

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD BLAKE PENDYGRAFT,

Defendant-Appellant.

UNPUBLISHED

February 16, 2001

No. 215420

Oakland Circuit Court

LC No. 98-160642-FH

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant, Richard Blake Pendygraft, appeals as of right from his jury trial convictions for operating a motor vehicle under the influence of liquor (OUIL), third offense, MCL 257.625(1); MSA 9.2325(1), and operating a motor vehicle while license suspended (DWLS), second or subsequent offense, MCL 257.904(1); MSA 9.2604(1). Defendant was sentenced as a third-offense habitual offender to 2½ to 10 years' imprisonment for the OUIL conviction and one year imprisonment for the DWLS conviction, sentences to run concurrently. We affirm.

Defendant first argues on appeal that there was insufficient evidence to convict him of DWLS. We disagree. In an insufficiency claim, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational juror could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). The elements of a crime may be proven by circumstantial evidence and reasonable inferences arising from the evidence. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court must draw all reasonable inferences in favor of the jury's verdict. See *Nowack, supra*. Further, in resolving a challenge to the sufficiency of the evidence, this Court must examine all of the evidence, including the defendant's admissions. *People v Brown*, 184 Mich App 567, 570; 459 NW2d 19 (1990).

The elements that must be proven to establish the offense of DWLS are that (1) the defendant's license was suspended, (2) the defendant was notified of the suspension, and (3) the defendant operated a motor vehicle on a public highway while his license was suspended. *City of*

Troy v McMaster, 154 Mich App 564, 572; 398 NW2d 469 (1986).¹ MCL 257.904(1); MSA 9.2604(1) provides that notice of suspension is to be furnished, in accordance with the provisions of MCL 257.212; MSA 9.1912, by the secretary of state.

Defendant argues that there was insufficient evidence to support his conviction for DWLS because the prosecutor failed to present evidence that defendant received the requisite notice from the secretary of state regarding the license suspension. However, at trial, and in the presence of the jury, defendant stipulated that his license was suspended and that he was aware of the suspension at the time the alleged offense was committed. Stipulations of fact are binding on the parties. See *People v Williams*, 153 Mich App 582, 587; 396 NW2d 805 (1986); *People v Kremko*, 52 Mich App 565, 575; 218 NW2d 112 (1974). Although defendant's stipulation did not relieve the prosecution of its burden to prove every element of the offense beyond a reasonable doubt, defendant's admission is compelling evidence that could lead a reasonable juror to infer that notice was provided by the secretary of state. See *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998); *Old Chief v United States*, 519 US 172, 186; 117 S Ct 644; 136 L Ed 2d 574 (1997). Further, defendant's primary defense at trial was that he was not the driver of the vehicle, not that he failed to receive notice of his license suspension. Viewing the evidence in a light most favorable to the prosecution, we find sufficient evidence to sustain defendant's conviction.

Defendant next argues that his conviction for DWLS should be vacated because there was an instructional error regarding the DWLS offense. We disagree. Because defendant failed to object to the jury instructions in the trial court, appellate review is precluded absent manifest injustice. *People v Kelly*, 231 Mich App 627, 645-646; 588 NW2d 480 (1998). Manifest injustice occurs where an erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997).

Defendant argues that the trial court erroneously instructed the jury on the second element of the DWLS offense because the trial court framed the element as defendant having "knowledge" of the suspension rather than defendant having been "notified" of the suspension. However, whether defendant had the appropriate notice regarding his license suspension was not a basic and controlling issue in the case. Therefore, relief is not required to avoid manifest injustice. Further, after review of the jury instructions in their entirety, we hold that the instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Brown*, 239 Mich App 735, 746; 610 NW2d 234 (2000).

Finally, defendant argues that the presentence investigation report (PSIR), which listed a prior conviction for forgery or altering an operator's license, must be corrected. We disagree. A defendant has a right to have the sentencing judge use accurate information at sentencing. *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000). In response to an allegation that the PSIR is inaccurate, the judge may determine the accuracy of the information,

¹ Although MCL 257.904(1); MSA 9.2604(1) has been amended since *McMaster*, the notification provision remains the same.

accept the defendant's version, or disregard the challenged information. *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991). When the court finds the challenged information to be inaccurate or irrelevant, it must strike that information from the PSIR. *People v Hoyt*, 185 Mich App 531, 535; 462 NW2d 793 (1990).

Defendant argues that the sentencing judge erred by failing to correct a reference, as count two,² in the PSIR to an October 1995 conviction for "Forgery Altering Operator's License." In response to defendant's objection, the prosecutor indicated that the conviction was for giving a false name to a police officer. Defendant did not dispute the prosecutor's explanation but instead objected to the characterization of the conviction as "forgery or alternating [sic] an operator's license."

The Michigan Vehicle Code (MVC), specifically MCL 257.324; MSA 9.2024, governs violations of operator's license provisions. This statute, generally, prohibits the falsification and/or misrepresentation of information, either verbal or written, related to and/or regarding an operator's license, including but not limited to personal identification information. Consequently, defendant's argument is without merit. Giving a false name to a police officer during a traffic stop is a violation of the same statute that prohibits forgery or altering an operator's license. Although the PSIR may have been more explicit if the exact violation of MCL 257.324; MSA 9.2024 was indicated, the PSIR was accurate. Therefore, the sentencing judge properly refused to correct or strike the conviction from the PSIR.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

² Count one was a conviction for OUIL, third offense.