

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ROBERT VENZKE,

Defendant-Appellant.

UNPUBLISHED

January 24, 1997

No. 180709

Ingham Circuit Court

LC No. 93-066794-FH

Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Defendant, David Robert Venzke, appeals as of right from his conviction on a charge of causing death by operating a vehicle while under the influence of intoxicating liquor (OUIL causing death), MCL 257.625(4); MSA 9.2325(4). We affirm.

On appeal, defendant first contends that the OUIL causing death statute, MCL 257.625(4); MSA 9.2325(4), is unconstitutional because it does not require a mens rea and does not fit the definition of a strict liability, public welfare crime. The constitutionality of a statute is a question of law which we review de novo on appeal. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

Subsequent to the filing of appellant's brief on appeal, the Michigan Supreme Court in *People v Lardie*, 452 Mich 231; 551 NW2d 656 (1996), issued an opinion addressing and resolving the issue which defendant raises on appeal. In *Lardie*, the Court held that OUIL causing death is not a strict liability crime. *Id.* at 256. The Court found that the Legislature intended that proof of a mens rea be demonstrated by a showing that the driver knowingly consumed an intoxicating liquor or a controlled substance, and acted voluntarily in deciding to drive after such consumption. *Id.* Therefore, the statute is not violative of the constitution, and defendant's conviction cannot be overturned on this basis.

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

Defendant also contends on appeal that defendant was denied his right to an impartial jury when the court coerced a verdict by forcing the jurors to deliberate until midnight or to return to court on Saturday morning to continue deliberations. We disagree.

Claims of coerced verdicts are reviewed on a case-by-case basis, with the reviewing court considering all of the facts and circumstances, including the particular language used by the trial court. *People v Vettese*, 195 Mich App 235, 244; 489 NW2d 514 (1992). In matters of trial conduct, the trial judge has a great deal of discretion. *People v London*, 40 Mich App 124, 129; 198 NW2d 723 (1972). This discretion includes the power of the trial judge to urge the jury into reaching a verdict. *People v Coles*, 28 Mich App 300, 303; 184 NW2d 214 (1970). However, language indicating what verdict should be rendered, or language encouraging jurors to give way at the expense of their honest convictions is forbidden. *Id.*, at 303-304. Considering all of the facts and circumstances of this case, we find the lower court did not improperly coerce the jury into rendering a verdict.

In this case, the lower court consistently gave the jury the option to adjourn for the evening and return for deliberations the next day. In addition, the trial judge never asked the jury to speed up their deliberations, but merely inquired as to the jurors' preference as to when to schedule their deliberation. The record contains no evidence that the lower court created an atmosphere requiring a hasty verdict or forcing the jury to deliberate for extensive periods of time. Accordingly, we find that the trial court did not coerce a verdict and defendant was not denied his right to a fair trial. *London, supra*, at 128.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan