

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTIN DEWAYNE KING,

Defendant-Appellant.

UNPUBLISHED

November 13, 2003

No. 242730

Calhoun Circuit Court

LC No. 01-003338-FH

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction for operating under the influence of liquor (OUIL), in violation of MCL 257.625(1)(a). He was sentenced as a third offender pursuant to MCL 257.625(8)(c)(i) and as an habitual offender, second, pursuant to MCL 769.10, to 24 to 90 months' imprisonment. Defendant challenges the conviction on the basis of sufficiency of the evidence and against the great weight of the evidence. Because the sufficiency challenge stems from a credibility determination and the great weight of the evidence challenge is unreserved, we affirm.

This Court reviews sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether sufficient evidence was presented at trial to sustain a criminal conviction, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

A verdict can be based on circumstantial evidence and the reasonable inferences drawn from that evidence. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The jury determines what inferences can be drawn from the evidence and what weight to give each inference in its deliberation. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). This Court should not interfere with the jury's role in this process or the jury's determination of witness credibility. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 478, amended 441 Mich 1201 (1992).

In particular, defendant disputes the factual conclusion that he was the operator of an automobile involved in a one car motor vehicle accident when the vehicle left the roadway, struck a tree with the right front of the vehicle, and the vehicle was then abandoned. He admits

that he was a right front seat passenger in the involved automobile, that he was extremely intoxicated, and that he crawled out the window and walked away from the crash with minor scrapes to seek help from Matthew and Jeff Jones. But he asserts that “Jack” was the driver.

Vicki Scroggins, the owner of the involved automobile and defendant’s girlfriend, testified at trial that defendant had keys to her car and that defendant called her eight days after the accident to apologize for taking her car, explaining to Scroggins that a tire had blown and that caused him to lose control and damage her vehicle. Arresting Officer Joseph Donovan testified that the damage to the right side of the vehicle was such that a front passenger, as defendant claimed to be, would have sustained severe injuries. Donovan further testified that defendant told him multiple stories about meeting an alleged driver “Jack” that evening but could not give any identifying information about Jack to assist in confirmation of his story. Matthew Jones testified that defendant told him that he, defendant, “wasn’t paying attention and he hit a tree.” Jones continued that defendant had talked about telling the police that someone else had been driving. Jones suggested the name “Jack.” Jeff Jones, Matthew’s father, testified that defendant initially did not want him to call 911 and stated that this would be defendant’s third offense of drunk driving.

The testimony was weighed by the jury against conflicting testimony offered by defendant who maintained that an individual named Jack was driving the vehicle. Based on the testimony, sufficient evidence was presented to the jury for the jury to reasonably infer that defendant had been driving Scroggins’ vehicle at the time of the accident, that it was defendant who lost control and hit a tree, and that defendant offered police the story about another driver, using Matthew’s suggested name of “Jack” because he was worried about being convicted of his third drunk driving offense.

Defendant also asserts that his conviction was against the great weight of the evidence. A claim that the verdict is against the great weight of the evidence must be preceded by a motion for new trial before the trial court. *Heshelman v Lombardi*, 183 Mich App 72, 83; 454 NW2d 603 (1990). Failure to raise the issue by the appropriate motion waives the issue on appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Defendant failed to bring a motion for new trial; therefore, this issue is not preserved for review. In any event, we conclude after reviewing the record that the evidence reasonably supports the jury’s verdict.

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio