

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

FEBRUARY SESSION, 1997

FILED
June 3, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee,)
)
V.)
)
GORDON SCOTT ALDRIDGE,))
)
Appellant.)

C.C.A. NO. 03C01-9602-CC-00055

GREENE COUNTY

HON. JAMES E. BECKNER, JUDGE

(DUI)

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OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

The Defendant, Gordon Scott Aldridge, appeals as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Following a jury verdict, he was found guilty of driving under the influence of an intoxicant. The offense occurred in February 1995. In addition to challenging the sufficiency of the evidence in this appeal, the Defendant argues in three (3) separate issues that the trial court erred in admitting the results of his blood alcohol test because (1) the Defendant was not competent to execute the implied consent form allowing the blood alcohol test; (2) the Defendant was not able to have an independent analysis of his blood alcohol content; and (3) the vial used to contain the blood alcohol sample was not tamper proof. Finding no merit to any of Defendant's issues, we affirm the judgment of the trial court.

I.

In his first issue, Defendant argues that the evidence was insufficient as a matter of law to support his conviction for driving under the influence of an intoxicant. When the sufficiency of the evidence is challenged by the accused, the standard is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, after reviewing the evidence in the light most favorable to the prosecution. Jackson v. Virginia, 443 U.S. 307, 319 (1979). The credibility of the witnesses, the weight and value to be given the evidence, and all factual issues raised by the evidence are to be resolved by the trier of fact, and not by this court. State v. Pappas, 754 S.W.2d 620, 623 (Tenn.

Crim. App.), perm. to appeal denied, id. (Tenn. 1987). This court may not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

The verdict of guilty, pronounced by the jury and approved by a trial judge, accredits the testimony of the State's witnesses, resolves all conflicts in testimony in favor of the State, and establishes the State's theory of the case. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983).

Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

Shortly before midnight on February 18, 1995, Clara Elizabeth Nease and David Susong were traveling in Ms. Nease's vehicle on the Old Kentucky Road in Greene County. They observed a car sitting off the road down an embankment, partially suspended in the air by the barbed wire fence struck by the vehicle. The Defendant was alone in the car in the driver's seat. After returning to Mr. Susong's nearby residence to call 911 for help, they returned to the scene of the wreck. Even though the vehicle was off the ground, the Defendant was trying to restart his vehicle in order to move it.

Ms. Nease testified that the Defendant was not aware that he had had an accident, did not know where he was or that he had run off the road, and

could not speak clearly. There was a very strong odor of alcohol in the car, and the Defendant admitted that he had been drinking.

Soon Deputy Glenna Estopp of the Greene County Sheriff's Department arrived on the scene. After making sure the Defendant was not seriously injured, Deputy Estopp assisted him up the embankment to the road. She also observed that he had a strong odor of alcohol about him, was unsteady on his feet, could not stand in one position, would lean to one side or the other or stagger and was very talkative. She attempted to administer two field sobriety tests. When the Defendant attempted the "finger to nose" test, he slapped his own face and started to fall backward. When the Defendant attempted to stand on one leg and hold it in place for thirty (30) seconds, he began to fall again and Deputy Estopp had to help hold him up because he had lost his balance. Defendant had already admitted to Deputy Estopp that he had been driving the vehicle and had been drinking alcoholic beverages at a friend's house. Based on the results of the two field sobriety tests, and the information given to her by the Defendant, Deputy Estopp arrested Defendant for driving under the influence of an intoxicant.

Mr. Susong, as well as Ms. Nease testified concerning Defendant's inability to perform the field sobriety tests and his apparent intoxication at the scene. Dale Dodds, a lieutenant with the Greene County Sheriff's Department arrived on the scene as backup for Deputy Estopp. Lieutenant Dodds observed the Defendant to be extremely intoxicated and based this conclusion upon the extremely strong odor of alcohol about Defendant's person, his slurred speech, short attention span, and his inability to perform the field sobriety tests.

A forensic chemist with the Tennessee Bureau of Investigation Lab testified that he analyzed the blood sample taken from the Defendant and concluded that there was 0.17 percent weight of alcohol in the Defendant's blood.

