

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT ROSIK CAMACHO,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 215978

Oakland Circuit Court

LC No. 98-159465-FC

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317; MSA 28.549, and operating a motor vehicle while impaired (OWI), causing death, MCL 257.625(4); MSA 9.2325(4). He was sentenced to concurrent prison terms of eighteen to fifty years for the murder conviction and ten to fifteen years for the OWI causing death conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred in admitting evidence that he was driving on a probationary license at the time of the fatal accident. We disagree. Our review of a trial court's decision to admit or exclude evidence is for an abuse of discretion. *People v Smith*, 456 Mich 543, 549; 581 NW2d 654 (1998). Ordinarily, a trial court's decision regarding a close evidentiary question cannot be an abuse of discretion. *Id.* at 550. At trial, witnesses testified that defendant accelerated before entering the intersection despite facing a red traffic signal. Defendant denied accelerating in order to evade police. Evidence of defendant's probationary status was relevant to the issue of his intent. The jury could infer that he intentionally accelerated and proceeded through the red light to evade the police as support for the finding of malice required for second-degree murder. *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Thus, the evidence was relevant to a fact of consequence at trial and was offered for a proper purpose under MRE 404(b). *People v Sabin (After Remand)*, 463 Mich 43, 55-60; 614 NW2d 888 (2000). Further, because the question of defendant's intent was a principal issue at trial, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *Id.* We cannot conclude that the trial court abused its discretion in admitting the evidence.

Defendant next argues that the trial court erred in denying his motion for a directed verdict where there was insufficient evidence of the requisite intent to support the charge of

second-degree murder. We disagree. We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). At trial, witnesses testified to the following: defendant consumed a substantial amount of alcohol; defendant swerved in traffic shortly before the fatal collision; defendant saw a police officer activate his overhead lights to effectuate a traffic stop through his rear view mirror; defendant accelerated through a high volume intersection despite the presence of a red traffic signal; and defendant failed to brake before the collision. This evidence, viewed in the light most favorable to the prosecution, was sufficient to support a finding of malice. *Goecke, supra*. Although defendant argues that the testimony by some witnesses was unreliable and inconsistent, the credibility of the witnesses was for the trier of fact to resolve. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant next argues that the trial court erred in admitting blood alcohol test results based on samples drawn two and a half hours after the accident. Defendant also argues that once the blood alcohol test results are suppressed, there is insufficient evidence to convict him of OWI causing death. We disagree. The trial court did not abuse its discretion in admitting the blood alcohol test results because any delay affected the weight of the evidence, not its admissibility. *People v Wager*, 460 Mich 118, 122-126; 594 NW2d 487 (1999). Even without the test results, the evidence of defendant's alcohol consumption, erratic driving, the smell of alcohol emanating from defendant and his vehicle immediately after the accident, and defendant's condition and demeanor at the hospital was sufficient to enable the jury to find beyond a reasonable doubt that defendant was driving while impaired. *Nowack, supra*.

Defendant next argues that his eighteen year minimum sentence for second-degree murder was disproportionate. We disagree. A trial court's sentencing decision is reviewed for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The principle of proportionality requires that a sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* Defendant's sentence was within the recommended range under the sentencing guidelines. The circumstances surrounding the offense were serious, resulting in the death of another individual. Defendant had a prior history of alcohol related and driving offenses, including a head on collision that did not result in serious injury. Accordingly, we cannot conclude that the trial court abused its discretion in sentencing defendant. *Milbourn, supra*.

Defendant next argues that his double jeopardy rights, in violation of the United States and Michigan Constitutions, US Const, Am V; Const 1963, art 1, § 15, were violated when he was sentenced for both second-degree murder and OWI causing death, arising out of the same accident. We disagree. The two statutes were designed to punish conduct that violates different social norms. See *People v Kulpinski*, 243 Mich App 8, 14-15; 620 NW2d 537 (2000). In the case of second-degree murder, the statute is designed to punish malicious conduct. However, in the case of OWI, causing death, the statute is designed to dispel the social acceptance associated with drunk driving by ensuring swift and sure punishment. *Id.* The maximum punishment for OWI, causing death, is fifteen years, MCL 257.625(4); MSA 9.2325(4), whereas the maximum punishment for second-degree murder is life imprisonment. MCL 750.317; MSA 28.549. The

statutes are not hierarchial and share only one element, a death caused by defendant. Defendant's dual convictions do not violate the constitutional protections against double jeopardy. *Kulpinski, supra*.

Affirmed. However, we direct that the judgment of sentence be amended to reflect the jury's determination that defendant was convicted of OWI, causing death, not OUIL, causing death. See MCR 7.216(A)(1).

/s/ William B. Murphy

/s/ Harold Hood

/s/ Jessica R. Cooper