

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH PAUL BANDY,

Defendant-Appellant.

UNPUBLISHED

June 29, 2004

No. 247511

Wayne Circuit Court

LC No. 02-004248-01

Before: Murphy, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for operating a motor vehicle while under the influence of intoxicating liquor (OUIL) causing death, MCL 257.625(4), involuntary manslaughter with a motor vehicle, MCL 750.321, and two counts of OUIL causing serious injury, MCL 257.625(5). Defendant was sentenced to three to fifteen years' imprisonment for both the OUIL causing death and manslaughter convictions and three to five years' imprisonment for the two convictions of OUIL causing serious injury. We affirm.

Defendant first argues that there was insufficient evidence to sustain his convictions for OUIL causing death and OUIL causing serious injury. We disagree.

In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and 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); *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). However, this Court should not interfere with the fact-finder's role of determining the weight of evidence or the credibility of witnesses. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

To be guilty of OUIL causing death or serious injury a defendant must have killed or seriously injured someone by operating his motor vehicle while intoxicated, after having knowingly consumed alcohol and having voluntarily decided to drive. MCL 257.625(4) and (5); *People v Lardie*, 452 Mich 231, 259; 551 NW2d 656 (1996). A defendant's intoxicated driving

must be a substantial cause of the death or injury. *Id.* at 260. “[I]n proving causation, the people must establish that the particular defendant’s decision to drive while intoxicated produced a change in that driver’s operation of the vehicle that caused the death of the victim.” *Id.* at 258.

The evidence, when viewed in a light most favorable to the prosecution, established that defendant was the driver of a pickup truck, which was traveling eastbound on Warren Road at 3:00 a.m. on January 1, 2002, when it crossed the centerline and collided with an Escort traveling westbound, killing the driver of the Escort, and seriously injuring the passenger in the Escort and also seriously injuring the passenger in defendant’s pickup truck. There was also testimony that defendant had been drinking alcohol at two bars before driving. After the accident, defendant’s blood was taken at 4:25 a.m. and 6:18 and 6:19 a.m. An expert in forensic toxicology testified that using these samples, he could extrapolate that defendant’s blood alcohol level was between .075 and .097 grams of alcohol per 100 milliliters of whole blood at the time of the accident. This testimony established a presumption that defendant’s ability to operate his truck was at least impaired by his use of alcohol. MCL 257.625a(9)(b).¹ While defendant’s expert in accident reconstruction theorized that the decedent crossed into the eastbound lane and that defendant’s move into the westbound lanes was a reasonable driving maneuver done to avoid a collision, there was no physical evidence to support such conjecture. From the foregoing evidence, the trial court could infer that defendant’s ingestion of alcohol impaired his ability to perceive the curve in the road, causing him to cross the centerline and kill the decedent and injure the two passengers in the vehicles.

Defendant argues that the testimony by an acquaintance and a good friend of defendant’s established that defendant was not intoxicated on the night of the accident and that his driving did not change as a result of any alcohol consumption. These two witnesses, who were with defendant at the bar before the accident, testified that defendant did not show any signs of being intoxicated, i.e., he did not slur his words, his eyes were not bloodshot, and his conduct and demeanor did not indicate that he was drunk. However, the analysis of the blood samples and the expert toxicologist’s testimony regarding what defendant’s blood level would have been at the time of the accident, result in a presumption that defendant’s ability to operate his truck was impaired by alcohol. MCL 257.625a(9)(b). Moreover, the evidence showing that defendant failed to negotiate the roadway curve and crossed into oncoming traffic, braking only at the last moment while the decedent’s vehicle attempted to brake more extensively, can be viewed as proof that defendant was intoxicated and impaired while operating the vehicle. The fact that defendant did not appear to be impaired by alcohol consumption did not negate the validity of evidence to the contrary. The evidence was sufficient to infer that defendant’s decision to drive while intoxicated produced a change in his operation of the truck such that it caused the death and injuries of the victims.

Defendant also argues that there was no proof that his driving was a substantial cause of the accident and points to testimony that the stretch of road where the accident occurred was curved and had been the scene of other fatal and serious accidents in the past. Defendant also

¹ We note that this provision was deleted by the Legislature effective September 30, 2003. 2003 PA 61. The provision is applicable here because the accident occurred in January 2002.

dwells on the fact that his truck was twice as heavy as the Escort and on the claim that none of the victims were wearing seatbelts as the reasons why the decedent died and the passengers were seriously injured. While these facts may have contributed to the occurrence of the accident and the seriousness of the injuries to the occupants of the vehicles, they do not take away from the fact that there was sufficient evidence at trial establishing that defendant's failure to perceive the curve in the road due to alcohol consumption was "a" substantial cause of the collision that killed the decedent and seriously injured the passengers.

Defendant further argues that the decedent's inattention also contributed to the accident in that decedent was most likely changing a compact disc immediately before the accident. There was testimony at trial that the decedent's passenger repeatedly asked the decedent to change the "Fat Joe" compact disc on the night of the accident, the last time being minutes before the crash. But, the decedent's passenger also testified that the decedent had repeatedly refused to change the compact disc and that the decedent was not attempting to change the disc before the crash. Further, the decedent's friend testified that the "Fat Joe" compact disc was still in the compact disc player when the player was recovered from the totaled Escort. Lastly, defendant suggests that the decedent was distracted because he was smoking while driving. But while there was evidence that the decedent smoked, the decedent's passenger testified that he was not smoking in the car before the accident.

