

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

JAMES MOORE,

Defendant-Appellee.

---

UNPUBLISHED

September 28, 2001

No. 232814

Washtenaw Circuit Court

LC No. 00-000934-AR

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the circuit court order reversing defendant's district court conviction for OUIL, third offense, MCL 257.625(9). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At 5:00 p.m. on January 27, 1999, an Ypsilanti Police Department support officer observed a blue Cadillac on the front lawn of the police station. The driver was a white male. The car drove away, but she was able to observe all but one of the numbers of the license plate. A review of the possible numbers identified one Cadillac, which was registered to defendant, who lived three blocks from the police station.

A police sergeant went to the address listed on the vehicle registration and saw the Cadillac parked in front of the house. The hood was warm, and the vehicle had fresh damage and wet mud in the wheel wells. She knocked on the door for ten minutes, but no one answered. Defendant's girlfriend arrived and allowed police into the house, where they found defendant sleeping at the kitchen table.

Defendant smelled of alcohol and admitted that he had been drinking. Defendant said he had been driving, but he did not recall an accident. Chemical tests showed a blood alcohol level of .11. The trial court found defendant guilty, but the circuit court reversed, finding that there was insufficient evidence to support the conviction.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In order to prove the offense of operating a motor

vehicle under the influence of intoxicating liquor, the prosecution must establish that defendant was operating a motor vehicle upon a public highway while under the influence of alcohol. *People v Raisanen*, 114 Mich App 840, 844; 319 NW2d 693 (1982).

Here, there was insufficient evidence to prove beyond a reasonable doubt that defendant was driving while intoxicated. Observers were unable to identify the driver of the car and defendant's statements to police were too vague to establish that he was driving the automobile during the time frame in question. The circuit court did not err in reversing the conviction.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper