

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZORAN SAVIC,

Defendant-Appellant.

UNPUBLISHED

May 20, 2008

No. 277257

Van Buren Circuit Court

LC No. 04-013996-FH

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of failure to use due care when approaching a stationary emergency vehicle, MCL 257.653a. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case stems from a collision between defendant's box truck and a stationary Michigan State Police patrol vehicle on I-94, which resulted in an injury to a state trooper who was providing emergency assistance to another truck driver after the driver's semi jackknifed and blocked the highway. The patrol vehicle was parked on the shoulder of the highway with its emergency lights and spotlights activated when the collision occurred. Weather conditions were poor, it was snowing, and the highway was icy.

Defendant's sole argument on appeal is that he was denied his constitutional right to present a defense when the court denied his request for an instruction on the sudden-emergency doctrine. Defendant states that his theory of defense was that he "had been traveling at a reasonable speed, hit a patch of ice, slid, and collided with the police car." According to defendant, the following instruction was requested and rejected, "If you find that the defendant used ordinary care and was still unable to avoid the violation because of hitting a patch of ice on the roadway, then his violation is excused and you must return a verdict of not guilty." The trial court found that the evidence did not support the instruction, and defendant was convicted pursuant to MCL 257.653a.¹

¹ Under MCL 257.653a(1), a motorist is required to exhibit due care and caution when approaching and passing a stationary authorized emergency vehicle that is giving a visual signal
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Jury instructions that involve questions of law are reviewed de novo by this Court; however, the determination of whether an instruction is applicable to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). When a jury instruction is requested on a defense theory, the trial court must give the instruction, unless the theory is not supported by the evidence. *People v Rodriguez*, 463 Mich 466, 472-473; 620 NW2d 13 (2000).

In this case, defendant did not testify and the only supporting evidence cited by defendant is testimony that the roadway was icy. While the roadway may have been icy, there was no direct evidence that defendant's truck actually hit an icy patch and slid out of control because of the ice, resulting in the accident. Therefore, the trial court did not abuse its discretion in denying the instructional request.

Further, defendant does not cite, nor are we aware of, any binding precedent that recognizes the sudden-emergency doctrine as a defense in a criminal prosecution. Additionally, the requested instruction does not fit the sudden-emergency doctrine. In *White v Taylor Distributing Co, Inc*, 275 Mich App 615, 622; 739 NW2d 132 (2007), this Court examined the sudden-emergency doctrine and described the doctrine as follows:

“One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence.”

* * *

[T]he sudden-emergency doctrine is a logical extension of the “reasonably prudent person” standard, with the question being whether the defendant acted as a reasonably prudent person when facing the emergency, giving consideration to all the circumstances surrounding the accident. [Citations omitted.]²

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by means of flashing, rotating, or oscillating colored lights. The statute describes what constitutes due care and caution, and on a highway such as I-94, a motorist approaching a stationary emergency vehicle must proceed with caution and yield the right-of-way by moving into the adjacent lane. MCL 257.653a(1)(a). “If movement to an adjacent lane . . . is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b).” *Id.* Subsection (b) of MCL 257.653a(1) provides that “[t]he approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution” Defendant acknowledges that the jury was read instructions predicated on MCL 257.653a(1), which covered the concepts of due care and caution and the need to reduce and maintain a safe speed given the weather and road conditions.

² We also note that the *White* panel explained that the sudden-emergency doctrine applies only where circumstances surrounding the accident present an unusual or unsuspected situation.
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Accordingly, the doctrine applies when a person is faced with an emergency and makes a choice to take a particular course of action, or reacts to the emergency in a particular manner, but adopts a course of action or method, which, upon reflection, was not the wisest choice, and negligence cannot be found in such circumstances. That is not the type of instruction requested by defendant in the case at bar. His factually unsupported theory was that he hit a patch of ice and lost control, slamming into the police cruiser; he did not contend that he came upon an emergency situation and made some kind of a choice or reacted in a particular manner.

Affirmed.

/s/ Pat M. Donofrio

/s/ David H. Sawyer

/s/ William B. Murphy

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White, supra at 622. Even if the doctrine was appropriate for consideration, there is nothing unusual or unsuspected in regard to icy roads and disabled or damaged vehicles on the roadways on a cold, snowy, and blustery day. Also, because the sudden-emergency doctrine still requires a person to act as a reasonably prudent person in the face of an emergency, i.e., with due care and caution, a sudden-emergency instruction would have added little for the jury to ponder. Thus, prejudice was not established. MCL 769.26; *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).