STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 13, 2008
v	No. 274823 Livingston Circuit Court
RONALD MARTIN CAMPBELL, Defendant-Appellant.	LC No. 05-015286-FH

Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of operating a vehicle while intoxicated, second offense (OWI 2d). MCL 257.625(1). The court sentenced defendant to 30 days in jail. We affirm defendant's conviction and sentence, but remand for the ministerial task of correcting the judgment of sentence.

The first issue defendant raises on appeal is whether sufficient evidence existed to support his conviction. This Court reviews challenges to the sufficiency of the evidence de novo. *People v Osantowski*, 274 Mich App 593, 612-613; 736 NW2d 289 (2007). The Court must view "the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt." *Id.* In making this determination, "[i]t is for the trier of fact and not the appellate court to determine what inferences can be fairly drawn from the evidence and the weight to be accorded to those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The evidence demonstrated that defendant operated his truck in an attempt to reposition it on his girlfriend's driveway, which is curved, narrow, and on a hill. Testimony revealed that, before repositioning his vehicle, defendant consumed several beers during and after dinner. Defendant's son testified that defendant might have consumed three or four additional beers after dinner before driving the truck. Defendant was unable to successfully reposition the truck on the driveway. To prevent it from tipping and rolling, defendant drove the vehicle down the hill and across the neighbor's yard. The neighbor contacted the police and an officer arrived approximately one hour later. The officer testified that, on his arrival, he observed the truck was positioned between the neighbor's driveway and the roadway. Reportedly, defendant acknowledged to police that he drove the vehicle "backwards through Ms. McDonald's yard and,

you know, out into the roadway and it stopped at that point," and conceded that a portion of his vehicle was in the driveway. Observing defendant's slurred speech and bloodshot eyes, the officer conducted several field sobriety tests and arrested defendant based on his suspicion that defendant was intoxicated. At the jail, the officer twice administered a blood alcohol content (BAC) test, which showed that defendant's blood alcohol content level was .15 and .14 respectively.

MCL 257.625(1) provides, in relevant part:

> A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated.

Defendant contends that the record does not support the finding that he drove his truck in a place open to the general public or generally accessible to motor vehicles. Specifically, defendant contends that because the driveway is not open to the general public even though it is generally accessible to motor vehicles, the evidence is insufficient to support his conviction. Initially, we note that it is unnecessary to address this issue as evidence adduced at trial indicates that defendant did not restrict his operation of the vehicle to the neighbor's driveway and front lawn. Defendant reportedly acknowledged that two of his vehicle's wheels were on the edge of the driveway when he attempted to reposition his truck. In addition, the investigating officer testified that when he arrived at the scene defendant's vehicle was partially in the roadway and obstructing a portion of the lane. Defendant fails to dispute that the roadway abutting the neighbor's driveway and driveway area constitute a "highway or other place open to the general public or generally accessible to motor vehicles." MCL 257.625(1). As a result, the facts do not support defendant's claim that operation of his truck was confined to private property, which did not meet the statutory requirements of MCL 257.625(1).

In addition, we note that defendant misconstrues the statutory requirements. This Court previously interpreted the meaning of the statutory language in *People v Nickerson*, 227 Mich App 434, 439-440; 575 NW2d 804 (1998), stating in relevant part:

> [T]he disjunctive phrases "open to the general public" and "generally accessible to motor vehicles" specify two distinct alternative places other than highways where driving a vehicle while under the influence of liquor is prohibited. Thus, even if a place is not "open to the general public," the OUIL statute is violated if a person, while under the influence of liquor, is driving in a place "generally accessible to motor vehicles." Clearly the Legislature intended to broaden the coverage of the OUIL statute when it amended this statute to additionally prohibit drunk driving in places "generally accessible to motor vehicles." [*Id.* at 440.]

The testimony showed that defendant drove on his girlfriend's driveway, his neighbor's lawn and driveway, and part of the street in front of his neighbor's house. The statute does not require defendant to have driven in a place both open to the general public *and* a place generally accessible to motor vehicles. *Id.* Rather, it suffices if defendant drove in a place generally accessible to motor vehicles. *Id.* Given the stated intent of the drunk driving statute to prevent

"the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property," *People v Wood*, 450 Mich 399, 404; 538 NW2d 351 (1995), private driveways and lawns fit within the category of areas generally accessible to motor vehicles within the meaning of the statute.

Defendant's next argument is that the lower court erred because it instructed the jury that it could infer from the BAC test that defendant's level of intoxication was the same at the time of the incident as it was at the time of the test. This Court reviews claims of instructional error de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002). To determine whether the court committed error, we read the jury instructions in their entirety rather than piecemeal. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). We will not find that jury instructions are erroneous if they are imperfect; however, they must fairly apprise the jury of the issues to be tried and protect the defendant's substantial rights. *Id.*

The court informed the jury of all the elements of the crime for which defendant had been charged, as well as the lesser-included offense. Pursuant to CJI2d 15.5, the court also instructed the jury to consider all the evidence that tended to show that defendant was intoxicated, including defendant's motor function, the results of the BAC test, and the reliability and accuracy of the test method. In reference to the BAC test, the court specifically instructed the jury that it "*may* infer that the Defendant's bodily alcohol content at the time of the test was the same as his bodily alcohol content at the time he operated the motor vehicle." (Emphasis added.) See CJI2d 15.5(6). The court emphasized that the test constitutes only one factor amongst all the evidence, which the jury could consider and that the jury "may give the test whatever weight you believe that it deserves." See CJI2d 15.5(7).

The relevant law underpinning these instructions is MCL 257.625a(6)(a), which applies with respect to chemical tests of a person's blood or urine. The provision states, in relevant part:

> The amount of alcohol . . . in a driver's blood . . . at the time alleged as shown by chemical analysis of the person's blood . . . is admissible into evidence in any . . . proceeding and is presumed to be the same as at the time the person operated the vehicle. [MCL 257.625a(6)(a).]

The Legislature's purpose in creating the statutory presumption of intoxication in MCL 257.625a(6)(a) is to allow the prosecution "to obtain convictions without being unduly burdened in the proof of the crime." *People v Campbell*, 236 Mich App 490, 498; 601 NW2d 114 (1999). The *Campbell* Court specifically ruled:

> The Legislature did not include a limit on the amount of time that the chemical analysis would continue to show the amount of alcohol "at the time alleged." Clearly, "at the time alleged" refers to the time of the offense. Pursuant to the plain language of the statute, a chemical test, regardless of the amount of time before the test is actually performed, is assumed to be a reasonable approximation of a person's blood alcohol level at the time of the offense. The Legislature has determined that a chemical test is generally a sufficiently close indicator of a person's blood alcohol content at the time of the offense that it must be allowed into evidence. [*Id.* at 496 (internal citations omitted).]

The challenged jury instruction used by the court is consistent with the language and purpose of MCL 257.625a(6)(a). The court also properly informed the jury that it was required to determine the weight to be given the test and that it should be considered along with all other evidence of defendant's condition. *Id*. These instructions were consistent with the relevant statutory provision and clearly and adequately described the applicable law.

Finally, defendant seeks remand to the trial court to correct the judgment of sentence. The prosecution concurs in this request. Defendant was charged with OWI 2d with an occupant under the age of 16. The jury convicted defendant of the lesser offense of OWI 2d. However, the judgment of sentence incorrectly indicates that defendant was convicted of the charged offense. Accordingly, we remand to the trial court solely for the ministerial correction of the judgment of sentence. *People v Avant*, 235 Mich App 499, 521; 597 NW2d 864 (1999).

Defendant's conviction and sentence are affirmed, but we remand to the trial court for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Stephen L. Borrello