

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LEONARD ORNATOWSKI,

Defendant-Appellant.

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UNPUBLISHED

February 25, 2000

No. 213895

Cass Circuit Court

LC No. 97 009079-FH

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of sales tax fraud, MCL 205.27; MSA 7.657(27), and two counts of violating the Tobacco Products Tax Act, MCL 205.428; MSA 7.411(38). For his tax fraud convictions, the trial court sentenced defendant to a term of five years' probation, ordering that the first ninety days be spent in jail. Defendant was also ordered to pay a fine of \$1,000 for his convictions of violating the Tobacco Products Tax Act. Defendant appeals as of right. We affirm.

This case arises from an investigation conducted by the state police and state tax enforcement officials into the business operations of the Pleasant Lake Resort (hereinafter "the resort"), a registered Michigan corporation operated by defendant as a topless bar and located near the Indiana border, in Edwardsburg. This investigation was spurred by a report from the Indiana Department of Revenue regarding the sale of cigarettes bearing Indiana tax stamps at the resort. In the investigation, it also became apparent that defendant had failed to file several years' worth of sales tax returns on behalf of the resort.

On appeal, defendant first argues that because his liability for the resort's corporate taxes is derivative, he may only be convicted of the corporation's failure to file a return or pay taxes due if it is shown that he aided and abetted the corporation in violating MCL 205.27; MSA 7.657(27). According to defendant, because the prosecution chose not to pursue defendant on a theory of aiding and abetting, his conviction is invalid and must be reversed. We disagree.

First, we note that because defendant failed to raise this assertion below, the issue is unpreserved. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). However, this Court may consider an issue not decided by the trial court if the issue is one of law and the record is factually sufficient. *People v Brown*, 220 Mich App 680, 681; 560 NW2d 80 (1996). Regardless of its unpreserved nature, we find defendant's argument without merit.

As the sole owner and officer of Pleasant Lake Resort, Inc., and the individual responsible for filing the required tax returns on behalf of the corporation during the years in question, defendant's criminal liability for violation of MCL 205.27; MSA 7.657(27) was personal, not derivative. See *Joy Management Co v Detroit*, 183 Mich App 334, 340; 455 NW2d 55 (1990) ("It is well established that corporate employees and officials are personally liable for all tortious and criminal acts in which they participate, regardless of whether they are acting on their own behalf or on behalf of a corporation"), citing *Attorney General v Ankersen*, 148 Mich App 524, 557; 385 NW2d 658 (1986). Accordingly, defendant could be prosecuted and convicted of any criminal wrongdoing that the jury found him to have perpetrated, regardless of whether those actions or inactions were taken on behalf of the corporation.

Defendant next challenges the sufficiency of evidence supporting his convictions of violating the Tobacco Products Tax Act. Specifically, defendant argues that because the prosecution did not present any evidence that defendant himself possessed or sold cigarettes at the resort, there is insufficient evidence to sustain his convictions of violating a section of the Tobacco Products Tax Act, that being MCL 205.428; MSA 7.411(38). We disagree.

When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). "The prosecutor is not required to present direct evidence linking the defendant to the crime." *People v Saunders*, 189 Mich App 494, 495; 473 NW2d 755 (1991). Circumstantial evidence and the reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994); *Saunders, supra*, at 495-496.

MCL 205.428; MSA 7.411(38), as in existence during the relevant time period, provided criminal penalties for any person found to have possessed, acquired, transported, or offered for sale any tobacco product in a manner contrary to the Tobacco Products Tax Act, MCL 205.421 *et seq.*; MSA 7.411(38) *et seq.* When viewed in a light most favorable to the prosecution, the evidence presented at trial, including business documents indicating purchases of cigarettes in Indiana, which defendant deducted as business expenses, combined with the purchase of Indiana generated cigarettes by undercover agents inside the resort and the subsequent search and discovery of cigarette shipping cartons without the appropriate markings and of Indiana generated cigarettes in a cabinet beneath the resort's bar, was sufficient to support a conclusion that

defendant, in operating the resort, possessed or sold cigarettes in violation of the Tobacco Products Tax Act.

Affirmed.

/s/ Brian K. Zahra

/s/ Helene N. White

/s/ Joel P. Hoekstra