During the Defendant's case in chief, the parties stipulated to the admission into evidence of a letter written by Carolyn Parkins, the laboratory manager of Laughlin Memorial Hospital in Greene County. In essence the letter stated that an extra sample of Defendant's blood provided to him on the night of his arrest could not be tested because it was not properly marked or demonstrated to be a tamper-free sample. The Defendant also testified in his own behalf at trial. He admitted to consuming approximately three (3) mixed drinks of Canadian Mist liquor prior to the wreck, and that he finished drinking at approximately 9:00 p.m. He recalled nothing concerning the wreck, his arrest, or the field sobriety tests. He recalled driving on the Asheville Highway but did not remember anything else until he realized he was being put into the holding cell at the Sheriff's Department. A half-full bottle of Canadian Mist liquor was found in Defendant's vehicle at the scene of the wreck.

From the evidence introduced at trial, any rational trier of fact could have easily found the Appellant guilty of driving under the influence of an intoxicant. Appellant has failed to meet his burden of proof to illustrate why the evidence is insufficient to support the verdict returned by the jury. This issue is without merit.

II.

Defendant argues the results of the blood alcohol tests of his blood were inadmissible because Defendant was not “competent” to sign the waiver. An Implied Consent Form signed by the Defendant wherein he agreed to submit to a blood alcohol test was introduced into evidence at the trial. It was also signed by Deputy Estepp. Furthermore, Defendant signed a request for blood withdrawal which was also introduced into evidence. Deputy Estepp testified that the Defendant agreed to take a blood alcohol test after she read to him the form and advised him of his rights stated therein.

The Defendant argued a motion to suppress results of the blood test pre-trial. He did not submit any testimony in support of the motion and his counsel merely argued that Defendant did not understand the implied consent form.

The trial court found that Defendant consented to the blood alcohol test, and this court is bound by the factual findings of the trial court unless the evidence preponderates otherwise. State v. Tate, 615 S.W.2d 161, 162 (Tenn. Crim. App. 1981). We find that the evidence does not preponderate against the findings of the trial court and accordingly this issue is without merit.

III.

In his third issue, the Defendant argues that the trial court erred in admitting the results of the blood alcohol test because Defendant was given a separate sample of his blood which “he couldn’t test.” Tennessee Code Annotated section 55-10-410(e) provides that when a sample of a person’s blood

is taken to determine blood alcohol content, that person shall be “entitled to have an additional sample of blood . . . procured and the resulting test performed by any medical laboratory of that person’s own choosing and at that person’s own expense; provided, that the medical laboratory is licensed pursuant to Title 68, ch. 29.”

In Defendant’s case, he was given an additional sample of his blood at the time the sample sent to the TBI Crime Lab was taken from the Defendant. The Defendant arranged for his additional sample of blood to be presented to a different hospital from which the sample was drawn. This second hospital refused to test the sample for the reasons stated earlier in this opinion. The Defendant was afforded the sample of his blood as provided in the statute. The burden was on the Defendant to find an appropriate facility which could test the blood. This issue is without merit.

IV.

In his final issue, the Defendant argues that the results of his blood alcohol content should have been inadmissible because the blood sample was not contained in a proper tamper-proof container. The blood sample was taken from Defendant at Takoma Hospital. There was proof in the record that personnel of Laughlin Hospital sealed blood sample containers in a manner differently than Takoma Hospital, and that personnel of Laughlin Hospital felt the blood sample taken at Takoma had no tamper-proof mechanism and therefore could not be tested reliably. However, the forensic chemist who tested the blood and testified as to the results at trial stated that the sample came enclosed in a

sealed container kit. The blood tube under pressure would have a vacuum which would let out a distinctive sound when opened. If no sound emits, then the blood is not tested because the individual container would have been broken. Notations would be made in situations such as this, and there were no notations of any irregularities in the blood sample taken from the Defendant. Essentially, the Defendant challenges the chain of custody of his blood sample used to test for blood alcohol content.

In State v. Holloman, 835 S.W.2d 42, 46 (Tenn. Crim. App.) (perm. to appeal denied 1992), this court held,

The identity of tangible evidence need not be proven beyond all possibility of doubt, and all possibility of tampering need not be excluded. The circumstances must establish a reasonable assurance of the identity of the evidence.

This issue is without merit.

After having considered all issues raised by the Defendant to be meritless, we affirm the judgment of the trial court.

THOMAS T. WOODALL, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge