

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JON ALAN GUILFORD,

Defendant-Appellant.

UNPUBLISHED

February 25, 1997

No. 188825

Ionia Circuit Court

LC No. 94-010101

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by jury of operating a motor vehicle while under the influence of intoxicating liquor, third offense (OUIL-3), MCL 257.625(6)(d); MSA 9.2325(6)(d),¹ and operating a motor vehicle while his license was suspended, revoked or denied, MCL 257.904(1)(b); MSA 9.2604. Defendant was sentenced to a single term for both convictions of one year in jail and two years probation. We affirm.

Defendant first argues that the evidence presented at trial was insufficient because the prosecution failed to show that he was operating the vehicle, an essential element of OUIL-3. *People v Raisanen*, 114 Mich App 840, 844; 319 NW2d 693 (1982). In reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Sufficient circumstantial evidence may sustain a defendant's conviction. *People v Smith*, 164 Mich App 767, 770; 417 NW2d 261 (1987).

Defendant and a companion testified that a third individual, who had not yet been located at trial, was actually driving the vehicle. Although no one saw defendant driving, a prosecution witness testified that someone dressed like defendant was the only person he observed exiting the driver's side

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

of the vehicle, and he did not see anyone leaving the scene of the accident. The investigating police officer testified that there were no footprints to confirm defendant's testimony that he and the alleged driver had walked off in opposite directions. A rational trier of fact could have concluded that defendant was driving the vehicle when the accident occurred. The credibility of witnesses is appropriately determined by the jury. *Wolfe, supra* at 514-515.

Defendant next argues that the trial court abused its discretion in denying his motion for a new trial. We disagree. When deciding a motion for new trial, the judge may evaluate the credibility of the witnesses. *People v Herbert*, 444 Mich 466, 476; 511 NW2d 654 (1993). This Court will give deference to the trial court's opportunity to hear the witnesses and its unique ability to assess credibility. *People v Bender*, 208 Mich App 221, 227; 527 NW2d 66 (1994). In this case, the trial court reviewed the whole body of proofs and found the prosecution's witnesses credible. We find no abuse of the trial court's discretion in denying defendant's motion.

Affirmed

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burress

¹ Defendant was convicted and sentenced after the amended OUIL statute became effective May 1, 1995. Although his judgment of sentence indicates that he was convicted under MCL 257.625(6) or MCL 257.625(10), the correct citation for defendant's offense is MCL 257.625(7)(d); MSA 9.2325(7)(d).