

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK DOUGLAS PARKS,

Defendant-Appellant.

UNPUBLISHED

July 5, 2002

No. 230327

Saginaw Circuit Court

LC No. 00-018343-FH

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

On July 24, 2000, a jury convicted defendant of operating a motor vehicle under the influence causing death, MCL 257.625(4). Defendant was sentenced as an habitual offender, second offense, to 86 to 264 months' imprisonment. MCL 769.10. Defendant appeals as of right. We affirm.

On November 13, 1999, defendant was driving southbound on Highway M-13. The vehicle defendant was driving was struck when he attempted to make a sudden left hand turn in front of a northbound oncoming vehicle. The passenger in defendant's car, Scott Maciejewski, suffered a ruptured diaphragm and a severely damaged liver as a result of the impact. Mr. Maciejewski later died in the operating room from a loss of blood. Police officers found empty beer cans in the driver's floorboard area. Moreover, both the paramedic that treated defendant and a police investigator testified that they could smell alcohol on defendant. There was also testimony that defendant's speech was slurred and that his eyes were bloodshot and watery. The Michigan State Police analyzed a sample of defendant's blood taken after the accident and determined that it had an alcohol content of 0.15 grams of ethanol alcohol per 100 milliliters.¹

On appeal, defendant argues that the trial court erred by instructing the jury on the lesser offense of operating while impaired (OWI), MCL 257.625(3), when the information only charged him with operating a motor vehicle under the influence (OUIL), MCL 257.625(1)(a), and having an unlawful blood-alcohol content (UBAL), MCL 257.625(1)(b), causing death. We disagree.

¹ Under MCL 257.625(1)(b), the legal limit is less than 0.10 grams of alcohol per 100 milliliters of blood.

It is the function of the trial court to clearly present the case to the jury and instruct them on the applicable law. *People v Katt*, 248 Mich App 282, 310; 639 NW2d 815 (2001).

We review jury instructions in their entirety to determine if error requiring reversal occurred. . . . Even if the instructions are somewhat imperfect, reversal is not required as long as they fairly presented the issues to be tried and sufficiently protected the defendant's rights. . . . With regard to unpreserved claims of instructional error, this Court reviews such claims for plain error that affected substantial rights. [*People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001) (citations omitted).]

The court rules require that a prosecution be based on the information, MCR 6.112(B), and that the trial court instruct the jury on the applicable law, MCR 6.414(F). According to *People v Higuera*, 244 Mich App 429, 443-444; 625 NW2d 444 (2001), the information must contain the nature of the offense stated in a language that fairly apprises the accused and the court of the charged offense. The pertinent portion of the information in the instant case charged defendant with:

Operating—Under The Influence Causing Death

did operate a motor vehicle in the State of Michigan upon a highway . . . while being under the influence of intoxicating liquor, or while having an alcohol content of 0.10 grams or more per 100 milliliters of blood; and by the operation of that vehicle did cause the death of Scott Douglass Maciejewski; Contrary to Sec. 257.625(4)

According to MCL 257.625(4) a person “who operates a motor vehicle in violation of subsection (1) or (3) and by the operation of the motor vehicle caused the death of another person is guilty of a crime” (Emphasis added).² Section 625(1) describes OUIL and UBAL; whereas,

² MCL 257.625 provides that:

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if either of the following applies:

(a) The person is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(b) The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

* * *

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating

(continued...)

§ 625(3) involves OWI. We note that there is only one penalty for violation of § 625(4), regardless of whether the accused violated subsections (1) or (3). MCL 257.625(4)(a).

The trial court instructed the jury according to CJI2d 15.11 regarding the crime of OUIL/UBAL/OWI Causing Death and explained the difference between OUIL, UBAL, and OWI. Defendant suggests that these instructions went beyond the crime described in the information and that he was not apprised that he was being charged under subsection (3) as well. However, the information specifically charged defendant with violating MCL 257.625(4), which includes both subsections (1) and (3). See *Higuera, supra* at 444. The trial court's instructions accurately depicted the elements of the crime described in MCL 257.625(4) and we find no plain error. *Aldrich, supra* at 124-125.

Defendant further maintains that he was denied the effective assistance of counsel. Essentially, defendant cites his trial counsel's failure to object to the jury instructions given by the trial court. However, because the jury instructions accurately depicted the applicable law, defendant's counsel was not ineffective for failing to object. See *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000) (counsel is not required to raise a meritless objection).

We affirm.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper

(...continued)

subsection (1), a finding of guilty under this subsection may be rendered.