IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE SESSION, 1995

STATE OF TENNESSEE,	**)**	**No. 03C01-9502-CR-00041**
	)	
APPELLEE,	**)**	**Greene County**
	)	
vs.	**)**	**Hon. Ben K. Wexler, Judge**
	)	
SHARON ANN CONNER,	**)**	**(DUI, Third Offense)**
	)	
APPELLANT.	**)**	

For the Appellant:

LeRoy Tipton, Jr.
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(at trial)

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(on appeal)

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For the Appellee:

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District Attorney General
and
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Assistant District Attorney General

Greeneville, TN 37743

OPINION FILED:_____

AFFIRMED

J. S. Daniel
Special Judge

OPINION

This is an appeal from the judgment of the trial court,

approving the jury verdict finding the defendant guilty of driving under the influence, third offense.

This appeal presents one issue for our review. This one issue concerns whether there was sufficient evidence adduced at trial to sustain the jury verdict of guilty of driving under the influence. We find that there was sufficient evidence to sustain the conviction, and affirm the judgment of the trial court.

The appellant was stopped by a Greene County police officer in the early hours of July 19, 1993 because she was speeding. The officer, upon approaching appellant, noticed the strong odor of alcohol about the appellant. Three field sobriety tests were administered by the arresting officer and he concluded that the appellant failed those tests. The officer noted that the appellant was unsteady on her feet and that her attitude was combative. A second officer arrived on the scene shortly after appellant was stopped and his conclusion was similar to the arresting officer's in regards to appellant's performance on the field sobriety tests as well as to her general condition.

Appellant contends that the officer improperly concluded that she failed the field sobriety tests, particularly the one-leg stand and the heel-to-toe walk, because she suffered from vertigo and an injured knee on which she had previously had surgery. She also testified that she had consumed only two twelve-ounce beers earlier in the day. Her story was corroborated by a friend who was with her. The appellant testified at trial that she had been asleep on the night of the arrest, but was awakened by a telephone call from her husband who was experiencing car trouble. It was on the way to assist her husband that she was stopped by the officer for speeding and was subsequently charged with driving under the influence.

Where a complaint is raised concerning the sufficiency of evidence to support a conviction, our standard of review requires us to view the evidence in the light most favorable to the State and to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, setting aside a conviction only if the evidence is insufficient to support the jury's finding. Tenn. R. App. P. 13(e); Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Once the defendant is found guilty of the crime with which he is charged, the presumption of innocence is replaced with a presumption of guilt on appeal, State v. Grace, 493 S.W. 2d 474 (Tenn. 1973), which the appellant has the burden to overcome. State v. Brown, 551 S.W. 2d 329 (Tenn. 1977); State v. Tuggle, 639 S.W. 2d 913 (Tenn. 1982); State v. Williams, 657 S.W. 2d 405, 410 (Tenn. 1983).

On appeal from a conviction, the State is entitled to have the appellate court take the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from it in its favor. State v. Cabbage, 571 S.W. 2d 832, 835 (Tenn. 1978); State v. Gregory, 862 S.W. 2d 574 (Tenn. Crim. App. 1993); State v. Kinnaird, 823 S.W. 2d 571 (Tenn. Crim. App. 1991). In this case the trial court and jury were called upon to determine the credibility of the various witnesses that were presented. The jury accredited the testimony of the State and did not accredit the testimony presented by the appellant. Issues concerning the credibility of witnesses, the weight and value to be given to evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not the appellate court. Grace, 493 S.W. 2d 474. This court will not disturb a verdict of guilty due to the sufficiency of the evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the accused guilty beyond a reasonable doubt. Tuggle, 639 S.W. 2d at 914; State v. Butler, 900 S.W. 2d 305, (Tenn. App. 1994).

We find that sufficient evidence was presented at the trial of the matter to support a conviction by a rational trier of fact. Therefore, we affirm the conviction.

The case is remanded to the trial court to enforce its judgment and sentence. Cost is taxed to the appellant.

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_____J. S. Daniel, Special Judge

CONCUR:

_____
Jerry Scott, Presiding Judge

_____
Joseph M. Tipton, Judge