STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 19, 2009
v	No. 285492 Gratiot Circuit Court
KELI SUE HOGAN, Defendant-Appellant.	LC No. 07-005467-FH

Before: Borrello, P.J., and Whitbeck and K.F. Kelly, JJ.

PER CURIAM.

Defendant appeals by right from her convictions, following a jury trial, of three counts of operating a motor vehicle while visibly impaired (OWVI) causing death, MCL 257.625(4), and one count of OWVI causing serious impairment of body function, MCL 257.625(5). For the reasons set forth in this opinion, we affirm.

Defendant's conviction arose out of an evening collision between defendant's pickup truck and a Chevrolet Trailblazer on March 23, 2007. The evidence established that defendant ran a stop sign and crashed into the Trailblazer at the intersection of Harrison and Luce Roads in Gratiot County. As a result of the collision, three of the five occupants in the Trailblazer were killed and a fourth occupant sustained a fractured skull. Defendant contended at trial that she failed to stop at the stop sign because deer on the roadway had distracted her. Plaintiff contended that defendant's ability to drive was visibly impaired due to the consumption of alcohol earlier that evening. The jury found that the evidence supported plaintiff's contention and convicted defendant as charged.

Defendant argues that plaintiff failed to present sufficient evidence of visible impairment.[1] The Court must view the evidence in the light most favorable to the prosecution.

[1] Defendant also asserts in her brief on appeal that plaintiff failed to present sufficient evidence that defendant voluntarily decided to drive knowing that she had consumed alcohol and might be visibly impaired. However, defendant failed to develop this argument in her appellate brief. "An appellant may not merely announce [a] position and leave it to this Court to discover and rationalize the basis for [its] claims . . . ." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1,
(continued…)

People v Davis, 241 Mich App 697, 700; 617 NW2d 381 (2000). We will uphold the conviction so long as a rational juror could have found that the prosecutor proved the elements of the charged crime. *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990).

According to the controlling statute, "[a] person . . . shall not operate a vehicle upon a highway . . . when, due to the consumption of alcoholic liquor, . . . the person's ability to operate the vehicle is visibly impaired." MCL 257.625(3). To convict defendant under this statute, plaintiff had to present evidence to establish beyond a reasonable doubt "'that defendant's ability to drive was so weakened or reduced by consumption of intoxicating liquor that defendant drove with less ability than would an ordinary, careful and prudent driver.'" *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975). See also CJI2d 15.4. Further, plaintiff had to establish that defendant's impaired ability to drive was "'visible to an ordinary, observant person.'" *Lambert*, *supra* at 305; CJI2d 15.4.

Defendant's brief on appeal suggests that eyewitness testimony that defendant herself appeared visibly impaired is required to satisfy MCL 257.625(3). This is incorrect for two reasons. First, the plain language of MCL 257.625(3) does not require eyewitness testimony to satisfy the requirement that "the person's ability to operate the vehicle is visibly impaired." The Legislature is presumed to have intended the meaning it plainly expressed. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). A court may not read something "into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). In addition, Michigan case law has not interpreted the statute as requiring eyewitness testimony that the defendant herself appeared visibly impaired. See *Lambert*, *supra* at 305. The Criminal Jury Instructions, which were based on our Supreme Court's holding in *Lambert*, likewise do not contain such a requirement. See CJI2d 15.4.

Second, circumstantial evidence and the reasonable inferences therefrom can constitute satisfactory proof of the elements of a crime, *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), and reasonable inferences may be drawn from established facts. *People v Wilson*, 107 Mich App 470, 474; 309 NW2d 584 (1981). In this case, defendant admitted that prior to the accident, she was at a pub and that she consumed alcoholic beverages. Furthermore, there is no dispute that defendant ran the stop sign and crashed her pickup truck into the victims' vehicle. Witnesses observed defendant's pickup run through the stop sign, and defendant does not dispute the fact that she was driving her truck and that she ran the stop sign. That defendant consumed alcoholic beverages before the crash, drove her pickup truck after consuming those beverages, ran the stop sign at the intersection, and crashed her pickup truck into the victims' vehicle are established facts from which it can be inferred that defendant was visibly impaired.

In addition, there was circumstantial evidence from which it can be inferred that defendant's ability to operate her vehicle was visibly impaired. Defendant admitted that she was familiar with the intersection where the collision occurred and that she saw the sign warning of the intersection ahead and yet in spite of these facts, she still failed to stop at the intersection.

(…continued)

14; 672 NW2d 351 (2003). By failing to properly address the merits of her assertion of error, defendant has abandoned this issue. *Id*.

Furthermore, there was evidence that defendant's blood alcohol content (BAC) was .04 grams per 100 milliliters of blood about two hours after the crash[2] and that after the accident, she was confused, some of her responses to questions posed by a paramedic were unclear, her eyes were red and bloodshot, and she smelled of intoxicants. Moreover, an accident reconstruction expert testified that in the majority of nighttime collisions in which a driver misses a stop sign, alcohol is involved. In sum, based on the established facts and circumstantial evidence, the jury could have reasonably inferred that defendant's ability to drive her vehicle was visibly impaired, i.e., that it was reduced to the point where an ordinary, observant person would have noticed it. Thus, the prosecutor introduced sufficient evidence to establish that defendant's ability to operate her vehicle was visibly impaired.

Defendant also argues that the trial court erred in admitting the expert testimony of toxicologist Michele Glinn, Ph.D. Glinn used retrograde extrapolation to calculate defendant's BAC content at the time of the collision. Defendant maintains that the factual basis for the calculation was deficient and that as such the trial court should have excluded Glinn's testimony. Assuming that Glinn's testimony was relevant, we find that defendant's challenges to Glinn's testimony address the weight of the retrograde extrapolation evidence, not its admissibility. See *People v Wager*, 460 Mich 118, 126; 594 NW2d 487 (1999).

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

[2] We observe that even without the retrograde extrapolation evidence, which defendant contends the trial court erred in admitting, see *infra*, the evidence is sufficient to establish that defendant's ability to operate her vehicle was visibly impaired.