

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS RICHARD MARINES,

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 196571

Ingham Circuit Court

LC No. 96-069807-FH

Before: Saad, P.J., and Holbrook and Doctoroff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of operating a motor vehicle under the influence of intoxicating liquor or controlled substance (OUIL) causing death, MCL 257.625(4); MSA 9.2325(4), and two counts OUIL causing serious impairment of a bodily function, MCL 257.625(5)(a); MSA 9.2325(5)(a). Defendant was sentenced to twenty to thirty years' imprisonment for each of the convictions of OUIL causing death, and six and one half to ten years' imprisonment for each of the convictions of OUIL causing serious injury. He now appeals as of right. We affirm.

On appeal, defendant first argues that the jury was not adequately instructed on the issue of substantial cause. He argues that the jury should have been instructed that a substantial cause is one that was so strong as to dominate any intervening causes, that defendant's driving would have been different had he been sober, and that the accident would not have occurred had defendant been sober. However, because defendant stipulated to the instruction given by the trial court, our review is limited to relief necessary to avoid manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

We find no manifest injustice here. On the issue of substantial cause, the trial court instructed the jury, "[n]ow, if you find that Liza Lutman [the driver of the other vehicle involved in the accident] was negligent, you may only consider that negligence in deciding whether the defendant's conduct was a substantial cause of the accident." In order for a defendant to be convicted of OUIL causing death or serious impairment of a bodily function, the prosecution must prove, among other things, that defendant's conduct was a substantial cause of the accident. *People v Lardie*, 452 Mich 231, 259-260; 551 NW2d 656 (1996). This may be done by proving that the defendant's culpable conduct, his decision to drive while intoxicated, substantially contributed to the resulting deaths and injuries. *Id.* at

260 n 51. Although the victim's negligence is admissible in determining whether the defendant was negligent, it is not a defense. *People v Tims*, 449 Mich 83, 98; 534 NW2d 675 (1995). Therefore, it would have been erroneous for the court to instruct the jury, as defendant now requests, that a substantial cause must be the dominant cause, or that the people must prove that defendant's driving would have been different had he been sober, or that the accident would not have occurred had he been sober. The instruction given comports with the holding in *Lardie* and did not cause the defendant to suffer manifest injustice.

Defendant next argues that the evidence was not sufficient to support his convictions. We disagree. In reviewing a claim of insufficient evidence, this Court must view the evidence, including all reasonable inferences arising therefrom, in the light most favorable to the plaintiff and determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

The prosecution presented sufficient evidence to support defendant's convictions for two counts of OUIL causing death and two counts of OUIL causing serious injury. The elements of the offense are, (1) the defendant was operating his motor vehicle when 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 or serious injury. *Lardie*, *supra* at 259-260.

The prosecution presented evidence that defendant's blood alcohol level was 0.18. Gonzales, a passenger in the vehicle driven by defendant, testified that defendant was driving at the time of the collision. Further, Kobiska and Creaser, two witnesses to the aftermath of the accident, testified that they each saw defendant behind the wheel after the collision. This evidence, when viewed in the light most favorable to the prosecution is sufficient to establish that defendant was intoxicated and operating a motor vehicle. Gonzales also testified that defendant had asked for the keys in order to drive. Evidence was admitted that after the accident defendant tried to start the vehicle, and, when that failed, he climbed out a window and started running. This evidence when viewed in the light most favorable to the prosecution is sufficient to establish that defendant voluntarily decided to drive knowing that he was intoxicated. Evidence was presented that defendant was intoxicated, he was speeding at the time of the accident, and defendant made no attempt to brake prior to the collision. When this evidence is viewed in the light most favorable to the prosecution, it supports a rational trier of fact's finding that defendant's intoxicated driving was a substantial cause of the deaths and injuries in this case. Finally, evidence was presented that as a result of the accident, Liza Lutman and one of the passengers in her vehicle died, and Gonzales and another passenger in Lutman's vehicle were injured. Therefore, viewed in a light most favorable to the prosecution, the evidence was sufficient to justify a rational trier of fact in concluding all the elements of the crime were proven beyond a reasonable doubt.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff