

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN LEE TETREAU,

Defendant-Appellant.

UNPUBLISHED

November 28, 2006

No. 264365

Huron Circuit Court

LC No. 05-004401-FH

Before: White, P.J. and Zahra and Kelly, JJ.

MEMORANDUM.

Defendant was convicted by a jury of one count of operating a motor vehicle while under the influence of intoxicating liquor (OUIL), third offense, MCL 257.625, and operating a vehicle with a suspended license, MCL 257.904. He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent terms of 2 years, 6 months to 15 years for the OUIL conviction and 93 days for the operating with a suspended license conviction. He appeals as of right. We affirm.

Defendant argues that the evidence presented at trial was insufficient to support his OUIL conviction. Specifically, he contends the prosecution failed to prove beyond a reasonable doubt that he was actually operating the vehicle while intoxicated. We disagree. In reviewing a challenge to the sufficiency of the evidence supporting a conviction, we must view the evidence in a light most favorable to the prosecution and determine if a reasonable juror would consider it to be sufficient to find guilt beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003). All reasonable inferences and credibility choices must be resolved in favor of the jury verdict. *Id.* at 640-641.

The evidence established that on December 4, 2004, a car belonging to defendant's ex-wife was found rolled in a ditch and defendant was found laying in the woods near the car in an intoxicated state. The arresting officer found no one else around the car. Defendant initially stated, according to officer, that he was the only one there. It was not until they arrived at the hospital that defendant blurted out, "I sure hope you guys find Dave." When questioned about Dave, defendant could only describe him as being six feet tall with black hair. Defendant could not give a last name or a location where Dave could be found. Defendant claimed at trial that he had met Dave earlier in the evening at a bar and that he had let Dave drive his ex-wife's car to Detroit while defendant rode in the passenger seat.

Since it is in the jury's province to determine witness credibility, the jury was free to reject defendant's testimony claiming that "Dave" was driving his car. Also, given that circumstantial evidence is sufficient to establish the elements of a crime, the circumstantial evidence in this case, when viewed in a light most favorable to the prosecution, supports defendant's conviction. *People v Green*, 260 Mich App 392, 403; 677 NW2d 363 (2004). From defendant being the only one found at the scene and defendant initially stating he was the only one involved in the accident, a reasonable trier of fact could conclude beyond a reasonable doubt that defendant was driving the vehicle while intoxicated.

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly