

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANN LYNN ETHINGTON

Defendant-Appellant.

UNPUBLISHED

January 28, 2000

No. 211449

Grand Traverse Circuit Court

LC No. 95-006950-AR

Before: Sawyer, P.J., and Gribbs and McDonald, JJ.

PER CURIAM.

Defendant was convicted of failing to display her driver's license upon demand of a police officer, MCL 257.311; MSA 9.2011, and was ordered to pay various fines and costs. Defendant appealed her conviction to the Grand Traverse Circuit Court. After a hearing, the circuit court affirmed her conviction. We affirm.

Defendant first argues that MCL 257.901a; MSA 9.2601(1) violates equal protection. We disagree. Whether a statute violates equal protection is a question of law. *People v Pitts*, 222 Mich App 260, 272; 564 NW2d 93 (1997). This Court reviews questions of law de novo. *Id.*

Equal protection of the law is guaranteed by both the United States and the Michigan Constitutions. US Const, Am XIV; Const 1963, art 1, § 2; *Pitts*, *supra*, 222 Mich App 272 (citing *People v Martinez*, 211 Mich App 147, 150; 535 NW2d 236 (1995)). The equal protection guarantee requires that persons under similar circumstances be treated alike. *Pitts*, *supra*, 222 Mich App 272 (citing *Thompson v Merritt*, 192 Mich App 412, 424; 481 NW2d 735 (1991)). Thus, "things which are different in fact or opinion" may be treated differently. *El Souri v Dep't of Social Services*, 429 Mich 203, 207; 414 NW2d 679 (1987).

MCL 257.901a; MSA 9.2601(1) states:

If a person has received a citation for a violation of section 311, the court shall waive any fine and costs, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, has produced his or her

operator's or chauffeur's license and that the license was valid on the date the violation of section 311 occurred.

and MCL 257.311; MSA 9.2011 states:

The licensee shall have his or her operator's or chauffeur's license, or the receipt described in section 311a, in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such.

A violation of this statute may occur by 1) failing to possess a license while driving a motor vehicle or 2) failing to display the license on demand of any police officer. *People v McMaster*, 154 Mich App 564, 572-573; 398 NW2d 469 (1986) (interpreting Section 5.63 of the Troy City Code but stating that the code is analogous to MCL 257.311; MSA 9.2011). Defendant was charged with failing to display her license upon demand of an officer.

The part of MCL 257.901a; MSA 9.2601 which provides for the waiver of costs and fines upon presentation, before the appearance date, of a license that was valid at the time of the violation, is directed at that part of MCL 257.311; MSA 9.2011 which requires a person to have their operator's license in their immediate possession while driving. The purpose of this part of the statute is to allow people who have a valid license at the time they are stopped, but do not have it with them, to avoid costs and fines by showing that they were in fact validly licensed at the time of the stop. The part of the statute requiring a driver to display the license upon demand requires that a person perform the required act within a reasonable time. *People v Charlie Moore*, 38 Mich App 132, 134; 195 NW2d 789 (1972). That part of the statute is directed not at validly licensed people who do not have the license with them, but instead is directed at those who refuse to show their license to the officer when asked to do so. Thus, although the statute creates two classifications, the persons within those classifications are not similarly situated. Therefore, equal protection guarantees are not implicated.

Second, defendant argues that the trial court erred when it omitted an essential element of the crime from the jury instructions. Defendant failed to preserve the alleged instructional error for appeal. However, we will review unpreserved, constitutional errors under the plain error doctrine. *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999).

To determine if there was error in the jury instructions, the instructions must be reviewed in their entirety. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). Generally, instructions must include all the elements of the offense and must not exclude any material issues, defenses, or theories if the evidence supports them. *Id.* However, even if the instructions are imperfect, this Court will find no error "if the instructions fairly present the issues to be tried and sufficiently protect the defendant's rights." *Id.*

The record reflects that the trial court clearly identified that there were two ways to violate the statute and further instructed the jury that the prosecutor was claiming a violation based on failure to display a license upon demand of a police officer. The trial court also explained to the jury what failure

to display license upon demand means. Furthermore, before the trial court explained the law, the court told the jury that for each crime, the prosecutor has the burden to prove each element of the offense beyond a reasonable doubt. Because the trial court fairly presented the issues to be tried and sufficiently protected the defendant's rights, the jury instruction was not in error.

Third, defendant argues that because plaintiff failed to abide by MCR 7.101(D), (I), (J) and (K) the circuit court abused its discretion when it allowed plaintiff to participate in oral argument. Determining whether plaintiff was allowed to participate in oral argument is a decision to be made by the trial court and is reviewed for abuse of discretion. Abuse of discretion occurs only where a court's action is so violative of fact and logic as to constitute perversity of will or defiance of judgment. *People v Laws*, 218 Mich App 447, 456; 554 NW2d 586 (1996).

Pursuant to the court rules, the appellant is the one who is burdened with the obligation to file, serve, and request oral argument if he or she seeks to receive appellate review in the circuit court. MCR 7.101(I)(1). Furthermore, MCR 7.101 does not exclude an appellee from participating in oral argument even if the appellee fails to file a timely brief. *Richter v Dep't of Natural Resources*, 172 Mich App 658, 662; 432 NW2d 393 (1988).

However, the circuit court file indicates that the appellee did not file an appearance pursuant to MCR 7.101(D)(1). Therefore, we must determine whether it is an abuse of discretion to allow plaintiff to participate in oral argument despite appellee's failure to file an appearance pursuant to MCR 7.101(D)(1).

MCR 7.101(D)(1) states that the appellee must file an appearance in the trial and circuit court within fourteen days after being served with the claim of appeal. This court rule was promulgated to notify the court and opposing party where to send court documents because "there is no presumption that an attorney representing a party at the trial court level will continue to represent the party on appeal." Martin, Dean, and Webster, Michigan Court Rules Practice, Rule 7.101, p 24.

In the case at bar, there can be a presumption that appellate representation will be the same as trial court representation. This case involved a criminal appeal from a conviction in Grand Traverse County. Furthermore, defendant filed her appeal in the Grand Traverse Circuit Court. Therefore, both the circuit court and defendant could reasonably presume that plaintiff's attorney would be the prosecuting attorney in the Grand Traverse County Prosecuting Attorney's Office. With such a presumption, the court and defendant would be correct to send court documents to that office. In fact, the circuit court record reflects that that is exactly what happened. Therefore, the circuit court's decision to allow plaintiff to participate at oral argument despite plaintiff's failure to file an appearance was not a decision that was so violative of fact and logic as to constitute perversity of will or defiance of judgment.

Last, defendant argues that there was insufficient evidence for a jury to find defendant guilty of violating MCL 257.311; MSA 9.2011. Where leave to appeal is granted pursuant to an application, "the appeal is limited to the issues raised in the application and supporting brief." MCR 7.205(D)(4).

Defendant's application for leave to appeal and her initial supporting brief do not identify an insufficiency of the evidence issue. Therefore, we will not address this issue.

Affirmed.

/s/ David H. Sawyer

/s/ Roman S. Gibbs

/s/ Gary R. McDonald