

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN MICHAEL MARSLAND,

Defendant-Appellant.

UNPUBLISHED

August 2, 2005

No. 253147

Livingston Circuit Court

LC No. 03-013448

Before: Borrello, P.J. and Bandstra and Kelly, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of operating a vehicle while under the influence of intoxicating liquor (OUIL), MCL 257.625(1), third offense, and operating a vehicle without security, MCL 500.3102. The trial court sentenced him as a second habitual offender to twelve months' imprisonment on the OUIL conviction and six months' imprisonment on the failure to have security conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first claims the trial court erred in failing to grant his motion to suppress evidence and finding probable cause existed for his arrest. This Court reviews for clear error findings of fact regarding a motion to suppress evidence; however, we review de novo the trial court's ultimate decision on a motion to suppress. *People v Fosnaugh*, 248 Mich App 444, 450; 639 NW2d 587 (2001). We discern no error in this case. Most of defendant's argument on appeal addresses the alleged improper administration of the horizontal gaze nystagmus sobriety test and its impact on the finding of probable cause to arrest. However, even if we were to determine that the test was improperly administered, the results of this test were not admitted as evidence or relied on by the trial court in its finding of probable cause to support defendant's arrest. Our review reveals more than sufficient evidence to support the conclusion that defendant's arrest was supported by probable cause.

We likewise reject defendant's claim that the court erred in considering the results of the blood alcohol content test results when the machine had not been tested for accuracy the week before defendant's arrest. Chemical analysis of blood alcohol content is admissible in proceedings charging OUIL. The proper functioning of the machine or questions regarding the accuracy of the results goes to the weight to be afforded the evidence, not its admissibility. *People v Wager*, 460 Mich 118; 594 NW2d 487 (1999).

Affirmed.

/s/ Stephen L. Borrello

/s/ Richard A. Bandstra

/s/ Kirsten Frank Kelly