

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID B. HOWARD, JR.,

Defendant-Appellant.

UNPUBLISHED

April 16, 2002

No. 229329

Wayne Circuit Court

LC No. 00-001429

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for operating under the influence of liquor (“OUIL”), third offense, MCL 257.625(1), and driving with a suspended license, MCL 257.904. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was stopped after he was observed driving erratically after leaving a bar. Defendant failed field sobriety tests. The breath tests given at the police station showed a blood alcohol level of .23 and .22. The trial court denied defendant’s motion for a directed verdict and the jury found him guilty as charged. Defendant appeals of right.

On appeal, defendant argues that the verdict was against the great weight of the evidence. However, he did not move for a new trial. MCR 6.431 allows the trial court to grant a new trial in a criminal case only when a motion has been brought by the defendant. *People v McEwan*, 214 Mich App 690, 694; 543 NW2d 367 (1995). Failure to raise the issue by the appropriate motion waives the issue on appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

A trial court’s decision on a motion for a new trial is reviewed for abuse of discretion. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Where the trial court has not been asked to exercise its discretion, there is nothing for this Court to review. Furthermore, given the testimony and the blood alcohol level reflected in the tests, there is no showing that the denial of a new trial would be an injustice.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh