

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH SESSION, 1996

STATE OF TENNESSEE,)	C.C.A. NO. 01-C-01-9508-CC-00257
)	
Appellee,)	RUTHERFORD COUNTY CIRCUIT COURT
)	
v.)	HON. J.S. DANIEL, JUDGE
)	
KIMBERLY SUTTON STREET,)	(Possession marijuana, two
)	counts; possession drug
Appellant)	paraphernalia; D.U.I. second
<hr/>)	offense)

FOR THE APPELLANT:

LIONEL R. BARRETT, JR.
Washington Square Two
Suite 417
222 Second Avenue, North
Nashville, TN 37065

JOHN D. PELLEGRIN
113 West Main St.
Gallatin, TN 37066

FOR THE APPELLEE (STATE):

CHARLES W. BURSON
Attorney General & Reporter

ROBIN L. HARRIS
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0943

WILLIAM WHITESELL
District Attorney General
3rd Floor Judicial Bldg.
Murfreesboro, TN 37130

JOHN PRICE
Assistant District Atty. General
303 Rutherford County
Judicial Bldg.
Murfreesboro, TN 37130

OPINION FILED _____.

AFFIRMED

OPINION

_____ Kimberly Sutton Street appeals her convictions for possessions of marijuana, valium and drug paraphernalia; plus a conviction for driving under the influence of an intoxicant, second offense. Her sentence is not at issue.

FACTS

Highway Patrol officers were alerted by radio to be on the lookout for the appellant's car. The first of three officers to reach the scene found her parked upon the shoulder of the interstate highway. She was instructed to turn off the car's motor and put the gear mechanism in park.

All three officers testified that she was obviously under the influence, and she was placed under arrest by the first officer to scene. She refused to submit to a blood test. An inventory search of her car turned up hemostats stained by brown residue, rolling papers, two medical syringes, four bags of marijuana, a pipe with recently smoked marijuana residue stained by lipstick matching that worn by the appellant, a multiplicity of various prescription medicines, and a prescription bottle containing ten milligram Valium pills labeled for five milligram doses of Valium.

Her prior offense of driving under the influence was stipulated.

Obviously, the evidence supports the convictions and its sufficiency is not questioned except as to the valium possession conviction.

THE ISSUES

The appellant alleges that the trial court erred in allowing the jury to hear proof of unidentified motorists' complaints

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concerning the drunken driving of the appellant.

We find that the court did not allow details of the erratic driving reported to the officers to be admitted to prove the erratic driving. The substance of what was admitted over objection was that there had been reports to the officers which caused them to look for this particular car. The trial judge specially instructed the jury that they would consider the reports only in explanation of what the officers were doing. Once the appellant was found in her stupefied condition no proof of erratic driving was necessary. To further support overruling of this issue, we note that defense counsel injected some of the complained of information into the record by asking the arresting trooper to read from the Highway Patrol's radio log and he read:

At 10.51 the call was given to Unit 3413 coming from the Rutherford County Sheriff's Department, 1049, which is a reported drunk driver westbound coming by the 84-mile marker at the time in a Camaro.

The first issue is without merit.

The second issue complains that the trial court erred in allowing the jury to hear evidence that other unrelated medications were found in the possession of the defendant. They were Pyridium, Zovirax, Furosemide and Promethazine.

When an objection was made on the grounds of relevancy (to intoxication) the prosecuting attorney said that "the toxicologist will be here, and she will talk about the effects of the

medications". The trial judge ruled that "at this point it will be introduced as a matter of identification. The toxicologist will be here, and she'll talk about the effects of the medications". When the toxicologist testified the State attempted to ask her about the effects of the drugs. The defense

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objected because she was not a "medical expert" and the objection was sustained.

The only evidence that this collection of prescription drugs had relevant to intoxication came in through Trooper Smith, who testified that the label on the Promethazine warned against drowsiness and mixing with alcohol.

This record is clear that the appellant had a long standing severe drug addiction, and on this occasion was severely drug intoxicated. The introduction of evidence that these other medicines were in her possession had no erroneous harmful influence upon the verdict. The issue is without merit.

The third issue complains of the introduction of evidence concerning the nature of Methadone. The toxicologist called by the State testified to the effects of Methadone based on the Physician's Desk Report. The toxicologist testified to the strength and effects of the drug, that it is a narcotic that induces sleep and relieves pain. The argument of the appellant that this testimony would "only make the jury feel that the appellant was a drug addict" is without force, given the admitted fact that she is, and long has been a drug addict. Since the Methadone was found in her possession, and it could cause or contribute to her drug intoxication, the Methadone evidence was clearly admissible.

Lastly, the appellant does question the legal sufficiency of the evidence of the unlawful possession of valium.

The appellant has failed to show how she was in lawful possession of the ten milligram dosage of Valium when her prescription was for five milligram dosage. The jury has found her guilty of illegal possession. We affirm under the authority

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of State v. Cabbage, 571 S.W. 2d 832, 836 (Tenn. 1978) and countless other cases.

We affirm the judgment in all respects.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

JERRY L. SMITH, JUDGE

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ORDER OF JUDGMENT

_____ This Cause came on to be regularly heard by a panel of the Court at the March Session in Nashville upon oral argument and the entire record in the cause, and was taken under advisement.

After full consideration it is the judgment of the Court, for the reasons set out in its Opinion filed this date, that the judgment of the court should be and is in all matters **AFFIRMED**.

Costs on appeal are taxed to the appellant. The cause is remanded for the enforcement of the judgments below.

Hayes, J.
Smith, J.
Russell, Sp. J.