

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP GEORGE SPENCER,

Defendant-Appellant.

UNPUBLISHED

April 27, 2004

No. 245370

Cass Circuit Court

LC No. 01-010235-FH

Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a jury trial of operating under the influence of liquor, MCL 257.625(1)(b). We affirm.

Defendant was the only person found near his car, which had crashed into a large tree after going through a guard rail and knocking over a GTE telephone box in Cass County near the Indiana border. The deputy who responded to the scene did not see defendant driving the vehicle involved in the accident. However, the deputy testified that he saw drops of blood on the driver's side of the car, noticed that the seatbelt on that side of the car was still partially extended, and further noted that the steering wheel looked like it had been forced up by someone crashing into it; there were no indications that anyone had been on the passenger's side of the car. Defendant had the keys to the car in his hand, but promptly threw them to the ground as the deputy approached. Two emergency medical technicians testified that defendant had abrasions on his chest angled so as to indicate that they were caused by a driver's side seat belt. Nonetheless, defendant has steadfastly maintained that he was not driving the vehicle at the time of the crash, and that a friend, whose name and identifying features he has never provided to police, was driving at the time of the accident.

Because defendant had numerous cuts on his face and hands, the deputy suggested that defendant needed an ambulance. Defendant was transported to the hospital, which happened to be in Elkhart, Indiana. While at the hospital, defendant received medical treatment, and his blood was drawn and tested to determine his blood alcohol content.

Defendant first contends that the blood draw in Indiana violated his constitutional rights and should have been suppressed under Michigan's implied consent law, MCL 257.625a(6)(e). Defendant premises his argument on the factual assertion that his blood was drawn pursuant to a request by the deputy from Michigan, who had no authority as a law enforcement officer in

Indiana, and who requested that defendant's blood be drawn under the Indiana implied consent law, IC 9-30-6-6. Defendant further asserts that the trial court erroneously applied Indiana law when it determined that his blood alcohol results should not be suppressed, arguing that the results should have been suppressed under proper application of the pertinent Michigan implied consent provision, MCL 257.625a(6)(e). Defendant then argues that his blood alcohol results should have been suppressed because Michigan's statute only allows for blood to be drawn for medical purposes from the driver of the vehicle, and because this was a contested issue at trial the court's determination constituted error requiring reversal. We disagree.

We first note that defendant's argument misapprehends the proceedings before the lower court regarding his motion to suppress evidence of his blood alcohol level. The trial court initially granted defendant's motion to suppress, because it was presented with only the deputy's testimony that defendant's blood was drawn and his blood alcohol level ascertained pursuant to the deputy's request under Indiana's implied consent law. However, at a subsequent hearing, the doctor who treated defendant at the emergency room testified that he had ordered that defendant's blood be drawn and his blood alcohol level be ascertained for medical purposes, irrespective of the deputy's request. After hearing the doctor's testimony, the trial court applied MCL 257.625a(6)(e) to the facts of the case and, finding that the elements of the provision were met, determined that the result under Michigan law would not violate the laws of Indiana.

Consequently, defendant's argument before this Court is without a factual basis. Further, while we review defendant's legal claims de novo, we review for clear error the trial court's findings of fact regarding a motion to suppress. *People v Callon*, 256 Mich App 312, 321, 324-325; 662 NW2d 501 (2003). Defendant does not demonstrate that the trial court's threshold findings, including that he was the driver of the car when it crashed, were erroneous. Defendant also provides no support for his interpretation of MCL 257.625a(6)(e) that his blood could only be drawn after he was determined to be the driver of the vehicle. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Next, defendant argues that the trial court violated his constitutional rights by determining the factual issue of whether defendant was the driver of the vehicle and thereby usurped the rightful function of the jury as the exclusive trier of fact. At trial, the jury was properly instructed that, to find defendant guilty, it first had to find, as an element of the crime, that defendant was the driver of the vehicle. The court therefore did not remove this issue from the jury's consideration. Furthermore, defendant once again does not provide us with law that actually supports his position, nor does he provide us with facts supporting his claim. Therefore, defendant's claims must fail. See *Kelly*, *supra* at 640-641.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Donald S. Owens