

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1995 SESSION

<p><b>FILED</b></p> <p><b>November 9, 1995</b></p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
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STATE OF TENNESSEE, )  
 )  
                   Appellee )  
 )  
 V. )  
 )  
 JACK STEPHEN SORRELLS, )  
 )  
                   Appellant )

NO. 03C01-9503-CR-00083  
 BLOUNT COUNTY  
 HON. D. THOMAS KELLY, JR.,  
 JUDGE  
 (Driving Under the Influence -  
 Third Offense)

FOR THE APPELLANT:

Steven G. Shope  
 800 Gay Street  
 1610 Plaza Tower  
 Knoxville, Tennessee 37929

FOR THE APPELLEE:

Charles W. Burson  
 Attorney General and Reporter  
 450 James Robertson Parkway  
 Nashville, Tennessee 37243-0493

Michael J. Fahey, II  
 Assistant Attorney General  
 450 James Robertson Parkway  
 Nashville, Tennessee 37243-0493

Michael L. Flynn  
 District Attorney General

Philip Morton  
 Assistant District Attorney General  
 363 Court Street  
 Maryville, Tennessee 37804-5906

OPINION FILED: \_\_\_\_\_

AFFIRMED

William M. Barker, Judge

OPINION

In this appeal we are asked by the appellant, Jack Stephen Sorrells, to review the sufficiency of the evidence adduced at a bench trial where he was found guilty by the Blount County Circuit Court of the offense of driving under the influence (hereinafter "DUI").

It is undisputed that the appellant was found by Deputy Sheriff Joe Thornhill of the Blount County Sheriff's Department seated behind the steering wheel of a parked automobile and that he was intoxicated. The undisputed proof also revealed that the keys were in the ignition of the automobile and the vehicle was capable of being driven away by the appellant.

The appellant contended at trial that he had not driven the automobile, had no intention of driving the automobile, and that he was merely getting out of the driver's side of the car because the passenger side door was incapable of being opened. The appellant testified that he was attempting to get out of the car in order to go to the bathroom. He further testified that his friend, Ray Harrell, had driven the automobile to the spot where Deputy Sheriff Thornhill found it and the appellant. The appellant's version of what occurred on that evening was that Mr. Harrell was driving him from Mr. Harrell's house in South Knoxville to the appellant's mother's house when the car overheated. The appellant and Mr. Harrell both testified that after Mr. Harrell brought the car to a stop in a business parking lot, Mr. Harrell went to a nearby residence in order to get help with the car. It was during Mr. Harrell's absence from the scene that Deputy Sheriff Thornhill arrived and determined that the appellant was under the influence of alcohol. There was supporting testimony put on by the appellant which indicated that he had not driven the car on the day he was arrested for DUI.

The trial court found that there was "a reasonable doubt as to whether the defendant was driving the vehicle." However, the trial court found that there was no reasonable doubt as to whether or not the appellant was in physical control of the automobile at the time he was arrested. The trial court found the appellant guilty of driving under the influence based upon its findings that the appellant was intoxicated,

the key was in the ignition of the automobile, the vehicle was capable of being operated, and the appellant was in the driver's side of the car.

We agree with the trial court's judgment.

Tennessee Code Annotated section 55-10-401(a) provides:

[i]t is unlawful for any person or persons to drive or be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the State of Tennessee, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while under the influence of any intoxicant... (emphasis added).

Our Supreme Court made abundantly clear in State v. Lawrence, 849 S.W.2d 761, 765 (Tenn. 1993), that whether or not an intoxicated person has been shown to have driven a vehicle while intoxicated, he or she may be convicted of DUI if, under the totality of the circumstances, the State proves beyond a reasonable doubt that the appellant was in "physical control" of an automobile in public.

The undisputed facts of this case showed that the appellant was intoxicated and seated on the driver's side of a vehicle which had the keys in the ignition and which was capable of being driven. This evidence was sufficient to establish that the appellant was in physical control of a motor vehicle in a public place while intoxicated. Accordingly, under the standard announced in Lawrence, this evidence was sufficient to prove the appellant guilty beyond a reasonable doubt of violating Tennessee Code Annotated section 55-10-401(a). This is true although the trial court found that there was a reasonable doubt as to whether the appellant had ever driven the automobile on the day of his arrest.

The judgment of the trial court is affirmed.

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WILLIAM M. BARKER, JUDGE

CONCUR BY:

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JOHN K. BYERS, SPECIAL JUDGE

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F. LEE RUSSELL, SPECIAL JUDGE