

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE DARRELL LORD,

Defendant-Appellant.

UNPUBLISHED

October 14, 2003

No. 237894

Kent Circuit Court

LC No. 00-002353-FH

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of two counts of negligent homicide, MCL 750.324. He was sentenced to five years' probation, with one year to be served in the county jail. He appeals as of right. We affirm.

This case arises from a tragic incident in which a trailer, carrying a backhoe, that defendant was towing with his dump truck disconnected from the dump truck and collided with an oncoming pickup truck, resulting in the deaths of the two occupants of the pickup. Defendant was charged with two counts of negligent homicide. The information alleged that defendant negligently failed to use safety chains to secure the trailer to the dump truck as required by law. Although the prosecutor raised various commercial vehicle statutory violations as the basis of the alleged negligence, these bases were not pursued, essentially by consent of the parties.¹

¹ Other alleged bases of negligence included a cracked trailer frame, lack of trailer brakes, and overweight vehicle. Defendant moved to quash the bindover with regard to these bases of negligence, arguing in part that defendant was not operating a commercial vehicle and therefore the commercial vehicle requirements cited by the prosecutor were inapplicable. Defendant also subsequently moved to suppress evidence relating to the trailer because the trailer was destroyed before defendant had an expert inspect it. The trial court denied the motion to suppress, noting that because the prosecution had proceeded only on the safety device theory under MCL 257.721(3), the trailer was not critical evidence. The court stated that absent an amendment of the information, or a defense motion for a bill of particulars, the issue for trial was limited to safety chains or cables. Defendant did not appeal that ruling and, on the morning of trial, stated on the record that he concurred with the court's ruling regarding the issue at trial. Defendant subsequently relied on the ruling in seeking limitations on the prosecutor's evidence during trial.

Defendant was tried solely on theory that he failed to secure the trailer to the dump truck contrary to the motor vehicle code requirements, MCL 257.721(3).

At trial, a sheriff's deputy who investigated the accident testified that defendant told him that the trailer was attached to the dump truck with only a ball hitch, without the use of any secondary safety devices (such as chains or cables). Further, testimony from this deputy and other police witnesses indicated that no such safety chains or cables were found in the course of searching the scene and that no physical evidence of the use of such devices was found on the dump truck or trailer.

In contrast, defendant testified that, when he attached the trailer to the dump truck on the morning of the incident, he "got the cable out of the—from behind the seat and hooked it around there." Defendant stated that he hooked the cable around the hitch of the dump truck and through the tongue area of the trailer. Defendant also testified that the sheriff's deputy asked him if he used chains and that he replied, "No," but told him that he had used a cable.

I

Defendant first argues that the trial court erred by applying MCL 257.721(3) in analyzing this case. Defendant maintains that, under MCL 480.11a, his dump truck was a commercial motor vehicle because it weighed over 10,001 pounds and, as such, was governed by federal regulations adopted by reference in MCL 480.11a. However, any claim of error in this regard is waived because defendant concurred in the court's ruling that confined the issue of negligence to whether defendant used adequate safety devices to secure the trailer, which was based on a violation of MCL 257.721(3). Further, defendant used the court's ruling to his advantage at trial in barring prosecution evidence that defendant's vehicle was subject to the laws governing commercial vehicles. Error warranting reversal must be that of the trial court, and not error to which the aggrieved party contributed by plan or negligence. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

At the outset of the trial, defense counsel addressed the court's ruling that limited the issue in this case to essentially that set forth in the information, i.e., the requirement of safety chains or their equivalent. Counsel stated that the defense did not appeal the court's ruling because "the narrowing of the issues were [sic] precisely what we were looking for." Counsel therefore moved to bar the prosecution from introducing any evidence relating to other safety violations, e.g., the condition of the trailer, the lack of brakes, and overweight. The prosecutor concurred in the limitation of the issues, and the trial proceeded accordingly.

During trial, defense counsel objected to testimony from Officer Daniel Meagher of the Michigan State Police Motor Carrier Division, that he was called to the accident scene because the accident involved a commercial motor vehicle. Defense counsel indicated that, under the trial court's rulings, "whether or not [defendant's dump truck] was a commercial vehicle, whether it was underweight, overweight, whatever, are all irrelevant to the subject at hand." The trial court stated that its ruling on defendant's motion to suppress "precludes lines of questions about weight and things of that sort," but not necessarily other observations that could be germane to the issue in the case. Defense counsel responded that he did not object to such observations, but did object to the prosecution's classification of defendant's vehicle as a commercial vehicle and that the defense intended "to dispute that vigorously."

Defendant's argument on appeal is now dependent on the vehicle's alleged weight, i.e., that it weighed over 10,001 pounds, and its classification as a commercial motor vehicle under MCL 480.11a(2)(c). In light of defendant's positions below, defendant extinguished any error in regard to this issue. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000) (waiver includes intentional relinquishment of a known right).²

Further, although there was some subsequent discussion regarding whether the federal regulations for safety chains and devices were applicable in this case, defense counsel again objected to the prosecutor's line of inquiry concerning the federal regulations, prompting the court to respond that the prosecutor's inquires were likely unnecessary. Accordingly, the prosecutor limited Officer Meagher's testimony "just to the Michigan motor vehicles code."

It is manifest that, in these circumstances, both parties affirmatively indicated that they were agreeable to the trial court deciding this case without determining whether the dump truck was a commercial motor vehicle. In applying the doctrine of waiver, our Supreme Court has stated, "When a court proceeds in a manner acceptable to all parties, it is not resolving a disputed point and thus does not ordinarily render a ruling susceptible to reversal." *People v Riley*, 465 Mich 442, 449; 636 NW2d 514 (2001). Accordingly, we conclude that defendant is not entitled to relief based on his claim that the court erred in applying the state motor vehicle code.

II

Defendant next argues that there was insufficient evidence to support his negligent homicide convictions because the trial court did not find beyond a reasonable doubt that he failed to use a safety cable to secure his trailer to his dump truck, as he claimed in his testimony, but rather merely expressed that it had "considerable question" whether he did so. We conclude that defendant's argument is inherently flawed, and also fails to accurately characterize the trial court's findings of fact in this regard.

First, evidence in a bench trial is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, a rational factfinder could determine that each element of the crime was proven beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Contrary to defendant's argument, the trial court's statements in its findings of fact are irrelevant to the question of the legal *sufficiency* of the evidence to support defendant's conviction.

Further, the trial court did not convict defendant solely on the basis that it disbelieved his testimony that he used a safety cable to attach the trailer to the dump truck. The trial court stated that it had "considerable question" whether there was a cable as claimed by defendant. The court also based its decision on its conclusion that, even if it accepted defendant's testimony that he attached the trailer with one cable, defendant nevertheless violated MCL 257.721(3), which

² We note that defense counsel could effect a waiver regarding this evidentiary matter. *Id.* at 218-219.

requires the use of two such safety devices and on a conclusion that the cable, if one was used by defendant, was not of sufficient strength. Accordingly, defendant is not entitled to relief based on this issue.³

III

Next, defendant argues that the trial court erred by denying his post-trial motion to amend the verdict to not guilty on the grounds that MCL 257.271(3) was inapplicable because (1) his dump truck was not a “passenger vehicle” or (2) his trailer was a “semi-trailer” and not a “trailer” within the applicable statutory definition. We disagree.

First, as discussed above, defendant effectively waived any claim of error on the ground that MCL 257.271(3) was inapplicable. As the court noted, the vehicle code definitional issues should have been addressed before trial. Trial proceeded on the basis that the issue was whether defendant violated the motor vehicle code, and evidence was presented accordingly. Defendant may not now be heard to complain that MCL 257.271(3) was inapplicable. *Griffin, supra*. Given these circumstances, we find no error requiring reversal in the trial court’s denial of defendant’s post-trial motion.

Further, given the circumstances in which this issue was raised below, the trial court’s analysis was not error requiring reversal.⁴ MCL 257.271(3) provides, in pertinent part:

A vehicle or trailer towed or drawn by a vehicle shall be attached to the vehicle with forms of coupling devices in a manner so that when the combination is operated in a linear alignment on a level, smooth, paved surface, the movement of the towed or drawn vehicle or trailer does not deviate more than 3 inches to either side of the path of the towing vehicle that tows or draws it. The vehicle or trailer shall also be connected to the towing vehicle by suitable safety chains or devices, 1 on each side of the coupling and at the extreme outer edge of the vehicle or trailer. Each chain or device and connection used shall be of sufficient strength to haul the vehicle or trailer when loaded. . . .

Assuming, as defendant asserts, that the dump truck was not a passenger vehicle, nothing in the language of MCL 257.721(3) limits its applicability to passenger vehicles. Indeed, the term “passenger vehicle” is not used in MCL 257.721(3). Rather, by its plain language, MCL 257.721(3) applies to a vehicle or trailer that is towed or drawn by “a vehicle,” i.e., any vehicle,

³ Defendant also briefly refers to the trial court’s reference at one point that defendant “may be inferred” to have been negligent. However, the trial court proceeded to state expressly that it concluded that defendant’s operation of a vehicle in a negligent manner “has been established by evidence beyond any reasonable doubt.”

⁴ We review defendant’s claim only in the context in which it was presented, and our analysis limited to the circumstances of this case. In this context, we do not address whether the federal regulations would otherwise provide the applicable safety standard.

regardless of whether it is a passenger vehicle. Thus, applying the clear and unambiguous language of MCL 257.721(3), we reject defendant's contention that this statute is not applicable because his dump truck was not a passenger vehicle. See, e.g., *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003) (further construction of clear and unambiguous statutory language is not allowed).

To the extent defendant bases his argument on the use of the term "passenger vehicle" in the catch line heading for MCL 257.721, we are guided by MCL 8.4b, which expressly states that the catch line heading of a statutory section "shall in no way be deemed to be a part of the section or the statute, or be used to construe the section more broadly or narrowly than the text of the section would indicate." See *People v Al-Saiegh*, 244 Mich App 391, 395-396; 625 NW2d 419 (2001) (applying MCL 8.4b to preclude consideration of catch line of a statutory section).

Likewise, accepting defendant's assertion that his trailer was a "semi-trailer" as defined at MCL 257.59 for purposes of the motor vehicle code, it was still a "vehicle" within the meaning of MCL 257.721(3). The pertinent statutory definition of "semi-trailer" is "every *vehicle* with or without motive power, other than a pole-trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle." MCL 257.59 (emphasis added). It is inherent in this definition that every "semi-trailer" is a vehicle. See *People v Brown*, 249 Mich App 382, 385; 642 NW2d 382 (2002) (when a statute has its own glossary, courts must apply the meaning of terms as expressly defined). Also, the applicable statutory definition of "vehicle" includes "every device" upon which property "may be transported or drawn." MCL 257.79. Thus, as a device on which property may be transported or drawn, defendant's trailer or "semi-trailer" was plainly a "vehicle" for purposes of MCL 257.721(3). By its plain language, MCL 257.721(3) applies not only to a "trailer," but also to a "vehicle" that is "towed or drawn by a vehicle." Thus, accepting defendant's characterization of his trailer as a "semi-trailer," it would still be subject to MCL 257.721(3) as a "vehicle." Accordingly, we must reject defendant's argument that MCL 257.721(3) does not apply to his "semi-trailer."⁵

IV

Finally, defendant argues that the statutory scheme regarding the requirements for safety devices in the present situation is ambiguous and that the ambiguities should be resolved in his favor. We conclude that defendant has not established a claim of error in this regard.

Defendant's first claim of ambiguity, based on the differing requirements in MCL 257.721(3) and federal regulations, is predicated on the characterization of his dump truck as a commercial vehicle. However, that contention is waived for the reasons discussed in part I of this opinion.

⁵ It is immaterial to the resolution of this issue whether defendant's trailer was a "trailer" as defined by the motor vehicle code.

Defendant also vaguely asserts that there is ambiguity with regard to the use of the terms “passenger vehicle,” “trailer,” and “semi-trailer” in MCL 257.721(3). First, as discussed in part III of this opinion, the term “passenger vehicle” does not appear in MCL 257.721(3) and is irrelevant to that provision. Further, in light of our analysis in part III, any arguable ambiguity in the meaning of the terms “trailer” and “semi-trailer” is immaterial. Defendant’s dump truck was a vehicle. His trailer, regardless of whether it constituted a “trailer” or “semi-trailer” under the pertinent statutory definitions, is also a vehicle. As such, defendant was subject to the requirements of MCL 257.721(3) when using one vehicle, i.e., the dump truck, to pull the other vehicle, i.e., the trailer or “semi-trailer.”

Defendant lastly refers to approval of his trailer in a certification form issued at some point by the state police as indicating that he was in compliance with the law and as creating an ambiguity in the law. However, it is apparent that such a form does not have the force of law and could not vary the terms of a statutory provision such as MCL 257.721(3). Thus, contrary to defendant’s argument, this form could not create an ambiguity in the law.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Christopher M. Murray