Defendant next argues that there was insufficient evidence to sustain his conviction for manslaughter with a motor vehicle. Again, we disagree.

To convict on a charge of involuntary manslaughter with a motor vehicle under MCL 750.321, the prosecution must prove that defendant operated his vehicle in a grossly negligent manner and caused the death of another. *Lardie, supra* at 248-249; *People v McCoy*, 223 Mich App 500, 502; 566 NW2d 667 (1997). To show gross negligence, the prosecution must establish these elements: (1) knowledge of a situation which requires the exercise of ordinary care and diligence to avert injury to another; (2) ability to avoid the resulting harm by ordinary care and diligence; (3) the omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. *Lardie, supra* at 251-252; *McCoy, supra* at 503.

The evidence was sufficient for the trial court to infer that defendant knew that driving his truck was a situation which required the exercise of ordinary care and diligence to avoid injuring another and that defendant had the ability to avoid injuring others by refraining from drinking and driving. There was sufficient evidence that by drinking until his blood alcohol level was high enough to impair his ability to operate his truck, and then driving the truck, defendant performed an act from which disastrous results could occur, as, indeed, they did. His behavior showed a disregard for the possible consequences of his actions, and this is sufficient to constitute manslaughter. Defendant again points to the claims that none of the injured were wearing their seatbelts, that the curve in the road was dangerous, and that the truck weighed considerably more than the Escort as the reasons why the accident occurred and why the injuries were so severe. These factors may have contributed to the accident's occurrence and the extent of the injuries, but defendant may be found guilty of manslaughter if his actions were "a," rather than "the," substantial cause of the victim's death. *People v Stewart (On Remand)*, 219 Mich App 38, 41; 555 NW2d 715 (1996). Because there was sufficient evidence at trial that defendant's decision to drink and drive was a cause of the accident, i.e., his impairment due to

alcohol caused him to fail to stay in his own lane when coming upon a curve in the road, there was sufficient evidence to sustain his conviction of manslaughter with a motor vehicle.

Next, we conclude that defendant's assertion that the trial court's findings of fact were insufficient under MCR 6.403 is without merit. MCR 6.403 provides, in pertinent part:

The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Factual findings are sufficient as long as the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The trial court need not make specific findings of fact regarding each element of the crime. *Id.* The trial court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issues, that it resolved the issues, and that further explication would not facilitate appellate review. *Id.* at 134-135.

The trial court's findings of fact were sufficiently specific. The trial court found that defendant had been drinking on the night of the accident, that defendant's blood alcohol level at the time of the accident was between .075 and .095, that defendant was the driver of the pickup truck that was traveling in the wrong lane when it collided with the Escort causing the decedent's death and the serious injuries of the passengers in the vehicles. The trial court also stated that defendant operated his truck while visibly impaired due to drinking alcohol and that the operation of the truck when he was in this condition resulted in the decedent's death and the serious injuries of the passengers. The trial court also specified in its findings of fact that defendant operated his truck in a grossly negligent manner.

Defendant argues that the trial court did not specifically find that defendant's "drunken driving" caused the accident. Defendant asserts that the court did not address whether defendant's decision to drive after having consumed alcohol produced a change in defendant's operation of the vehicle and that this change caused the decedent's death. But the trial court found that defendant had been drinking, adopted the expert toxicologist's determination of defendant's blood alcohol level at the time of the accident which indicated that defendant was at least impaired by the alcohol he drank, and stated in its conclusion that defendant's ability to operate his truck was impaired by the alcohol and that operating his truck in this condition caused death and injury to the victims.

With regard to the trial court's findings concerning the manslaughter with a motor vehicle conviction, defendant disagrees with the fact that the trial court did not explain or provide any factual findings to show how it arrived at the conclusion that defendant was grossly negligent in operating his truck. Defendant states that the record does not indicate that the trial court "truly recognized the legal requirements of gross negligence and made an appropriate finding." However, the trial court's statement, that it found that defendant had operated his vehicle in a grossly negligent manner, indicated that the trial court was aware of the correct legal standard to be applied to the issue of whether defendant had committed manslaughter with a motor vehicle. The trial court's findings also clearly indicated that it was aware of the issue whether defendant's conduct constituted gross negligence, and it resolved the issue, i.e.,

defendant's decision to drink and then drive constituted gross negligence. Because further explication by the trial court would not facilitate review, the court's findings of fact and conclusions of law are sufficient under MCR 6.403.

Finally, defendant challenges the sentences on his convictions in that he claims the trial court erred in failing to recognize that it had the ability to depart downward from the sentencing guidelines range. Defendant also argues that the trial court erred in failing to depart downward from the guidelines range, where defendant possessed a sterling character. While defendant previously led an exemplary life, we must disagree with defendant's legal argument. The accident occurred after January 1, 1999; therefore, the legislative sentencing guidelines are applicable. MCL 769.34(2); *People v Greaux*, 461 Mich 339, 342 n 5; 604 NW2d 327 (2000). The interpretation of the statutory sentencing guidelines and legal questions presented by application of the guidelines are subject to de novo review. *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003). Under the sentencing guidelines, because defendant did not assert that the guidelines were scored in error or that the trial court decided his sentences on the basis of inaccurate information, and because the minimum sentence imposed on defendant fell within the sentencing guidelines range, the sentences must be affirmed by this Court. MCL 769.34(10); *Babcock*, *supra* at 261.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Jessica R. Cooper