

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH SLANEC,

Defendant-Appellant.

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UNPUBLISHED

December 13, 2002

No. 234047

Wayne Circuit Court

LC No. 00-004289-01

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for OUIL, third offense, MCL 257.625, and driving with a suspended license, MCL 257.904. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel who elicited damaging testimony as to his blood alcohol level, and admitted that defendant's testimony that he only had one beer was not credible.

A successful claim of ineffective assistance of counsel requires a defendant to "show that counsel's performance was deficient and that there is a reasonable probability that, but for the deficiency, the factfinder would not have convicted the defendant." *People v Snider*, 239 Mich App 393, 423-424; 608 NW2d 502 (2000).

Counsel's actions were part of a reasonable trial strategy of bringing the officers' actions into question. Counsel had no evidence that would allow him to effectively challenge the blood alcohol tests. Instead, counsel elected to emphasize defendant's condition to show that the officers manufactured the crime by allowing an obviously intoxicated person to stay in his car away from home with the keys in the ignition. This Court will not substitute its judgment for that of trial counsel regarding matters of trial strategy, even if the strategy backfired. *People v Rodgers*, 248 Mich App 702, 715; 645 NW2d 294 (2001). There is no showing that defendant would have been acquitted but for counsel's actions.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh