

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACLYN JENEVIETTE AVIGNE,

Defendant-Appellant.

UNPUBLISHED

December 11, 2008

No. 280078

Wayne Circuit Court

LC No. 07-006616-01

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Defendant appeals by right her waiver trial convictions for resisting or assaulting a police officer, MCL 750.81d(1), and operating a vehicle while intoxicated (OWI), MCL 257.625(1)(a). The trial court sentenced defendant to 14 days imprisonment and two years probation for both offenses. We affirm.

Defendant argues that the prosecutor presented insufficient evidence to support her OWI conviction.¹ We disagree. We review claims of insufficient evidence de novo. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). The evidence is viewed in a light most favorable to the prosecution to determine whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007).

Under MCL 257.625(1), OWI requires proof of three elements: (1) the defendant operated a motor vehicle, (2) on a highway or other place open to the general public or generally accessible to motor vehicles, (3) while under the influence of liquor or a controlled substance, or a combination of the two, or with a blood alcohol content of .08 grams or more.² Defendant

¹ In the argument section of her brief on appeal, defendant makes three cursory arguments unrelated to her sufficiency of the evidence claim. Defendant failed to raise any of these issues in her statement of questions presented. Consequently, these issues are not properly before this Court, and this Court need not address them. MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).

² This third element is disjunctive; in other words, it can be satisfied in *either* of the two ways.

contends that the prosecutor did not present adequate evidence of the first and third elements, and she notes that much of the evidence presented at trial was circumstantial. However, circumstantial evidence and reasonable inferences arising from such evidence may be sufficient to prove the elements of a crime. *Kanaan, supra*, at 619; *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998).

The evidence here showed that defendant approached Derek Emmons at a gasoline station and told him that she had crashed her truck on her way home from a couple of bars, and she needed a ride home. Emmons observed a truck off the road by a tree “like she had hit the tree.” The attendant at the gasoline station observed defendant run toward Emmons’s car and ask to be driven away when defendant noticed Police Officer Bruce Bullard across the street. The attendant also suggested to Bullard that the truck might be defendant’s, and a LIEN search confirmed that it was registered to defendant. When Bullard drove to defendant’s address, he found her exiting Emmons’s car. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant operated a motor vehicle on a public road, thereby satisfying the first two elements of OWI. *Odom, supra* at 418.

The evidence also showed that defendant was under the influence, meaning she “was substantially deprived of normal control or clarity of mind.” *People v Raisanen*, 114 Mich App 840, 844; 319 NW2d 693 (1982). Standing less than three feet from defendant, Bullard detected that defendant smelled strongly of intoxicants. Defendant slurred her speech and repeatedly used profanities. Both Emmons and another passenger in the car characterized defendant as drunk. Defendant told Emmons that she had crashed her truck returning from a couple of bars. Defendant’s own actions, including punching a police officer in the face, showed that she was “substantially deprived of normal control or clarity of mind.” *Id.* Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant was under the influence. *Odom, supra* at 418.

Defendant contends that the evidence indicates that she suffered some sort of head injury or other trauma, as opposed to being under the influence. However, defendant presented no evidence or witnesses in support of this theory, or indeed any theory consistent with her innocence. The prosecution need not negate every reasonable theory consistent with defendant’s innocence. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). The prosecutor must only prove his theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Here, defendant provided no contradictory evidence, and a rational fact-finder could conclude that defendant operated her vehicle on the night in question while under the influence. Therefore, sufficient evidence existed to convict her of OWI.

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher