

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ALAN JARVIS,

Defendant-Appellant.

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UNPUBLISHED

February 17, 2004

No. 244273

Wayne Circuit Court

LC No. 02-003136-01

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of operating a motor vehicle under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990). The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *Vaughn, supra* at 379-380. A trial court's findings of fact are reviewed for clear error. MCR 2.613(C).

A person shall not operate a motor vehicle upon a highway or in any other place open to the public or generally accessible to motor vehicles, including a parking lot, if the person is under the influence of alcoholic liquor, a controlled substance, or a combination thereof. MCL 257.625(1)(a). A person is considered to be "operating" a motor vehicle if he has put the vehicle into motion or in a position that poses a significant risk of causing a collision. *People v Wood*, 450 Mich 399, 404-405; 538 NW2d 351 (1995). Circumstantial evidence may sustain a conviction of OUIL. *People v Smith*, 164 Mich App 767, 770; 417 NW2d 261 (1987); see also, generally, *People v Lyon*, 227 Mich App 599, 612; 577 NW2d 124 (1998) (the defendant's admission to having driven a vehicle before stopping it and subsequently failing a sobriety test helped to support a finding of probable cause that the defendant committed the offense of OUIL).

Defendant argues that the evidence was insufficient to support his conviction because the prosecution failed to show he operated the vehicle while intoxicated. We disagree and affirm. A witness observed defendant's truck proceeding without headlights at approximately five miles an

hour as it approached an exit ramp. Defendant admitted he drove the vehicle to that location before it ran out of gas. Approximately five minutes after receiving the report of the slow-moving vehicle, the police discovered defendant sitting behind the wheel of the truck. His eyes were glassy, his speech was slurred, and he had an odor of alcohol about his person. He refused to perform field sobriety tests. The trial court rejected defendant's assertion that he consumed alcohol only after the truck ran out of gas and found that, based on the evidence that defendant drove very slowly and without headlights to the exit ramp and exhibited several signs of alcohol consumption shortly thereafter, he had consumed alcohol before the truck ran out of gas. The trial court concluded that defendant had operated the truck while under the influence of alcohol. The trial court, as the trier of fact, was entitled to determine what inferences could be drawn from the evidence and to determine the weight to be given to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The evidence, both direct and circumstantial, viewed in the light most favorable to the prosecution, was sufficient to support defendant's conviction. *Vaughn, supra* at 379.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter  
/s/ Donald S. Owens