IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

FILED

March 14, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	*	C.C.A. # 01C01-9506-CC-00210
APPELLEE,	*	LAWRENCE COUNTY
VS.	*	Hon. James L. Weatherford, Judge
HERMAN F. HICKMAN,	*	(DUI)
APPELLANT.	*	

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OPINION FILED: _____

AFFIRMED

Gary R. Wade, Judge

OPINION

The defendant, Herman F. Hickman, was convicted in a bench trial of driving under the influence. Tenn. Code Ann. § 55-10-401. The trial court imposed a sentence of 11 months, 29 days; all but 48 hours was suspended. The defendant was also fined $250 and had his license suspended.

The single issue presented for review is whether the evidence was sufficient to convict. We affirm the judgment of the trial court.

At 1:58 A.M. on October 9, 1993, Officer David White of the Lawrenceburg Police Department stopped a car driven by the defendant after it had crossed over the center line three times. The officer detected slurred speech and the smell of alcohol. The defendant was unsuccessful in his attempt to satisfactorily perform three field sobriety tests: the finger-to-nose, the one-leg stance, and the heel-to-toe. While acknowledging that he could not remember the specifics of the encounter except for stopping the defendant on Highway 64 and transporting him to the county jail, the officer based his trial testimony on notes he had included in the arrest report.

The defendant, who had been to a football game the evening before, testified that he had no recollection of crossing the enter line. While admitting that he had drunk three or four beers within a forty-minute period, just about a half-hour before his arrest, the defendant claimed that he was not impaired but merely tired from lack of sleep the night

before. He blamed his inability to perform field sobriety tests on a back injury.

The trial court found the defendant guilty based, in great measure, upon his admission that he had consumed "3 or 4 beers not too long before this arrest occurred." In challenging the sufficiency of the evidence, the defendant asserts that the proof was chiefly circumstantial and that alcohol ordinarily takes an hour or more "to metabolize from the stomach into the bloodstream."

On appeal, however, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). This court may neither reweigh nor reevaluate the proof introduced at trial. Id. Any conflicts in the testimony must be resolved in favor of the state. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). The determinative question, whether review is of a jury verdict or the finding of the trial judge, is 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, 312-13 (1979); Tenn. R. App. P. 13(e).

As part of his challenge to the sufficiency of the evidence, the defendant argues that the officer's testimony was inadmissible hearsay and should have been excluded. See Tenn. R. Evid. 803(5)(recollection recorded). The defendant's failure to object to the admission of this evidence at trial, however, operated as a waiver to any objection to the

admission of the evidence. Tenn. R. App. P. 36(a).

This limited scope of review compels us to affirm the judgment of the trial court. The evidence, both circumstantial and direct, clearly established the essential elements of the crime of driving under the influence. The trial judge accredited the testimony of the police officer and based its conclusion, at least in part, upon the defendant's admission that he consumed three or four beers only minutes before his arrest. In our view, there was a rational basis for the finding of guilt.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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Paul G. Summers, Judge

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Joseph M. Tipton, Judge