

OPINION

The defendant was charged in the indictment with driving while intoxicated (second offense), driving on a revoked license (third offense), and leaving the scene of an accident. He was found guilty on all counts at a jury trial and was sentenced to eleven months and twenty-nine days for driving while intoxicated, six months for driving on a revoked license, and thirty days for leaving the scene of an accident. The trial court ordered all sentences to run concurrently. The trial court also imposed fines in the amount of five hundred ten dollars (\$510) each for both driving while intoxicated and driving on a revoked license, and fifty dollars (\$50) for leaving the scene of an accident. In this appeal as of right, the defendant challenges the sufficiency of the convicting evidence. We find that the defendant's issue is without merit, and the judgment of the trial court is therefore affirmed.

At approximately 9:30 p.m. on February 10, 1994, Tracy Harrington was driving her car in Morristown, Tennessee, to pick up her husband. During her trip, another vehicle sideswiped her car and continued down the street without stopping to resolve the accident. Harrington made a U-turn and followed the vehicle which had hit her car. As she followed the vehicle through lighted intersections, she was able to discern two individuals in it. She was able to determine that the driver had light brown hair and the passenger had dark brown or black hair. The two cars soon entered a sharp curve, during which the vehicle which had hit Harrington's car jumped the curb and came to rest in a field. Harrington parked her car on the side of the road, turned on her emergency flashers and approached the vehicle in the field. She saw two individuals in the vehicle. Harrington confronted the driver, whom she later identified as the defendant, and asked him if he realized that he had just hit her car. The driver said something to the effect of "everything will be alright," and Harrington walked back to the road to get help.

At no time did Harrington see a third individual in the vehicle or fleeing the scene.

Harrington soon flagged down Officer Brent Murphy who accompanied her back to the vehicle in the field. Officer Murphy noted that there were two individuals in the vehicle and asked Harrington if she could identify the person who had been driving. Harrington stated that the two individuals in the car had switched places, and the man sitting in the passenger seat, the defendant, had been the driver of the vehicle when it had hit her car. Officer Murphy placed the defendant under arrest, at which time the defendant stated that he had not been the driver of the vehicle. Murphy then decided to take the defendant back to the station for sobriety testing because it was raining so heavily. At the station, the defendant failed four sobriety tests and also stated that he had indeed been the driver of the vehicle.

Subsequent to the accident but before trial, the defendant was involved in an altercation in which he was severely beaten. At trial, the defendant was unable to remember anything about the night of the accident because of injuries received during the altercation. The defendant did, however, offer testimony from several witnesses to refute the State's contention that he was the driver of the vehicle. Danny Johnson, the other individual in the vehicle at the time of the accident, testified that a third individual, whom he knew as Jeff Roberts, was actually the driver of the car. Johnson testified further that the defendant, in order to stop Roberts from leaving the scene of the accident, made the car jump the curb by pulling the steering wheel. Once the car had stopped in the field, Roberts fled the scene. Johnson testified that he had attempted to locate Roberts from the night of the accident to the day of trial but had been unable to do so. In addition, Chad Hannah, the defendant's son, and Mitchell Turner, Danny Johnson's nephew, both testified that they saw the defendant and Danny Johnson as passengers in a car driven by an unknown person at approximately 5:00 p.m. to 6:00

p.m. on the night of the accident. The defendant stipulated that he had been intoxicated on the night of the accident and that his driver's license had been revoked at that point. His main contention, then, was that he had not been the driver of the vehicle.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient 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 defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

In the present case, we are essentially faced with a credibility contest between the eyewitness identification of Tracy Harrington and the testimony of Danny Johnson, Chad Hannah and Mitchell Turner. At trial, the jury accredited the State's witnesses. From our review of the record in this case, we can only conclude that the facts are sufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. The defendant has failed to carry his burden.

For the reasons set out in the discussion above, the convictions of the defendant are affirmed.

JOHN H. PEAY, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

DAVID G. HAYES, Judge