

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL EDWARD DELASHMIT,

Defendant-Appellant.

UNPUBLISHED

November 23, 1999

No. 212364

Bay Circuit Court

LC No. 97-001324

Before: Sawyer, P.J., and Hood and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of operating a motor vehicle under the influence of intoxicating liquor causing the death of another, MCL 257.625(4); MSA 9.2325(4). The prosecution alleged that defendant was involved in an automobile accident, while intoxicated, that resulted in the death of his son, who was a passenger in defendant's vehicle. The trial court sentenced defendant to 36 to 180 months' imprisonment. Defendant contends that the trial court erred in denying his motion for a directed verdict of acquittal because the prosecution failed to present any evidence at trial that defendant knowingly consumed intoxicating liquor and voluntarily drove his automobile. We disagree and affirm.

When reviewing a trial court's ruling on a motion for directed verdict, we test the validity of the motion by the same standard as the trial court. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1991). When ruling on a motion for directed verdict, the court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997).

In *People v Lardie*, 452 Mich 231; 551 NW2d 656 (1996), our Supreme Court found that, in enacting MCL 257.625(4); MSA 9.2325(4), the Michigan "Legislature must reasonably have intended that the people prove a mens rea by demonstrating that the defendant purposefully drove while intoxicated, or in other words, that he had the general intent to perform the wrongful act." *Id.* at 256. "[T]he people must prove that (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." *Id.* at 259-260 (citations omitted). See also CJI2d 15.11. Defendant argues that the trial court erred in denying his motion because the prosecution did not offer any evidence to support the jury's finding that defendant voluntarily drove his automobile knowing that he had consumed intoxicating beverages.

Circumstantial evidence, including inferences, are sufficient to constitute satisfactory proof of the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991). The testimony of bystanders and police officers who arrived at the accident revealed that defendant drove his car accompanied by his adolescent son. Troopers Labelle and Jaskulka testified that they could smell intoxicants when they interviewed defendant at the hospital. A blood alcohol test performed on samples taken from defendant approximately one hour after the accident yielded 0.22 grams of alcohol per one hundred milliliters of blood. Another test performed on samples taken from defendant approximately four hours after the accident yielded 0.14 grams of alcohol per one hundred milliliters of blood. Edward Kivela, M.D., estimated that defendant's blood alcohol concentration at the time of the accident was between 0.19 and 0.20 grams of alcohol per deciliter of his blood.

Considering this evidence in the light most favorable to the prosecution, a reasonable trier of fact could find that defendant voluntarily drove his automobile, knowing that he had consumed intoxicating beverages. Reasonable jurors could have determined that defendant's blood alcohol level was twice the 0.10 grams per 100 milliliters threshold of MCL 257.625(4); MSA 9.2325(4). Based on the level of defendant's intoxication, reasonable jurors could have inferred that defendant consumed a large quantity of alcohol and was quite intoxicated. They could have found that he knowingly, and not accidentally, put himself in such a condition. Reasonable jurors could have determined that defendant drove his car of his own volition, accompanied by his son.

Because we find that reasonable jurors, based on inferences from the circumstantial evidence introduced at trial, could have concluded that defendant voluntarily drove his automobile knowing that he had consumed alcohol and might be intoxicated, we conclude that the trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ William C. Whitbeck