

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL MARKEL MAGBY,

Defendant-Appellant.

UNPUBLISHED

November 28, 2000

No. 224254

Oakland Circuit Court

LC No. 99-166100-FH

Before: Zahra, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Defendant pleaded nolo contendere to operating a motor vehicle under the influence of intoxicating liquor, causing the death of another person (hereinafter “OUIL causing death”), MCL 257.625(4); MSA 9.2325(4), and manslaughter, MCL 750.321; MSA 28.553. He was sentenced to concurrent terms of 7-1/2 to 15 years’ imprisonment for each conviction. This Court granted defendant’s delayed application for leave to appeal. We affirm.

On January 2, 1999, defendant was driving on I-75 in Oakland County when he struck the vehicle driven by Joseph Caravaggio (hereinafter “the victim”) and carrying passenger Sandra Michaud. Both Michaud and the victim sustained serious injuries. Defendant was charged with two counts of OUIL causing serious impairment of a body function (the victim and Michaud), MCL 257.625(5); MSA 9.2325(5), failure to stop at the scene of a serious personal injury accident, MCL 257.617(1); MSA 9.2317(1), operating a motor vehicle while under the influence of alcohol, second offense, MCL 257.625; MSA 9.2325, and driving with a suspended or revoked license, second offense, MCL 257.904(1); MSA 9.2604(1) (hereinafter referred to as the “Group I offenses”). Defendant pleaded nolo contendere to each of those offenses, and was scheduled to be sentenced on April 19, 1999, but sentencing was adjourned. On April 19, 1999, the victim died as a result of the injuries he suffered in the collision. The next day, defendant was charged with OUIL causing death and manslaughter (hereinafter referred to as the “Group II offenses”). On May 3, 1999, defendant was sentenced for the Group I offenses and arraigned on the Group II offenses. Thereafter, defendant alleged that the Group II offenses violated his double jeopardy right to be free from multiple prosecutions for the same transaction. The trial court denied defendant’s motion. Defendant pleaded nolo contendere to the Group II offenses. When the trial court sentenced defendant for the Group II offenses, the trial court vacated the

Group I conviction for OUIL causing serious impairment of a body function involving the injury to the victim.

Defendant first argues that his convictions for the Group II offenses violated the double jeopardy protection against multiple prosecutions for the same offense. We disagree. This issue presents a question of law that we review de novo. *People v Echavarria*, 233 Mich App 356, 358; 592 NW2d 737 (1999). We address the validity of multiple prosecutions as defined by the “same transaction” test. Except in limited circumstances, this test requires the prosecutor to join, at one trial, all the charges that arise out of a single criminal act, occurrence, episode, or transaction. *People v Hunt (After Remand)*, 214 Mich App 313, 316; 542 NW2d 609 (1995). In the present case, the Group II offenses arise out of the same episode as the Group I offenses. However, an exception to the same transaction test exists where the prosecutor is unable to proceed on a more serious charge at the outset because additional facts necessary to sustain the charge have not occurred or when all the events necessary for the greater crimes have not occurred at the time the prosecution for the lesser crime has begun. *People v Harding*, 443 Mich 693, 701-702; 506 NW2d 482 (1993). Because the victim had not died at the time of the filing of the initial charges against defendant, the Group II offenses could not have been charged. Therefore, a separate prosecution is permissible. *Id.* Defendant was not improperly subjected to multiple prosecutions for the same offense.

Defendant next argues that his dual convictions for OUIL causing death and manslaughter constitute multiple punishments for the same offense. We disagree. Defendant’s position was rejected in *People v Price*, 214 Mich App 538, 542-546; 543 NW2d 49 (1995). Defendant’s contention that *Price* is no longer valid in light of *People v Lardie*, 452 Mich 231; 551 NW2d 656 (1996) is also without merit. *People v Kulpinski*, ___ Mich App ___; ___ NW2d ___ (Docket No. 220072, issued October 17, 2000) slip op p 9.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Gary R. McDonald