

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID WILLIAM SCHAEFER,

Defendant-Appellant.

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UNPUBLISHED

March 25, 2004

No. 245175

Wayne Circuit Court

LC No. 02-004291

Before: Borrello, P.J., and White and Smolenski, JJ.

SMOLENSKI, J. (*concurring in part and dissenting in part*).

I respectfully dissent in regards to the majority's conclusion that the trial court's jury instruction pertaining to the charged offense of OUIL causing death was inadequate. In all other aspects, I concur with the majority's opinion.

It is well-settled that a jury must be instructed on each element of a charged offense. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). In determining whether the jury instructions were adequate, this Court reviews a trial court's jury instructions as a whole. Even if there are some imperfections, there is no basis for reversal if the instructions adequately protected the defendant's rights by fairly presenting to the jury the issues to be tried. *People v Dumas*, 454 Mich 390, 396; 563 NW2d 31 (1997). Reversal is not warranted for an instruction that is not "strictly correct" so long as the reviewing court determines that the jury could not be misled by it. *Id.*

Defendant argues, and the majority agrees, that the court's instructions did not sufficiently convey to the jury that defendant's intoxication or unlawful blood alcohol level while driving his vehicle was a substantial cause of the victim's death. However, the trial court specifically instructed the jury that in order to find defendant guilty of OUIL causing death, the jury had to find that defendant drove under the influence or drove with a blood alcohol content of 0.10. "*And as a result of so operating a motor vehicle, causes the death of another person.*" Therefore, I would find that the court adequately conveyed to the jury the causation element. Accordingly, I would affirm defendant's convictions and sentences.

/s/ Michael R. Smolenski