STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAIRD K. BUTLER,

Defendant-Appellant.

UNPUBLISHED
May 30, 1997

No. 187083
Macomb Circuit Court
LC No. 94-222-FH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of failure to stop at the scene of an accident resulting in serious injury or death, MCL 257.617; MSA 9.2317, and operating a motor vehicle while his operator's license was suspended. MCL 257.904(1); MSA 9.2604(1). We affirm.

For purposes of this appeal, defendant stipulates to several facts relating to the incident underlying the charges against him. He concedes that he was driving a van in which codefendant Ruszkiewicz,[1] the decedent and a third person were passengers; that there was an altercation between Ruszkiewicz and decedent; that Ruszkiewicz pushed decedent out of the van while the van was traveling at approximately thirty miles per hour; that at least two vehicles subsequently struck decedent; that decedent died as a result; and that defendant drove approximately 1.8 miles before he attempted to turn the van around. Defendant also takes no exception to Ruszkiewicz' conviction of second-degree murder arising out of this incident.

Defendant first claims that his conviction of failure to stop at the scene of an accident is factually inconsistent with Ruszkiewicz' conviction of second-degree murder and legally inconsistent with the definition of "accident." These claims raise legal questions. This Court reviews questions of law de novo. *People v Barrera*, 451 Mich 261, 268; 547 NW2d 280 (1996).

MCL 257.617; MSA 9.2317 provides in pertinent part:

> (1) The driver of a vehicle who knows or who has reason to believe that he or she has been *involved in an accident* upon either public or private property, when the

> property is open to travel by the public, resulting in serious or aggravated injury to or death of a person shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled. The stop shall be made without obstructing traffic more than is necessary. [Emphasis added.]

Section 617 provides no definition of "accident." However, in *People v Martinson*, 161 Mich App 55; 409 NW2d 754 (1987), this Court considered the term "accident" in the context of MCL 257.617a; MSA 9.2317(1) (failure to stop at the scene of an accident not resulting in serious injury or death). In *Martinson*, the defendant drove toward the complainant, who was leaning against his own car, and pinned the complainant between the two cars. The *Martinson* Court affirmed the defendant's convictions of assault with a deadly weapon and failure to stop at the scene of an accident. It held that "accident" includes both intentional as well as unintentional conduct. *Id*. at 57-58. It noted that courts in other jurisdictions have reasoned that criminal statutes that forbid leaving the scene of an accident "are not concerned with the cause of an accident but are intended to include all automobile collisions." *Id*. at 57. It concluded that there was no inconsistency between the defendant's conviction of an intentional assault and failure to stop at the scene of an accident. *Id*. at 58.

In *People v Keskimaki*, 446 Mich 240; 521 NW2d 241 (1994), the Michigan Supreme Court considered the scope of the accident exception to the physician-patient privilege of MCL 257.625a(9); MSA 9.2325(1)(9).[2] In *Keskimaki*, the defendant was found in his car, apparently unconscious, lawfully "parked" on the shoulder of the road, with the headlights on and motor running. He was charged with operating a motor vehicle under the influence of intoxicating liquor. He moved to suppress the results of the blood tests, arguing that he had not been involved in an "accident" as required by the accident exception. The *Keskimaki* Court vacated the Court of Appeals decision affirming the denial of the defendant's motion to suppress. It rejected adoption in the criminal arena of the more limited definition of accident used in the insurance context. *Id*. at 245-246. It specifically concluded that "*both* intended and unintended conduct may properly be classified as an 'accident' within the meaning of the accident exception." *Id*. at 251. The *Keskimaki* Court stated that it would not attempt to define "accident" in the criminal context, but delineated relevant factors that it believed would frequently appear in "accidents": "whether there has been a collision, whether personal injury or property damage has resulted from the occurrence and whether the incident either was undesirable for or unexpected by any of the parties directly involved." *Id*. at 255-256. Consideration of these factors convinced the Court that no "accident" had occurred in the case before it. *Id*. at 257.

Here, defendant's essential contention is that the incident at issue cannot constitute an "accident" because it arose from intentional conduct: Ruszkiewicz *pushed* decedent out of the van. However, *Keskimaki* and *Martinson* explicitly state that intentional conduct can be classified as an "accident." Like the *Martinson* Court, we conclude that there is no inconsistency in finding the incident at issue an "accident" despite the fact that intentional conduct gave rise to it. Contrary to defendant's contention, *Keskimaki* did not set forth a definition of "accident"; rather, it offered factors that will frequently be found in "accidents." To whatever extent they are relevant to a determination whether the incident at issue was an "accident," the *Keskimaki* factors are present here: there was a collision when decedent's body hit the pavement (as well as when the two other vehicles hit his body), there were

personal injuries that resulted in decedent's death and the incident was, clearly, undesirable for decedent. More specifically, evidence indicating that decedent was thrown from the moving vehicle defendant was driving was sufficient for the jury to conclude that defendant knew or had "reason to believe that he . . . ha[d] been involved in an accident" resulting in serious injury under § 617. Therefore, defendant's conviction of failure to stop at the scene of an accident was not inconsistent with § 617.

Defendant next contends that the trial court erred in failing to give a requested instruction regarding the definition of "accident."

> This Court reviews jury instructions in their entirety to determine if there is error requiring reversal. The instructions must include all elements of the charged offense and must not exclude material issues, defenses, and theories, if there is evidence to support them. Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. [*People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994); citations omitted.]
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> [F]ailure to give a requested instruction is error requiring reversal only if the requested instruction (1) is substantially correct, (2) was not substantially covered in the charge given to the jury, and (3) concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense. [*People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).]

Here, the jury instruction defendant requested did not accurately state the law as set forth in *Keskimaki*. It did not indicate that the listed considerations were merely factors frequently found in "accidents," not a list of elements of an "accident." It did not include the holding, relevant to the present case, that intentional conduct could constitute an accident.[3] The trial court found the requested instruction inapplicable, especially since defendant's theory of the case at trial was that decedent accidentally fell out of the van. Because the requested instruction by defendant was not substantially correct, the trial court did not err in refusing to give it. It instead instructed the jury in accordance with CJI2d 15.14 (leaving the scene of an accident). We conclude that the instructions as a whole fairly presented the issues to be tried, included all the elements of the offense and sufficiently protected defendant's rights.

For these reasons, we affirm defendant's judgment of sentence.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman

[1] Ruszkiewicz was convicted of second-degree murder in connection with this incident. He is appealing that conviction in Docket No. 187088.

[2] The relevant version of the statute provided in pertinent part:

> If after an *accident* the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol . . . in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. [*Id*. at 242, n 1.]

[3] Any error in the failure of the instructions to inform the jury that intentional conduct could constitute an accident was harmless because the jury convicted defendant of failure to stop at the scene of an accident despite its conviction of Ruszkiewicz of second-degree murder.