

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANN MARIE MCLEOD,

Defendant-Appellant.

UNPUBLISHED

June 22, 2004

No. 246325

Wayne Circuit Court

LC No. 01-011589-01

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of operating under the influence of intoxicating liquor, third offense, MCL 257.625(8)(c), and driving on a suspended license, MCL 257.904(3). She was sentenced to nine months to five years in prison for the OUIL conviction and to time served on the suspended license conviction. Defendant appeals her convictions as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred when it excused a missing juror in the middle of trial. Defendant failed to object or otherwise raise this issue below and thus it has not been preserved for appeal. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Therefore, review is precluded unless defendant establishes plain error that affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The court was authorized to excuse a juror for "any condition" which, in its opinion, "justifies the excusal" of any juror impaneled to hear the case. MCL 768.18; MCR 6.411. While the court does not have "arbitrary power to excuse the extra jurors according to his own inclinations," *People v Van Camp*, 356 Mich 593, 604-605; 97 NW2d 726 (1959), removal of a juror need not be predicated on just cause. *People v Tate*, 244 Mich App 553, 561; 624 NW2d 524 (2001).

When court convened on the second day of trial, one of the thirteen jurors was missing. Apparently no one was able to contact her and after waiting an hour, the court elected to go forward with the trial. Given the juror's apparent unwillingness to serve, the court's decision to excuse her was not improper. *Id.* at 562; *People v Bell*, 74 Mich App 270, 274; 253 NW2d 726 (1977). Even if defendant had shown error, she would not be entitled to relief because she has failed to establish that she suffered any prejudice due to the fact that the missing juror was not

available to possibly participate in deliberations. *People v Weatherspoon*, 171 Mich App 549, 560; 431 NW2d 75 (1988); *People v Clyburn*, 55 Mich App 454, 457; 222 NW2d 775 (1974).

Affirmed.

/s/ Janet T. Neff

/s/ Brian K. Zahra

/s/ Christopher M. Murray