

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 28, 2012

v

JEFFREY SCOTT HUNTER,
Defendant-Appellant.

No. 303239
Oakland Circuit Court
LC No. 2010-232237-FH

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for operating a motor vehicle while intoxicated (third offense), MCL 257.615(1) and (9). The trial court sentenced defendant to 60 days in jail and 18 months' probation. We affirm.

Defendant first argues that the lower court erred in finding that Officer Martin had reasonable suspicion to stop defendant, and thus, failed to properly suppress subsequent evidence. We disagree.

We review a trial court's findings of fact at a suppression hearing for clear error, while the ultimate decision on a motion to suppress is reviewed de novo. *People v Aldrich*, 246 Mich App 101, 116; 631 NW2d 67 (2001). A determination of the reasonableness of a warrantless stop of an automobile must be affirmed on appeal unless it was clearly erroneous. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). A determination is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that a mistake was made. *Id.*

This Court has held that an investigatory stop, which is limited to a brief and nonintrusive detention, constitutes a seizure under the Fourth Amendment to the United States Constitution, and thus, under the Michigan Constitution. *People v Jones*, 260 Mich App 424, 429-430; 678 NW2d 627 (2004). An officer may stop and briefly detain a person on the basis of reasonable suspicion that criminal activity may be occurring. *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001). Whether the officer had a reasonable suspicion to make an investigatory stop is determined case by case, under the totality of the circumstances, and the determination must be based on common sense judgments and inferences about human behavior. *People v Horton*, 283 Mich App 105, 109; 767 NW2d 672 (2009). In determining whether the totality of the circumstances established a reasonable suspicion supporting an investigatory stop, objective

facts known to the police officers who effected the stop should be considered, including information received from another, regardless of whether the officers subjectively relied on those facts. *Oliver*, 464 Mich at 192; *People v Chambers*, 195 Mich App 118, 122; 489 NW2d 168 (1992).

Martin had sufficient cause to stop defendant. Martin spent 20 to 25 minutes with defendant prior to defendant being ejected from the Palace. Martin described defendant as “being very loud, belligerent ... obviously intoxicated.” Defendant was “slurring his words[,] ... having trouble with his balance[,] . . . [and] heavily intoxicated.” After helping eject defendant, Martin explained to defendant that he should not be driving and that the car was to be used purely for shelter because of the cold weather. About an hour later, Martin received a call from the head of security at the Palace, John Rhodes, who saw defendant begin to drive a green pickup truck. Based upon common sense judgment that if defendant was unable to drive an hour previously, he likely would not be able to drive an hour later, Martin formed a reasonable suspicion that defendant was driving under the influence of alcohol. Martin pulled up next to the driver’s side window of the vehicle to look through the window and identify the driver; Martin recognized defendant and then pulled in front of the vehicle to effectuate the stop. In this way, Martin ensured that he stopped the appropriate vehicle for which he had cause.

Martin thus based his suspicion on his previous dealing with defendant. The objective circumstances at the time of the stop were sufficient for Martin to reasonably suspect that defendant was driving under the influence of alcohol. The trial court therefore did not err in finding that Martin had sufficient cause to stop defendant and denying defendant’s motion to suppress all evidence derived from Martin’s stop of defendant’s vehicle.

Defendant next argues that the prosecution failed to present sufficient evidence upon which a reasonable jury could find that defendant operated a motor vehicle in an area “generally accessible to motor vehicles.” We disagree.

This Court reviews a claim of insufficient evidence in a criminal trial de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing a claim that the evidence presented by the prosecution was insufficient to support the defendant’s conviction, we must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute sufficient proof of the elements of a crime. *Id.* Questions of statutory interpretation raise questions of law and are reviewed de novo. *People v Breidenbach*, 489 Mich 1, 6; 798 NW2d 738 (2011).

Defendant was convicted under MCL 257.625(1), which prohibits a person from operating a motor vehicle while under the influence of alcohol. MCL 257.625(1). The statute provides that a person, whether licensed or not, shall not (1) operate a vehicle upon a (2) 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 (3) the person is operating while intoxicated. *People v Wood*, 450 Mich 399, 403; 538 NW2d 351 (1995); MCL 257.625(1).

