

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARY MICHAEL LIPSON,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 227976
Oakland Circuit Court
LC No. 00-170791-FH

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals by right from a jury conviction of operating under the influence of liquor/unlawful blood alcohol level, third offense, MCL 257.625(1), (8), for which he was sentenced to two years' probation with the first eight months in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal was that the evidence was insufficient to sustain the conviction. In reviewing the sufficiency of the evidence in a criminal case, we must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of the offense are that defendant operated his vehicle on a highway at a time when: (a) he was under the influence of intoxicating liquor, i.e., his ability to drive was substantially and materially affected by the consumption of alcohol, or (b) his blood contained 0.10 grams or more of alcohol per 100 milliliters of blood. MCL 257.625(1); See *Oxendine v Secretary of State*, 237 Mich App 346, 353-354; 602 NW2d 847 (1999).

The evidence showed that defendant had been driving and that his driving was erratic: he was traveling at such a speed that he overtook another car and swerved into the left turn lane where he clipped the back end of that vehicle. Approximately an hour after the accident, a police officer spoke to defendant, who exhibited signs of intoxication: he smelled strongly of

intoxicants, he was unsteady on his feet, his eyes were watery and bloodshot, his speech was slurred, and he was unable to focus on the conversation. A blood test confirmed that his blood alcohol level exceeded 0.10 percent, which gave rise to a presumption that defendant was under the influence of intoxicating liquor. MCL 257.625a(9)(c). Although the witnesses were unable to state affirmatively that defendant was intoxicated when the accident occurred, the facts and circumstances were sufficient to enable the jury to draw a reasonable inference that such was the case. See generally *People v Kelley*, 60 Mich App 162; 230 NW2d 357 (1975).

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin D. Doctoroff

/s/ Donald S. Owens