

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JAMES HALL,

Defendant-Appellant.

UNPUBLISHED

January 24, 2008

No. 271409

Wayne Circuit Court

LC No. 05-012754-01

Before: Schuette, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of failure to stop at the scene of an accident resulting in death, MCL 257.617(3). The trial court sentenced him to seven to 15 years' imprisonment for his conviction. We reverse and remand for a new trial.

Defendant argues that he was denied the effective assistance of counsel because his trial attorney consented to an erroneous jury instruction. We agree.

To establish a claim of ineffective assistance of counsel, a defendant must show that his attorney's representation fell below an objective standard of reasonableness under prevailing professional norms; that, but for his counsel's error or errors, there is a reasonable probability that the result of the proceedings would have been different; and that the proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). To establish that his counsel's performance was deficient, a "defendant must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *Toma, supra* at 302.

Defendant was charged with failure to stop at the scene of an accident resulting in death, MCL 257.617(3). MCL 257.617 states:

(1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if

there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.

(2) Except as provided in subsection (3), if the individual violates subsection (1) and the accident results in serious impairment of a body function or death, the individual is guilty of a felony punishable by imprisonment for not more than 5 years or by a fine of not more than \$5, 000.00, or both.

(3) If the individual violates subsection (1) following an accident caused by that individual and the accident results in the death of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

Clearly, a conviction under MCL 257.617(3) requires a finding that the defendant caused the accident in question. However, the trial court's instructions omitted the element of causation¹ and instead indicated that defendant must have been "involved in an accident that resulted in a serious impairment of a body function or death." Defense counsel expressly consented to the instructions given by the trial court.

Defense counsel's actions fell below an objective standard of reasonableness under prevailing professional norms. *Toma, supra* at 302. Moreover, there is a reasonable probability that, if the correct instructions had been given, the outcome of the trial would have been different. *Id.* at 302-303. Indeed, there was evidence that the vehicle defendant hit with his truck lacked taillights, and from this the jury might have had a reasonable doubt regarding whether defendant "caused" the accident such that a conviction was warranted. Additionally, we find that the proceedings were fundamentally unfair or unreliable, *Rodgers, supra* at 714, in that an element of the crime was omitted from the jury instructions. A new trial is therefore warranted.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter

¹ We reject the prosecutor's reliance on an unpublished case to argue that causation is not an element of the offense. For a defendant to be subjected to the greater statutory maximum penalty provided in MCL 257.617(3), the trier of fact must conclude that the defendant caused the accident in question. See, generally, *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006) (discussing statutory maximum sentences and the impact of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 [2004]).