Defendant challenges the prosecution's evidence regarding element two. This Court addressed element two of MCL 257.625(1) most substantively in *People v Nickerson*, 227 Mich App 434; 575 NW2d 804 (1998). This Court found that the statutory language was clear; the disjunctive language of the statute creates two areas other than highways where driving a vehicle under the influence of liquor is prohibited. *Nickerson*, 227 Mich App at 440. Thus, even if a place is not "open to the general public," this Court held, "the OUIL statute is violated if a person, while under the influence of liquor is driving in a place 'generally accessible to motor vehicles.'" *Id.* In *Nickerson*, this Court held that the pit area of the Owendale Speedway, which also charged a fee to enter, was an area "generally accessible to motor vehicles," regardless of whether a fee was required to enter. *Id.* The pit area was a place where vehicles are "routinely permitted to enter for the purpose of driving and parking," and thus, an area "generally accessible to motor vehicles" within the meaning of the statute to be in accord with the legislative purpose to prevent collisions of vehicles. *Id.*

For the same reasons, the Palace parking lot is an area "generally accessible to motor vehicles." The Palace parking lot is an area where vehicles are routinely permitted to enter for the purpose of driving and parking. To construe the statute any other way would be to controvert the legislature's purpose, as announced in *Nickerson*, of preventing collisions when persons driving under the influence of liquor operate vehicles. Therefore, regardless of whether a fee is charged to enter, the Palace parking lot may properly be considered an area "generally accessible to motor vehicles."

The prosecution thus presented sufficient evidence that the Palace parking lot was an area "generally accessible to motor vehicles." Each security personnel member testified to the structure of the parking lot and the flow of traffic in the parking lot; Rhodes testified regarding security measures, public accessibility to the parking lot, and noted that vehicles were allowed to enter for a fee. Defendant does not dispute that the prosecution met its burden with respect to the other elements of the crime, and defendant pleaded guilty to the third offense element. The prosecution thus presented sufficient evidence for a jury to find defendant guilty of operating a motor vehicle under the influence of alcohol.

Defendant next argues that the trial court erred in adopting the prosecution's nonstandard jury instruction, as the instruction failed to inform the jury that the prosecution must prove that a parking lot is generally accessible to motor vehicles. We disagree. Review of jury instructions involving questions of law are subject to de novo consideration. *People v McMullan*, 284 Mich App 149, 152; 771 NW2d 810 (2009).

Jury instructions are reviewed in their entirety to determine whether the trial court committed error requiring reversal. *People v Crawford*, 232 Mich App 608, 619-620; 591 NW2d 669 (1998). Jury instructions must include all the elements of the charged offense and may not omit material issues, defenses, and theories if supported by the evidence. *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998). Even if imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. *Id.* The Standard Criminal Jury Instructions are not sanctioned by the Supreme Court and are not required to be used, and if an instruction does not accurately state the law, a court may disavow it. *People v Stephan*, 241 Mich App 482, 495; 616 NW2d 188 (2000).

The prosecution brought to the trial court's attention that, since the main defense in the case was that the Palace parking lot was not an area generally accessible to motor vehicles, the standard criminal jury instruction may not "comport with the level of exactness to the language of the statute." The prosecution thus requested that the trial court conform CJI2d 15.2—quoted in relevant part, ". . . second, that the defendant was operating a vehicle on a highway, or other place open to the public or generally accessible to motor vehicles"—to the exact language of the statute. Defendant argued that whether a parking lot is an area "generally accessible to motor vehicles" is a question of fact for the jury to decide, and argued for the use of CJI2d 15.2, or in the alternative, (in relevant part): "Second, that the defendant was operating a motor vehicle on a highway or other place open to the public or generally accessible to motor vehicles. An area designed for the parking of vehicles may be, but is not always, an area generally accessible to motor vehicles."

The trial court granted the prosecutor's motion and used language comporting exactly to the statute. The jury instruction thus read:

To prove that the defendant operated while intoxicated, the prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the defendant was operating a motor vehicle February 12, 2010. "Operating" means driving or having actual physical control over the vehicle. Second, the defendant was operating the vehicle on a highway or other place open to the public, or generally accessible to motor vehicles, including an area designed for the parking of vehicles. Third, that the defendant was operating the vehicle in the county of Oakland.

Presenting the language directly from the statute accurately presented the issues for trial. Although defendant is correct that instructional errors which directly affect a defendant's theory of defense can infringe on a defendant's due process right to present a defense, the trial court did not commit error. *People v Kurr*, 253 Mich App 317, 326-327; 654 NW2d 651 (2002). Trial courts are not required to use the standard jury instructions, and are allowed to use language that more accurately states the law. The exact language of the statute could in no way have infringed upon defendant's right to present a defense, as the language was unmodified from the statute. The trial court thus did not err in granting the prosecutor's motion to amend the standard jury instructions.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Kurtis T. Wilder

/s/ Mark T. Boonstra