

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES MICHAEL GROSS,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 191990

Oakland Circuit Court

LC No. 95-138026-FH

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of operating a motor vehicle under the influence of liquor (OUIL) causing death, MCL 257.625(4); MSA 9.2325(4). He was sentenced to two to fifteen years' imprisonment. He now appeals as of right. We affirm.

Defendant's conviction arose out of a traffic accident that resulted in the death of another driver, Richard Luna. After the accident, defendant's blood alcohol level was measured at .24, and Luna's was measured at .26. Although there were no eyewitnesses to the accident, an accident reconstruction expert testified for the prosecution that, in his opinion, defendant was at fault because it appeared that defendant's car had crossed the center line prior to the collision.

Defendant first argues that the trial court abused its discretion in denying his motion for new trial, which was based on his contention that his conviction was against the great weight of the evidence. This Court reviews the denial of such a motion for an abuse of discretion. *People v Harris*, 190 Mich App 652, 658-659; 476 NW2d 767 (1991). A verdict may be vacated as against the great weight of the evidence only when it does not find reasonable support in the evidence, but is more likely attributed to causes outside the record, such as passion, prejudice, sympathy, or some extraneous influence. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). While a judge cannot take from the jury its right of judgment, the judge may set aside a "perverse verdict" and grant a new trial on the ground that the prosecution's witnesses lack credibility. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993).

The elements of OUIL causing death are: (1) the defendant was operating his motor vehicle while he was intoxicated, (2) that he voluntarily decided to drive knowing that he had consumed alcohol and might be intoxicated, and (3) that the defendant's intoxicated driving was a substantial cause of the victim's death. *People v Lardie*, 452 Mich 231, 261; 551 NW2d 656 (1996). Defendant argues that the jury's finding that he was a substantial cause of Luna's death was against the great weight of the evidence because Luna had a blood alcohol level of .26. Furthermore, during cross-examination at defendant's preliminary hearing, the accident reconstruction expert admitted that it was possible that Luna had crossed into the left lane, and defendant turned to the left to avoid a collision. This testimony was read into the record at trial. Therefore, defendant contends, this evidence supports a finding that Luna was a substantial cause of his own death.

The trial court did not abuse its discretion in denying defendant's motion for a new trial. Substantial cause does not mean that defendant's conduct was the only cause of the victim's death. *People v Tims*, 449 Mich 83, 96-97; 534 NW2d 675 (1995). The question of causation is a factual one for the jury. *Lardie*, *supra* at 267. In the present case the expert testified at trial that he based his opinion that defendant's truck had drifted over the center line into the path of the victim's car on the position of the vehicles and the maximum point of collision. Although there may have been another possible explanation for the accident, the jury's conclusion that defendant was the cause of Luna's death was not against the great weight of the evidence.

Defendant next argues that the evidence was insufficient to convict him of OUIL causing death. In reviewing the sufficiency of the evidence, this Court must consider the evidence presented up to the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could have concluded that the elements of the crime were established beyond a reasonable doubt. *People v McCrady*, 213 Mich App 474, 484; 540 NW2d 718 (1995). A trier of fact may make reasonable inferences from the facts, if the inferences are supported by direct or circumstantial evidence. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). Intent may be inferred from all the facts and circumstances of the case. *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991). This Court may not interfere with the jury's role of determining the weight and credibility of the evidence. *Herbert*, *supra* at 474.

Defendant first contends that there was no direct or circumstantial evidence to support an inference that his driving was impaired. We disagree. This Court has held that the defendant's inability to drive normally is an element of the offense of OUIL. *People v Waters*, 160 Mich App 396, 402; 407 NW2d 662 (1987). The parties stipulated that defendant's blood alcohol level was .24 on the morning of the accident. MCL 257.625a(9)(c); MSA 9.2325(1)(9)(C) provides that if a defendant's blood alcohol level is .10 or more, it is presumed that defendant was under the influence of alcohol. Furthermore, the medical examiner testified that a person with a .24 blood alcohol level would be impaired. Based on this evidence, the jury rationally could have inferred that defendant was driving while impaired.

Defendant next contends that there was insufficient evidence from which a trier of fact could have determined that he was a substantial cause of Luna's death. We disagree. The prosecution

presented the testimony of an accident reconstruction expert, who expressed the opinion that defendant was at fault in the accident. The expert based his opinion on the way the two vehicles rotated after collision, the location of the maximum point of engagement in the southbound lane, the collision damage to the vehicles, and the fact that the vehicles came to rest in the southbound lane. Although defendant attempted to impeach the expert's trial testimony with his preliminary examination testimony under cross-examination, this Court may not interfere with the jury's role of determining the weight and credibility of the evidence. *Herbert, supra* at 474. Viewing this evidence in a light most favorable to the prosecution, a reasonable trier of fact could have found beyond a reasonable doubt that defendant was a substantial cause of the death of Richard Luna. Therefore, the evidence was sufficient to support his conviction of OUIL causing death.

Next, defendant argues that the OUIL statute, MCL 257.625(4); MSA 9.2325(4), violates due process because it creates a strict liability offense for which there is a severe penalty. This issue was firmly decided in *Lardie, supra* at 234, in which the Michigan Supreme Court held that the OUIL statute does not create a strict liability offense and is therefore constitutional. Accordingly, defendant's argument is without merit.

Finally, defendant argues that he is entitled to resentencing because his sentence was disproportionate to the circumstances of the offense. We disagree. This Court reviews a sentencing court's decision under an abuse of discretion standard. *McCrary, supra* at 483. A sentencing court abuses its discretion when it violates the principal of proportionality. *Id.* A sentence must be proportionate to the seriousness of the crime and the defendant's prior record. *Id.*

MCL 257.625(4); MSA 9.2325(4) provides for a maximum fifteen year prison sentence for OUIL causing death. At defendant's sentencing hearing, defense counsel asked the court to consider the extent of defendant's injuries, the fact that he may never drive again, and the fact that he has abstained from alcohol and drugs since the accident. Defendant also expressed his remorse. However, given defendant's three prior convictions for impaired driving and the fact that his impaired driving caused a death, the trial court did not abuse its discretion in imposing a two- to fifteen-year sentence.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Hilda R. Gage