

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH SLANEC, a/k/a KENNETH SLANCE,

Defendant-Appellant.

UNPUBLISHED

June 28, 1996

No. 178606

LC No. 94-004444

Before: Hood, P.J. and Markman and A. T. Davis, Jr.* , JJ.

PER CURIAM.

Defendant was charged with OUIL, MCL 257.625(6); MSA 9.2325(1); operating a motor vehicle with a suspended or revoked license, MCL 257.904(1)(b); MSA 9.264(1)(b); and furnishing a false, forged, fictitious or misleading identification to a police officer, MCL 257.324; MSA 9.2024.¹ Following a bench trial, defendant was convicted of counts two and three. On count one, defendant was convicted of the lesser offense of impaired driving, MCL 257.625b; MSA 9.235(2). The impaired driving conviction was then enhanced to an OUIL-3rd felony pursuant to MCL 257.625b(6); MSA 9.2325(1). Defendant pleaded guilty to the enhancement. Defendant was sentenced to two years probation, including treatment at a residential alcoholism treatment center.² He now appeals as of right, and we affirm..

Defendant argues that the evidence presented at trial was not sufficient to support his conviction for impaired driving. Defendant argues that there was not sufficient evidence that he was driving. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). It is necessary to prove that the defendant actually operated the motor for a conviction for impaired driving. *People v Walters*, 160 Mich App 396, 401; 407 NW2d 662 (1987). At trial, the arresting officer testified that he observed a silver van change lanes abruptly, cross four lanes of traffic, and go through a flashing red light. This was all done at a high rate of speed. The

* Circuit judge, sitting on the Court of Appeals by assignment.

officer testified that he saw defendant driving the van in the van's driver's side mirror and through the back of the van. When the officer pulled the van over, defendant exited from the driver's side. The officer observed a passenger in the passenger seat of the van. The van belonged to defendant. The officer smelled alcohol on defendant's breath and person, and defendant's eyes were bloodshot. Defendant could not balance on one leg. Defendant explained that he had surgery in both legs that prevented him from doing so. Defendant was off-balance when he tried to walk a straight line heel to toe. Only after the passenger had left did defendant claim for the first time that the passenger was driving.

Upon reviewing the evidence in the light most favorable to the prosecution, a rational, trier of fact could have found beyond a reasonable doubt that defendant was driving the van, and that defendant was impaired from the consumption of alcohol. The evidence was sufficient to support defendant's conviction for impaired driving.

Affirmed.

/s/ Harold Hood

/s/ Stephen J. Markman

/s/ John J. McDonald

¹ The date of the offense was May 28, 1991. The Michigan Vehicle Code has since been amended. The statute cites included in this opinion accordingly refer to the Michigan Vehicle Code as it existed on the date of the offense.

² The record indicates that defendant failed to enter the treatment center, and a bench warrant for his arrest was entered on December 14, 1994.