STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 10, 2013
v	No. 307740 Wayne Circuit Court
LARRY SCOTT, Defendant-Appellant.	LC No. 11-007041-FH

Before: M.J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for operating a motor vehicle while intoxicated, third offense, MCL 257.625(1), (9), and operating a motor vehicle while license suspended, second offense, MCL 257.904(1), (3). The trial court sentenced defendant to 18 to 60 months' imprisonment for operating a motor vehicle while intoxicated and 60 days for operating a motor vehicle while license suspended. We affirm.

Defendant argues that there was insufficient evidence at trial to support his conviction for operating a motor vehicle while intoxicated. We disagree.

On appeal, this Court applies a de novo review to challenges to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that all of the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

Defendant argues that the prosecution was required to prove that defendant's intoxication materially and substantially increased his risk of causing an accident or endangering others. To establish the offense of operating a motor vehicle while intoxicated, the prosecution must prove beyond a reasonable doubt that defendant (1) operated a vehicle (2) on a highway or other place open to the general public (3) while intoxicated. MCL 257.625(1).

On appeal, defendant only disputes the sufficiency of the evidence regarding the last element of the offense. The version of MCL 257.625(1) applicable at the time of the incident provides that

"operating while intoxicated" means *any* of the following:

> (a) The person is under the influence of alcoholic liquor . . . .
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood . . . .
>
> (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood . . . . [Emphasis added.]

Thus, the statute's use of the word "any" makes it clear that *any* (not all) of the conditions listed under subparts (a)-(c) are adequate to establish that a person was "operating under the influence."

The evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational jury to find that defendant was intoxicated at the time he was operating the vehicle. The evidence showed that, early in the morning of December 23, 2010, two Michigan state police officers observed a vehicle speeding and failing to signal when making a left turn onto Grand Boulevard in Detroit, Michigan. The officers followed and observed defendant exit the driver's side door of the vehicle as it was parked in the middle of the street. One of the officers approached defendant, noticed his glassy eyes and a strong odor of intoxicants on his person, and asked defendant to see his license. Defendant stated that he did not have his license, and he was placed under arrest for driving while license suspended. After failing a field sobriety test, defendant eventually consented to give a blood sample. At trial, both parties stipulated that the sample was tested and the results showed a blood alcohol content of 0.16 grams of alcohol per 100 milliliters of blood. This evidence was sufficient to establish that defendant had a blood alcohol level in excess of MCL 257.625(1)(b)'s threshold of 0.08 grams of alcohol per 100 milliliters of blood, i.e., that defendant was intoxicated at the time he was operating the vehicle.

Defendant's argument that the prosecution was required to prove that his intoxication materially and substantially increased his risk of causing an accident or endangering others, in addition to proving that his blood alcohol content was above the legal limit, is without merit. Defendant's argument is bewildering since he acknowledges in his brief on appeal that "the prosecutor must prove defendant operated a motor vehicle while intoxicated, *either* while under the influence of alcohol or his blood alcohol level (BAL) was above 0.08 grams per 100 milliliter[s] of blood." (Emphasis added.) The statute is clearly worded such that any of the three methods listed is sufficient for the prosecution to prove that defendant was intoxicated. See MCL 257.625(1)(a)-(c). Because the prosecution and defendant stipulated that the defendant's blood sample tested at twice the legal limit, there was sufficient evidence to establish that defendant was operating a motor vehicle while intoxicated.

Affirmed.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood