

STATE MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS WILLIAM SKUDLAREK,

Defendant-Appellant.

UNPUBLISHED

January 28, 1997

No. 183054

Recorder's Court

LC No. 94-005828

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Plaintiff appeals by leave granted the circuit court's order dismissing the count of OUIL resulting in death, MCL 257.625(4); MSA 9.2325(4), against defendant. We affirm.

Plaintiff argues that the trial court erred in dismissing the OUIL resulting in death charge based on a finding that the statute required proof that defendant's intoxication was a cause of the accident. We disagree. The elements of the crime of OUIL causing death, MCL 257.625(4); MSA 9.2325(4), are as follows:

(1) the defendant was operating his motor vehicle while he was intoxicated, (2) that he voluntarily decided to drive knowing that he had consumed alcohol and might be intoxicated, and (3) that the defendant's intoxicated driving was a substantial cause of the victim's death. [*People v Lardie*, 452 Mich 231, 259-260; 551 NW2d 656 (1996).]

Proof of the third element requires that the people "establish that the particular defendant's decision to drive while intoxicated produced a change in that driver's operation of the vehicle that caused the death of the victim." *Id.* at 258. In this case, the trial court found that there was no evidence that defendant's driving was a cause of the accident which resulted in the victim's death. Plaintiff does not challenge that finding. Based on the clear language of *Lardie*, we conclude that the trial court did not err in dismissing the OUIL resulting in death charge.

*Circuit Judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros