STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2003
v	No. 236785 Jackson Circuit Court
GREGORY CHARLES SHONK, Defendant-Appellant.	LC No. 01-001587-FH

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of operating a motor vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(1), and was sentenced as a fourth habitual offender, MCL 769.12, to a term of 46 months' to 20 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues that the prosecution did not present sufficient evidence to prove beyond a reasonable doubt that it was he who operated the motor vehicle, which was found abandoned in a ditch, or that he operated it while intoxicated. We disagree.

When reviewing the sufficiency of the evidence, we consider the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

In this case, Deputy Christopher Kuhl of the Jackson County Sheriff's Department testified that at approximately 8:00 p.m. on February 8, 2001, he responded to a report of a traffic accident at an intersection. When he arrived at the scene, Kuhl observed skid marks leading from the intersection to a Toyota automobile located in a ditch just off the roadway. Deputy Joseph Quainton, who arrived at the scene at about the same time, testified that the skid marks appeared to him to be "pretty fresh" because, in his experience, heavy rain, such as that occurring at the time, generally causes skid marks to disappear within a matter of minutes.

Lola Hart testified that defendant walked into the marina where she was working "a little after" 8:00 p.m. that same evening and, after informing her that his car was in a ditch, asked to

use the telephone to call someone to pick him up. Hart further testified that, after noting that defendant's eyes were "bloodshot" and that he could not walk in a straight line, she directed him to a pay telephone outside the marina. Hart also testified that during her encounter with defendant, she received a telephone call from an employee at Yukon Jack's, a nearby bar and restaurant, inquiring whether an "unwanted person" was visiting the marina and informing her that defendant had been at the restaurant and that the police had been called.

Only moments after arriving at the scene of the accident Kuhl was dispatched to the marina, which was located only a short distance from the scene of the accident. Kuhl arrived at the marina approximately two minutes later, which Hart testified was only ten to fifteen minutes after she had directed defendant to the pay telephone outside the marina. Upon arriving at the marina, Kuhl observed defendant near the pay telephone and asked that he approach Kuhl's patrol car. Kuhl testified that defendant had difficulty walking to the car, smelled of intoxicants, and failed a field sobriety test, resulting in his arrest. Kuhl further testified that when asked if "anyone else was in the car," defendant answered, "no, there was no one else in the car," and that, following his arrest, defendant asked Kuhl if he knew where his car would be towed.

While Kuhl was administering the field sobriety test, Quainton also arrived at the marina and, after taking defendant's keys, returned to the scene of the accident. According to Quainton, a Toyota ignition key found on defendant's key chain started the car, inside which Quainton found an open bottle of whiskey and a prescription medicine bottle bearing defendant's name. Quainton further testified that, despite the near freezing temperature that evening, the hood of the vehicle still felt warm when he touched it shortly after arriving back at the scene. Quainton also testified that he recalled only one set of footprints leading away from the car.

We find this evidence to be sufficient to support a rational trier of fact in concluding that defendant had been driving the vehicle at the time of the accident. When viewed in a light most favorable to the prosecution, the evidence indicates that defendant, while in possession of the vehicle's ignition key, arrived at the marina alone only a short time after the accident was reported. While there, defendant told Hart that his car was in a ditch and later told Kuhl that "no one else was in the car." Consistent with this testimony, only one set of footprints was found leading away from the car, which was located in a ditch only a short distance from the marina. This evidence, when considered in connection with the prescription medication bottle bearing defendant's name discovered inside the car, was sufficient to permit the jury to reasonably infer that defendant had been driving the car at the time of the accident.[1]

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[1] In reaching this conclusion, we reject defendant's assertion that the evidence was insufficient because (1) the prosecution failed to establish that defendant was the only person who possessed a key to the vehicle, and (2) the police failed to conduct a more thorough investigation of the accident scene. Indeed, the prosecution need not negate every reasonable theory consistent with innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is only required to prove the elements of the crime beyond a reasonable doubt. *Id*. Moreover, the investigatory inadequacies claimed by defendant both at trial and on appeal have no bearing on the sufficiency of the evidence in support of his conviction. Such matters go the weight of the evidence, which

(continued…)

The evidence at trial was similarly sufficient to support that defendant was intoxicated at the time he drove the vehicle into the ditch. Although defendant admits that he was intoxicated when Kuhl first made contact with him, he argues that the prosecution failed to produce evidence sufficient to show when defendant began drinking or when the accident even occurred. Thus, defendant argues, the prosecution failed to discount the possibility that defendant became intoxicated at Yukon Jack's or, possibly in the automobile, after he drove it into the ditch. As previously noted, however, the prosecutor was not required to negate every reasonable theory consistent with innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). In any event, as explained below, we find the evidence presented by the prosecution sufficient to permit a rational trier of fact to conclude that defendant was in fact intoxicated at the time the vehicle was driven into the ditch.

According to Hart, defendant's eyes were bloodshot and he could not walk in a straight line when he arrived at the marina only a short time after the police were notified of the accident. From this testimony, the jury could reasonably infer that defendant was already intoxicated when he arrived at the marina. Although there is no direct evidence indicating the exact time period between the accident and defendant's arrival at the marina, Hart testified that Kuhl arrived at the marina only ten to fifteen minutes after she directed defendant to the payphone, and Quainton testified that, given the heavy rainfall that day, the skid marks seen by the deputies upon arriving at the scene of the accident would have washed away in only a matter of minutes. Quainton also testified that the hood of the Toyota was still warm when he returned to the scene after he and Kuhl encountered defendant at the marina, despite the fact that it was still raining and the air temperature was near freezing. From this evidence a reasonable jury could conclude that the accident occurred only a short time before defendant arrived at the marina and that, therefore, defendant could not have spent enough time either at Yukon Jack's or seated in the vehicle after the accident to become as intoxicated as he was when Kuhl administered the field sobriety test at the marina.[2] In sum, a rational jury could have reasonably concluded that defendant was in fact intoxicated when he drove his car into the ditch.

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette

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is an issue for the trier of fact that will not be resolved by this Court anew on appeal. *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000).

[2] During the field sobriety test, defendant was unable to successfully recite the alphabet or count backward from twenty to one. Defendant was also unable to correctly determine which number fell between seventeen and eighteen, choosing "twelve" in response to that question from Kuhl.