

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JAMES HALL,

Defendant-Appellant.

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UNPUBLISHED

January 24, 2008

No. 271409

Wayne Circuit Court

LC No. 05-012754-01

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

SCHUETTE, P.J. (*dissenting*).

I respectfully dissent from the majority opinion of my distinguished colleagues, Judges Hoekstra and Meter.

Although I agree that defense counsel's consent to the jury instructions fell below an objective standard of reasonableness, defendant has failed to show that counsel's consent denied him a fair trial, "i.e., that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v Walker*, 265 Mich App 530, 545; 697 NW2d 159 (2005), vacated in part on other grounds 477 Mich 856 (2006). Even if the element of causation was omitted from the jury instructions, the evidence sufficiently showed that defendant caused the accident at issue. MCL 257.617(3) only requires that defendant cause the accident that resulted in death of another individual; it does not require that defendant be the proximate cause of death.

Here, the evidence showed that Ralph Yanas's car stalled in the middle of the road and he exited his car to look under the hood. During this time, defendant was traveling in Yanas's direction and the cars collided. Yanas died as a result of the accident and it was determined that Yanas's death was caused by injuries sustained as a result of being hit by defendant's car as a pedestrian. Although Yanas's vehicle only had a few working light bulbs that night, his headlights were on and the street lights were lighted. When David Oates, a motorist traveling in Yanas's direction before the accident at issue, saw Yanas's vehicle in the lane next to his, Oates was able to hit his brakes and reduce his speed to about 10 to 15 miles per hour. However, defendant was driving 45 to 51.5 miles per hour immediately before the accident and did not brake until the cars collided. Defendant's alcohol consumption was also over the legal limit for driving a motor vehicle.

The evidence presented at trial sufficiently showed that defendant caused the accident. It is more than likely that the jury found that defendant's intoxication and his failure to exercise caution when operating his motor vehicle caused the accident at issue. Defendant was driving about 45 to 50 miles per hour when the accident occurred and he did not decrease his speed until the moment of impact. Even if counsel erred by consenting to the jury instructions, defendant has failed to show that, but for defense counsel's error, the result of the proceeding would have been different. *Walker, supra* at 545. Therefore, defendant has failed to show that he was denied the effective assistance of counsel.

I would affirm defendant's conviction.

/s/ Bill Schuette