

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CORY JO SCHUT,

Defendant-Appellant.

FOR PUBLICATION

March 17, 2005

9:00 a.m.

No. 256377

Barry Circuit Court

LC No. 04-000104-FH

Official Reported Version

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

FITZGERALD, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that MCL 257.904(4) requires a causal link between the revoked license and the death because this Court is bound by the Supreme Court's decision in *People v Lardie*, 452 Mich 231; 551 NW2d 656 (1996), which interpreted identical language in MCL 257.625(4) to require proof of causation. But the Supreme Court recently granted leave to appeal in two cases decided by this Court that should afford the Supreme Court the opportunity to revisit this issue. See *People v Large*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 2004 (Docket No. 253261), lv gtd 471 Mich 923 (2004), and *People v Schaefer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2004 (Docket No. 245175), lv gtd 471 Mich 923 (2004). The cases are to be submitted together. The Supreme Court directed the parties

to include among the issues to be briefed: (1) whether the "substantial" cause language in *People v Lardie*, 452 Mich 231 (1996), is consistent with the statute, (2) whether the requirement of MCL 257.625(4) that the prosecutor establish that the defendant's "operation of that motor vehicle causes the death of another person" requires the prosecutor to establish that the defendant's operation of the motor vehicle was affected by his intoxicated state, (3) whether the statute obligates the prosecutor to show that the defendant's driving at the time of the accident was a proximate cause of another person's death, (4) whether it is sufficient that the prosecutor establish only that the defendant decided to drive while intoxicated, and that a death resulted, and (5) if so, whether the statute violates the Equal Protection Clause of the Michigan Constitution, Const 1963, art 1, § 2, or the Equal Protection Clause of the United States Constitution, Am XIV, or is otherwise unconstitutional. [*Schaefer*, *supra* at 923.]

Because identical language should receive identical construction when found in the same act, and because the issue in the present case—whether MCL 257.904(4) requires proof that a defendant's decision to drive was a proximate cause of the victim's death—or only requires proof that a defendant drove with a revoked license and that a death resulted—may be resolved by the Supreme Court's decision in *Large* and *Schaefer*, I would hold this case in abeyance pending the Supreme Court's decision.

/s/ E. Thomas Fitzgerald