STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2002
v	No. 227168 Charlevoix Circuit Court
STEPHAN DANIEL YOUNG, Defendant-Appellant.	LC No. 99-042209-FH

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of one count of operating under the influence of intoxicating liquor (OUIL) (third offense), MCL 257.625, and was sentenced to eighteen months' to five years' imprisonment. He appeals by right. We affirm.

Defendant first argues that the trial court erred by denying his motion to suppress the evidence obtained during the officers' search of his house. A trial court's factual findings regarding a motion to suppress are reviewed for clear error, *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001); however, when the trial court makes its decision solely on the basis of the preliminary examination transcript, there is no reason to give special deference to the trial court's findings and our review is de novo, *People v Zahn*, 234 Mich App 438, 445-446; 594 NW2d 120 (1999).

The right against unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). "The lawfulness of a search or seizure depends on its reasonableness." *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). A search conducted without a warrant is generally unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000), quoting *People v Mayes (After Remand)*, 202 Mich App 181, 184; 508 NW2d 161 (1993). One exception exists when the officers receive consent to search. *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). However, probable cause to search is not required in two exceptions – the emergency aid exception and the community caretaker exception. *People v Brzezinski*, 243 Mich App 431, 434; 622 NW2d 528 (2000). The emergency aid exception allows police officers to make an entry or search without a warrant when they reasonably believe a search is necessary to assist a person who may be in serious need of medical attention; however, the officers cannot do more

than is reasonably necessary to determine whether the person is in need of assistance and to provide the assistance. *City of Troy v Ohlinger*, 438 Mich 477, 483-484; 475 NW2d 54 (1991); *Brzezinski, supra* at 434. The police officer must be motivated primarily by the perceived need to render medical assistance. *Brzezinski, supra*.

In the instant case, the officers' search of defendant's house was justified. The officers went to defendant's house because they were investigating a rollover accident and were concerned with the well-being of any potential occupants of the vehicle. An officer located defendant in the basement of the house and noticed defendant had torn clothes and fresh scrapes on his body that were bleeding. The officer then notified the other officers in the house that he had found defendant, so the other officers went downstairs to inquire about defendant's condition. Although defendant told the officers he did not want them in his house, the officers acted reasonably to determine whether defendant was in need of medical assistance and to provide him with assistance; thus, the search was valid and the lower court's admission of the evidence – specifically, the officers' observations regarding defendant's condition – was not error.

Defendant next argues that the trial court improperly allowed an officer to testify that defendant's fiancée had stated that defendant was the driver of the vehicle. The decision to admit evidence is within the trial court's discretion and will not be disturbed absent an abuse of that discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

Even if it may have been error to admit this evidence, the error was harmless. Defendant has the burden of establishing that it was more probable than not that the alleged error affected the outcome of the trial. *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001). Although defendant's fiancée's statement was admitted into evidence through the officer's testimony, the court instructed the jury that the evidence was not being offered to prove the truth of the matter asserted. It was also emphasized to the jury that defendant's fiancée was not an eyewitness to the accident and could not have known for a fact who was driving the vehicle. The officer testified that the car was registered to defendant; thus, the officers would have eventually located defendant. Defendant has not established that it was more probable than not that this error was outcome determinative.

Defendant next argues that his constitutional right not to testify was violated and that he was denied a fair trial by the prosecution's alleged misconduct in closing argument. Because this issue is unpreserved, our review is precluded unless the prejudicial effect could not have been cured by a cautionary instruction or unless the failure to consider this issue would result in a miscarriage of justice. *People v Nimeth*, 236 Mich App 616, 626; 601 NW2d 393 (1999).

The propriety of a prosecutor's remarks depends on the facts of the case. *People v Johnson*, 187 Mich App 621, 625; 468 NW2d 307 (1991). A prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship the arguments bear to the evidence. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). A prosecutor cannot make statements to the jury that are unsupported by the evidence, but can argue the evidence and all reasonable inferences drawn from the evidence. *Id*. A prosecutor cannot comment on a defendant's failure to testify or present evidence; however, a prosecutor can argue that certain evidence is uncontradicted and can contest evidence presented by the defendant. *People v Reid*, 233 Mich App 457, 477; 592 NW2d 767 (1999).

A review of the prosecutor's closing argument shows that the prosecutor was attempting to argue to the jury that the instant case was based on circumstantial evidence and that the jury had to infer certain things from that circumstantial evidence, i.e., that defendant was the driver of the vehicle. Although the limited portions of the prosecutor's statements that defendant refers to, when taken alone, may appear to shift the burden to defendant to produce some sort of evidence, in reviewing the prosecutor's entire closing argument, the prosecutor clearly informed the jury that he had the burden of proof. Further, the prosecutor did not address defendant's failure to testify. Taking the prosecutor's statements in context, there was no error.

Finally, defendant argues that his conviction was not supported by sufficient evidence. When viewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court, however, will not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

In the instant case, there was no direct evidence that defendant was driving the vehicle. However, the circumstantial evidence and the reasonable inferences arising from the evidence linked defendant as the driver: the vehicle was registered to defendant, and defendant was found hiding in the basement of his home with injuries consistent with those of having been in a rollover accident. Defendant had a blood alcohol level of .28. In viewing this evidence in the light most favorable to the prosecution, the jury could have reasonably concluded that defendant was the driver of the vehicle and had left the scene to avoid arrest for OUIL.

We affirm.

/s/ Patrick M. Meter
/s/ Jane E. Markey
/s/ Donald S. Owens