

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIMBERLY ANN LOCKWOOD,

Defendant-Appellant.

UNPUBLISHED

June 18, 2002

No. 229927

Gratiot Circuit Court

LC No. 00-003975-FH

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of operating a motor vehicle while impaired (third offense). MCL 257.625. She was sentenced to probation. She now appeals and we affirm.

On the evening in question, defendant's car went into the ditch while driving on Wilson Road in Gratiot County (defendant claimed that it was being driven by someone else at the time). She then walked and hitchhiked to the nearest business, the Happy Hour Bar. She got a patron at the bar, Jeffrey Ringle, to drive her back to her car and pull it out of the ditch. After extricating the car from the ditch, Ringle directed her to drive it approximately sixty feet to a DNR parking facility. After that, she was sitting in the Ringle vehicle when sheriffs' deputies arrived, asking about the car they had seen in the ditch earlier in the evening. After learning that it was defendant's car, and determining that defendant was intoxicated, they arrested defendant for OUIL. At trial, the jury convicted defendant on the lesser offense of driving while impaired.

Defendant's only argument on appeal is that the trial court should have given a more specific unanimity instruction to the jury. Specifically, defendant argues that because the prosecutor commented that he need only prove that defendant drove while intoxicated either before or after the car went into the ditch, the jury should have been instructed that they had to unanimously agree that defendant either drove while intoxicated before the car went in the ditch or after it was pulled from the ditch and driven to the nearby parking lot. However, defendant

did not request such an instruction at trial and, therefore, relief is not available on appeal. *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995).

Affirmed.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Jessica R. Cooper