IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
APRIL SESSION, 1996

FILED

July 5, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 01C01-9508-CC-00245
Appellee	)	
	)	WILLIAMSON COUNTY
vs.	)	
	)	Hon. Donald P. Harris, Judge
BILLY W. WADDEY,	)	
	)	(D.U.I., Third Offense)
Appellant	)	

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Billy W. Waddey, was convicted in the Williamson County Circuit Court of operating a vehicle under the influence of an intoxicant, third offense,[1] in violation of Tenn. Code Ann. § 55-10-401 (1993), and driving on a revoked license in violation of Tenn. Code Ann. § 55-50-504 (1993). The appellant now challenges the sufficiency of the evidence to sustain his conviction for DUI.[2]

After reviewing the record, we affirm the judgment of the trial court.

I. FACTUAL BACKGROUND

On February 11, 1994, at approximately 10:00 p.m., Officer Kevin Teague and Reserve Officer Nick Grandy, Franklin police officers, observed the appellant's vehicle stopped at a traffic light. A passenger of the vehicle was standing beside the vehicle urinating. Officer Teague pulled up alongside the vehicle and instructed the appellant to steer his vehicle to the side of the road as

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[1]The parties agreed at sentencing that the conviction should be reduced from DUI, fourth offense, to DUI, third offense, because the first offense relied upon by the State had occurred outside the ten year time frame set forth in Tenn. Code Ann. § 55-10-403(a)(3) (1993).

[2]In his brief, the appellant appears to also challenge the basis of the officer's investigatory stop. Under both the Tennessee and United States Constitutions, a police officer may conduct an investigatory stop of a motor vehicle when the officer possesses "reasonable suspicion," supported by specific and articulable facts, that a criminal offense has been or is about to be committed. Delaware v. Prouse, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401 (1979); Terry v. Ohio, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 1879-1888 (1968); State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992); Griffin v. State, 604 S.W.2d 40, 42 (Tenn. 1980); State v. Brothers, 828 S.W.2d 414, 415 (Tenn. Crim. App. 1991), perm to appeal denied, (Tenn. 1992). Although this issue is waived pursuant to Tenn. R. App. P. 27(a)(4) and (7) and Ct. of Crim. App. Rule 10(b), we note that Officer Teague not only possessed "reasonable suspicion," but in fact observed the passenger of the appellant's vehicle committing the misdemeanor offense of indecent exposure, Tenn. Code Ann. § 39-13-511 (a) (1991), in his presence and, thus, was warranted in stopping the vehicle and arresting the passenger. Tenn. Code Ann. § 40-7-103(a)(1)(1994 Supp.).

soon as the light turned green, so that the officer could speak to the passenger. Officer Teague noticed that the appellant had a "1000 yard stare," a hazed look, and appeared confused or distant.

The appellant proceeded through the intersection, but did not pull over. Officer Teague activated his blue lights. He then activated his siren intermittently. Nevertheless, the appellant traveled approximately three blocks, made a right turn, and proceeded an additional 50 to 100 feet before stopping. The roadway offered several safe places for the appellant to stop during the police pursuit. After the appellant brought his vehicle to a stop, Officer Teague approached the vehicle on the driver's side and detected an odor of alcohol emanating from the appellant. Officer Teague asked the appellant to produce his driver's license and registration. The appellant stated that he did not have his license with him. The appellant further stated that he had been at the VFW club where he had drunk a couple of beers.

As the appellant exited the vehicle, Officer Teague noted that the appellant was unsteady on his feet, and his eyes were bloodshot and glassy. Moreover, the appellant's speech was slurred. The other responding officers made similar observations.

Officer Teague then administered a series of field sobriety tests. The first test required that the appellant stand on one leg for thirty seconds. The appellant told Officer Teague that he did not suffer any disabilities that would prevent him from successfully completing this test. Yet, the appellant could not maintain his balance for more than twelve seconds.

Officer Teague also asked that the appellant perform the "walk and turn,

heel to toe test." In performing this test, the appellant side stepped and was unable to place his heel in front of his toe. Furthermore, although the appellant walked nine steps forward as instructed, he failed to move seven steps backward as instructed.

The appellant was also unable to touch the tip of his nose with either forefinger, touching the side of his nose with the finger of one hand and near his eye with the finger of the other hand. Finally, Officer Teague asked the appellant to recite the alphabet from "a" to "z." After the letter "p," the appellant was inaudible.

Officer Teague concluded that the appellant had performed the four field sobriety tests unsatisfactorily. Officer Chris Gentry, who had also observed the appellant's performance, concurred with Officer Teague's assessment. Both officers testified that the appellant's performance demonstrated that his motor skills, coordination, balance, mental processes, reaction time, and ability to follow directions were impaired.

II. LEGAL ANALYSIS

When an appellant challenges the sufficiency of the evidence, the standard of review by an appellate court is whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994), cert. denied, __ U.S. __, 115 S.Ct. 743 (1995); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985), cert. denied, 475 U.S. 1031, 106 S.Ct. 1240 (1986); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable inferences

that may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978). In determining the sufficiency of the evidence, this court does not reweigh the evidence, id. at 835, nor do we substitute our inferences for those drawn by the trier of fact from the evidence. Liakas v. State, 286 S.W.2d 856, 859 (Tenn.), cert. denied, 352 U.S. 845, 77 S.Ct. 39 (1956).

The appellant argues that the evidence does not support the jury's verdict of guilt. After a careful consideration of the trial record, we conclude that the evidence was sufficient for a rational jury to find each of the essential elements set forth in Tenn. Code Ann. § 55-10-401: The appellant (1) was in physical control of an automobile, (2) on a public road within the State of Tennessee, and (3) was under the influence of an intoxicant.

Elements one and two are admitted by the appellant and are not at issue on appeal. With respect to the third element, the appellant's principal argument is that he demonstrated his ability to drive by successfully maneuvering his vehicle with police officers in pursuit. The appellant's reasoning is flawed. As pointed out by the State, "[a]ll that is required is that [an] intoxicant ... make[] it 'less safe' for him to operate a motor vehicle than it would be if he were not affected by an intoxicant." State v. Curtis, No. 01C01-9203-CC-00075 (Tenn. Crim. App. at Nashville, October 22, 1992). See also State v. Tharnish, No. 17 (Tenn. Crim. App. at Jackson, December 28, 1988), perm. to appeal denied, (Tenn. 1989)("'anyone who has partaken of intoxicating liquor so as to lessen or modify in any degree his power to control an automobile or to guide it is under the influence of an intoxicant'"). First, the appellant admitted to Officer Teague that he had consumed alcohol earlier that evening. Second, the jury could have inferred from the appellant's conduct either an impairment of the appellant's judgment in choosing not to stop for the police or an impairment of his faculties, including his motor skills, in failing to recognize police lights or hear the siren and

respond promptly. Third, a rational jury could have concluded that the appellant's appearance at the time of the stop and his failure to adequately perform each of the field sobriety tests demonstrated that the appellant was under the influence of an intoxicant.

Accordingly, the judgment of the trial court is affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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JOSEPH B. JONES, Presiding Judge

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JOHN H. PEAY, Judge