no evidence that
15 he intended to cause injury to Aiyana Stanley Jones.

16 THE COURT: I think I need to take a short
17 break to look up something that I don't have here at my
18 bench.

19 MR. FISHMAN: That's fine.

20 THE COURT: So I am going to take about a ten
21 minute break.

22 (Recess taken at 9:45 a.m.)

23 (Back on the record at 9:57 a.m.)

24 THE COURT: We are back on the record on People
25 versus Weekley.

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Appearances, please.

MR. MORAN: Good morning again, your Honor.

May it please the Court, Robert Moran,
assistant prosecutor.

MR. HINDELANG: Mark Hindelang on behalf of the
People.

MR. FISHMAN: Steve Fishman for Officer
Weekley.

THE COURT: The instruction on the manslaughter
involuntary reads as follows:

To prove this charge, the prosecution must
prove each of the following elements beyond a reasonable
doubt:

First, that the Defendant caused the death of
Aiyana Stanley Jones, that is, that Ms. Jones died as a
result of a gunshot wound.

Second, in doing the act that causes
Ms. Jones's death, the Defendant acted in a grossly
negligent manner. Gross negligence means more than
carelessness. It means willfully disregarding the results
to others that might follow from an act or failure to act.

In order to find that the Defendant was grossly
negligent, the trier of fact must find each of the
following things beyond a reasonable doubt:

First, that the Defendant knew of the danger to

1 another. That is, he knew there was a situation that
2 required him to take ordinary care to avoid injuring
3 another.

4 Second, that the Defendant could have avoided
5 injuring another by using ordinary care.

6 Third, that the Defendant failed to use
7 ordinary care to prevent injuring another when to a
8 reasonable person it must have been apparent that the
9 result was likely to be serious injury.

10 The key word here in this instruction is gross
11 negligence means willfully disregarding the results to
12 others.

13 Now, as I see this instruction, I'm not really
14 clear whether the three elements that the trier of fact
15 would have to find, coincide with willfulness. I don't
16 see that. So -- and I also don't see that there is
17 evidence in this case that supports, or evidence --
18 whether it supports or not supports, I don't see the
19 evidence that the Defendant willfully disregarded the
20 results to others. The entire trial has basically been
21 about the carelessness of the Defendant based on his
22 skills.

23 So looking at the evidence in the light most
24 favorable to the prosecution, there seems to be a conflict
25 between one part of the instruction and another part of

1 the instruction. There is no evidence in this Court's
2 opinion that supports willfully disregarding the results
3 to others, but the three things that the trier of fact has
4 to look at for gross negligence really are questions for a
5 trier of fact.

6 The trier of fact could decide if the Defendant
7 knew of the danger to another, that he knew that there was
8 a situation that required him to take ordinary care to
9 avoid injuring another. The trier of fact can decide
10 whether the Defendant could have avoided injuring another
11 by using ordinary care. And the trier of fact can decide
12 if the Defendant failed to use the ordinary care to avoid
13 injuring another when to a reasonable person it must have
14 been apparent that the result was likely to be serious
15 injury.

16 So with this conflict I'm going to, if I am
17 going to err, I'm going to err on the side of the defense
18 and I'm going to grant the motion for dismissing Count
19 One.

20 MR. FISHMAN: Thank you, Judge.

21 MR. MORAN: Your Honor, the People object to
22 that and the People ask for a Stay before we do closing
23 arguments so that I can talk to my supervisors upstairs
24 about an emergency interlocutory appeal.

25 Because it is our position that the elements

1 have been satisfied, as the Court indicated, and the legal
2 definition is wilfulness and the jury has to decide the
3 elements of the crime and that's what the Court instructs
4 them. The elements, as the Court has said, are there.
5 There is enough on this record to send this to the jury on
6 the elements of involuntary manslaughter.

7 THE COURT: I think that the elements on A, B
8 and C, are there. What is confusing is in the definition
9 of gross negligence it says that the act must be willful,
10 and I haven't heard -- I don't know if I've heard anything
11 about a willfulness to perform the act or failure to
12 perform the act. I've heard carelessness.

13 MR. MORAN: We've heard -- and we've heard lots
14 of testimony about the standard of ordinary care, what
15 that standard of ordinary care is, the training, the
16 equipment, all of that stuff we've heard over and over
17 again about what the standard of care is.

18 THE COURT: Right.

19 MR. MORAN: But the definition of gross
20 negligence means willfully disregarding the results to
21 others. It's defining that as being more than just
22 carelessness or recklessness, more than just ordinary
23 negligence. And if the Court looks at the jury
24 instruction that defines the differences between
25 negligence, it talks about that.

1 THE COURT: Right, the degree of negligence.

2 MR. MORAN: Right. How gross negligence is a
3 higher degree of negligence. It is not an intentional
4 crime. We've never said that this is an intentional
5 crime. Gross negligence is not an intentional crime. It
6 is a crime that occurs when someone knows better and
7 someone knows they are supposed to do something and they
8 don't do it, or they have an act they are supposed to
9 perform or they don't do that act or they fail to perform
10 an act they are supposed to perform. And that's how the
11 Court, the Courts have defined gross negligence as a
12 willful violation.

13 But for the jury, they have to decide the three
14 elements of the crime. They don't decide whether it's
15 willful or not. They decide is it gross negligence, and
16 the way they do is that A, B and C. And if they find A, B
17 and C, that means it is gross negligence, that means it is
18 a willful violation. Because we all know the jury
19 instructions say that you are to take everything as a
20 whole, but you also have to look at the elements of the
21 crime. That's all I have to prove. So if the jury
22 decides that I proved A, B and C, they find gross
23 negligence, that, by legal definition, is a willful
24 violation of his obligation to act.

25 That's how the Court's have defined gross

1 negligence. It's a bad jury instruction, but the --

2 THE COURT: Yes, that's the problem.

3 MR. MORAN: Yes. But the elements are clear.

4 The elements are clear and the Court has said we have
5 satisfied the elements and for that reason it should go to
6 the jury.

7 THE COURT: I'll grant you a Stay because I
8 don't think that it will take us long to resolve this. I
9 actually don't think that it will take more than maybe a
10 couple of hours --

11 MR. MORAN: Okay.

12 THE COURT: -- to resolve it. So I'll do that
13 for -- what I'll do is grant a recess for about an hour
14 until about 11:10, and I'll also look at it again.

15 MR. MORAN: Thank you, your Honor.

16 THE COURT: Because you used the right term,
17 it's a bad instruction.

18 MR. MORAN: It is. I agree with that.

19 THE COURT: And if it's a bad instruction, then
20 we could -- we should consider that in whether we submit
21 this to the jury or not also.

22 Let's take about an hour recess.

23 MR. MORAN: Thank you, your Honor.

24 (Record concluded at 10:05 a.m.)

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R E P O R T E R ' S C E R T I F I C A T E

I do hereby certify that I have recorded
stenographically the proceedings had and testimony taken
in the above-entitled matter at the time and place
hereinbefore set forth, and that the foregoing is a full,
true, and correct transcript of proceedings had in the
above-entitled matter; and I do further certify that the
foregoing transcript has been prepared by me, or under my
direction.

Melissa Harding, CSR 7138
Court Reporting Services
1441 St. Antoine
Detroit, Michigan 48226
(313) 224-6950

Dated: October 3, 3014