IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1997 SESSION

FILED

May 21, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	C.C.A. No.01CO1-9605-CC-00225
	)	
vs.	)	Coffee County
	)	
FRANKIE HILL,	)	Honorable Gerald L. Ewell, Sr.,
	)	Judge
Appellant.	)	(DUI Second Offense)
	)	

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OPINION FILED: _____

AFFIRMED

CURWOOD WITT
JUDGE

OPINION

Appellant, Frankie Hill, appeals his conviction of driving while intoxicated second offense. In this direct appeal, appellant's sole issue is whether the evidence presented at his jury trial in Coffee County Circuit Court was insufficient as a matter of law to support his conviction. Upon review of the record before us, we affirm the judgment of conviction of the trial court.

On February 23, 1995, appellant left work around 10:00 p.m. and went to Heroes and Friends, an establishment in Manchester. While at Heroes and Friends, he ate "hot wings" and "drank probably two beers." Thereafter, appellant left the building and went to his car, which was parked "by the door."[1] He backed out of his parking space and drove behind the building onto a driveway that connects the north and south parking lots of Heroes and Friends. Appellant could not complete his drive around the back of the building because two Manchester Police Officers were blocking the drive while they were inspecting a van parked on the drive. Appellant testified he knew the owners of the van and approached Officer Hall to find out what he and Officer Hendrix were doing. After talking with appellant, Officer Hall requested he perform two field sobriety tests, which appellant declined to do. Appellant told Officer Hall he would prefer to go "downtown," at which point Hall placed appellant under arrest for driving while intoxicated.[2] The exchange between Officer Hall and appellant was captured on videotape by a video camera mounted in Hall's patrol car. This video was admitted into evidence at trial and viewed by the jury.

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[1] Officer Troy Hall of the Manchester Police Department testified Heroes and Friends has two doors accessible to the public. One is located on the front of the building and the other is located on the north side of the building. Officer Hall also testified there are parking lots on the north and south sides of the building, which members of the public use when patronizing Heroes and Friends.

[2] Appellant was also charged with and convicted of violation of the implied consent statute, Tenn. Code. Ann. § 55-10-406. He has not appealed this conviction.

Against this factual background, appellant contends the evidence is not sufficient to support his conviction of driving while intoxicated second offense because he did not operate a motor vehicle in an area "generally frequented by the public at large," an essential element of the charged crime. See Tenn. Code Ann. § 55-10-401(a) (1993). The appellant does not dispute the finding that he was intoxicated for purposes of Code Section 55-10-401.

In determining the sufficiency of the evidence, it is not the function of this appellate court to reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Likewise, we may not substitute our inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (Tenn. 1956), cert. denied, 352 U.S. 845, 77 S. Ct. 39 (1956). To the contrary, we are required to afford the state the strongest legitimate view of the evidence contained in the record, along with all reasonable and legitimate inferences which may be drawn therefrom. Cabbage, 571 S.W.2d at 835.

Issues of credibility of witnesses, the weight and value to be afforded the evidence, and all factual issues raised by the evidence are properly resolved by the trier of fact. Cabbage, 571 S.W.2d at 835. A verdict of guilty rendered by a jury and approved by the trial judge accredits the testimony of the state's witnesses and resolves all conflicts in the evidence in favor of the state. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

Moreover, a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt. Grace, 493 S.W.2d at 476. On the defendant's appeal to this court, he has the burden of showing why the evidence is insufficient to support the verdict rendered by the trial court. State v. Tuggle, 639

S.W.2d 913, 914 (Tenn. 1982). This court will not disturb a verdict of guilt unless the facts of record and all the inferences which may be drawn therefrom are insufficient as a matter of law for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. Tenn. R. App. P. 13(e); Tuggle, 639 S.W.2d at 914.

After carefully reviewing the evidence in the light most favorable to the state, we are unable to agree with appellant that the evidence is not sufficient to support his conviction. Notwithstanding appellant's contention he did not drive his car in an area generally frequented by the public at large, see Tenn. Code Ann. § 55-10-401(a) (1993), while under the influence of an intoxicant, we find ample evidence supporting this finding. In his own testimony, appellant admits he drove from his parking place "by the door" to the drive in the back of the building and along the drive until reaching the area where the police officers had the drive blocked. Although appellant did not testify whether he parked by the front or north side door, it is patent from the evidence that to access the driveway behind Heroes and Friends he would have to drive across one of the establishment's two parking lots. Officer Hall testified he saw appellant's car "come through the back portion of the north side of the parking lot" into the driveway. Similarly, Officer Hendrix testified he saw appellant driving southward on the driveway, which logically indicates appellant had come from the north parking lot.

Appellant seeks to distinguish between the parking lot and the driveway by arguing the driveway was not an area generally frequented by the public at large, and therefore, his conviction was improper. What appellant fails to address, however, is that the state's evidence overwhelmingly supports a finding that appellant drove while under the influence in the north parking lot of Heroes and Friends, which is clearly an area generally frequented by the public at large. See, e.g., State v. Farris John Hunter, III, No. 01C01-9504-CC-00118 (Tenn. Crim. App.

at Nashville, filed 1/17/96) (DUI conviction where defendant was apprehended from vehicle in liquor store parking lot), aff'd on unrelated issue, ____S.W.2d ____, No. 01-S-01-9605-CC-00083 (Tenn. at Nashville, filed 3/24/97); State v. Raymond Carroll, No. 02C01-9308-CC-00179 (Tenn. Crim. App. at Jackson, filed 9/27/95) (car wash parking lot); State v. Tina Wiggs, No. 01C01-9310-CC-00346 (Tenn. Crim. App. at Nashville, filed 5/30/95) (convenience store parking lot), perm. app. denied.

Moreover, we fail to find merit in appellant's argument that the driveway behind Heroes and Friends is not an area generally frequented by members of the public at large. Appellant urges this court to adopt a "totality of the circumstances" approach in defining such an area and says the driveway behind Heroes and Friends is not such an area. Although we find it unnecessary to determine the propriety of a totality of the circumstances approach based on our finding of sufficient convicting evidence discussed above, we note that the totality of the circumstances in this case indicates the drive behind Heroes and Friends is an area generally frequented by members of the public at large. Both police officers testified to their frequent observations of the driveway being used for passage from one parking lot to the other, as well as for additional parking. Appellant, who is himself a member of the public at large, admitted he often parked in the drive so he would not have to worry about people "messing" with his car. Appellant further admitted other individuals park behind Heroes and Friends in the drive, as well, and he is not always able to use the drive because of the presence of these other cars. On appellate review, this evidence is sufficient to support a finding that the driveway upon which appellant admits he drove his car is an area generally frequented by the public at large as contemplated by Tenn. Code Ann. Section 55-10-401(a).[3]

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[3] Our interpretation of the statute takes into consideration the "obvious statutory aim" of "enabling the drunken driver to be apprehended before he

For these reasons, we find the evidence of record is sufficient to support appellant's conviction for DUI second offense. Consequently, the judgment of the trial court is affirmed.

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CURWOOD WITT, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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DAVID G. HAYES, JUDGE

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maims or kills himself or someone else[.]" State v. Lawrence, 849 S.W.2d 761, 765 (Tenn. 1993).