IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH 1997 SESSION

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	**C.C.A. NO. 01C01-9601-CR-00041**
Appellee,	)	
	)	**DAVIDSON COUNTY**
	)	
VS.	)	
	)	**HON. JAMES R. EVERETT, JR.**
	)	**JUDGE**
CHERI ANN WILLIAMS,	)	
	)	(Driving Under the Influence)
Appellant.	)	

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OPINION FILED: ________________

AFFIRMED

JOE G. RILEY,
JUDGE

OPINION

Williams appeals as of right from a jury verdict of guilty of driving under the influence of an intoxicant, marijuana or narcotic drug (DUI). Tenn. Code Ann. § 55-10-401. She was fined $500 and sentenced to eleven months, twenty-nine days with all but three days suspended. Williams presents two issues for our review: 1) whether the evidence was sufficient to sustain the DUI conviction; and 2) whether the trial judge erred in allowing a registered nurse to testify as an expert on the effects of certain drugs. The judgment of the trial court is affirmed.

FACTS

On December 20, 1993, Williams was involved in a one-car accident in which her car ran off the road. When paramedics first arrived, Williams signed liability release forms and instructed them to leave without administering any aid. Officer Eckert, the investigating officer dispatched to the scene, began asking Williams routine questions concerning the cause of the accident. He observed that Williams was loud, belligerent, confused, and had slurred speech and bloodshot eyes. He asked whether she had been drinking any alcohol or was on any medications. In response, Williams indicated that she had not been drinking, but was taking Valium several times a day. She then opened her purse and showed Eckert four bottles of prescription medication. Officer Eckert copied the labels directly from the bottles which showed the names of the medications as Diazepam, Anaspaz, Premarin, and Axid.

Officer Eckert instructed Williams to wait in the car while he returned to his vehicle to call a wrecker and fill out paperwork. Williams attempted to start the car and drive away. After stopping the car, Officer Eckert confiscated the keys and again instructed Williams to remain in the car and wait. Instead, Williams got out of the car and attempted to leave the scene on foot. When Officer Eckert apprehended

Williams, she had fallen and apparently injured her hip. Officer Eckert then placed Williams in the back of his patrol car and re-called the paramedics to transport Williams to the hospital.

Officer Eckert followed the paramedics to the hospital where Williams continued to argue with hospital personnel and scream profanities. After Williams' husband arrived at the hospital, she complained that Officer Eckert pushed her and caused her to fall. Officer Eckert denied having pushed Williams and immediately called his supervisor to make him aware of the complaint and to have another officer dispatched to the hospital to transport Williams to the police station. While en route to the police station with another officer, Williams kept turning around and sticking her tongue out at Officer Eckert.

There was also testimony at trial from Sergeant Joe Hampton that the defendant's husband told him at the hospital that the officer was justified in making the arrest since he felt his wife was under the influence. Defendant's husband also stated his wife was on medication and had drunk some wine earlier in the day. The husband denied making these comments.

The defendant's husband, daughter and a friend testified for the defense. They testified that defendant had not been drinking. They further testified that her loud and belligerent conduct was normal behavior when she was irritated.

SUFFICIENCY OF THE EVIDENCE

When an accused challenges the sufficiency of the evidence, this court must review the record to determine if the evidence adduced during the trial was sufficient "to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence or a combination of direct and circumstantial evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

In determining the sufficiency of the evidence, this court does not reweigh or

re-evaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn.1978). Nor may this court substitute its 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 (1956). To the contrary, this court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Herrod, 754 S.W.2d 627, 632 (Tenn. Crim. App. 1988).

Williams argues the evidence was insufficient to sustain the conviction for driving under the influence of an intoxicant, a narcotic drug, or a drug producing stimulating effects on the central nervous system. Tenn. Code Ann. § 55-10-401. Specifically, Williams contends the conviction is unsupported because there was no odor of alcohol detected at the accident. Williams argues that because she is naturally belligerent and argumentative, it should not be considered as proof of intoxication.

Officer Eckert not only testified that Williams was belligerent and uncooperative, but also that she had slurred speech, bloodshot eyes, and was confused. He further testified that Williams was "falling down, staggering and stumbling." When asked if she was on any medications, Williams told Eckert that she took Valium several times a day and then proceeded to open her purse and display four prescription bottles of medication. Officer Eckert testified that "the effect of medication was extreme and that he felt Williams was unable to drive or control a motor vehicle." Williams twice attempted to flee the scene of the accident after Officer Eckert instructed her to wait. Her behavior at the hospital was consistent with one under the influence of an intoxicant. There was more than sufficient evidence for a rational juror to conclude beyond a reasonable doubt that Williams was intoxicated. This issue is without merit.

ADMISSION OF EXPERT TESTIMONY

Williams next argues the trial court erred in allowing a registered nurse, Deborah Dougherty, to testify as an expert regarding the effects of certain drugs. Specifically, Williams contends that Dougherty was not qualified to give this type of opinion testimony. She further contends such testimony is irrelevant since there was no evidence that she had taken these drugs prior to arrest.

A.

We first note that this issue was not raised in the motion for new trial. It is, therefore, waived. Tenn. R. App. P. 3(e). We will, nevertheless, address the issue.

B.

Rule 702 of Tennessee's Rules of Evidence provides:

> If scientific, technical or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of opinion or otherwise.

In order to uphold the admission of expert testimony of a scientific nature, the following four factors must appear in the record: (1) the witness must be an expert; (2) the subject matter of the expert testimony must be proper; (3) the subject matter must conform to a generally accepted explanatory theory; and (4) the probative value of the testimony must outweigh the prejudicial effect. State v. Williams, 657 S.W.2d 405, 412-13 (Tenn. 1983); State v. Schimpf, 782 S.W.2d 186, 191 (Tenn. Crim. App. 1989). The allowance of expert testimony, the qualification of expert witnesses, and the relevancy and competency of expert testimony are matters which rest within the sound discretion of the trial court. A trial court's decision on these matters will not be reversed upon appeal absent a clear showing of abuse of discretion. Williams, 657 S.W.2d at 411-412; State v. Rhoden, 739 S.W.2d 6, 13 (Tenn. Crim. App. 1987).

C.

Outside the presence of the jury, Dougherty was questioned regarding her background and knowledge of Axid, Premarin, Diazepam, and Anaspaz, the four medications found in Williams' possession. She testified that she had been a registered nurse for seventeen (17) years, had taken a pharmacology course, and was familiar with the drugs in question. She further testified that Axid and Premarin were not intoxicants and did not produce a stimulating effect on the central nervous system. She testified that Diazepam is a generic name for Valium which she had administered to patients many times.

When asked about her familiarity with Anaspaz, she responded, "I believe it's a -- I've never given it, I've seen the doctors give it out as prescriptions for a muscle relaxer." Defense counsel questioned the nurse specifically, "whether she had medical knowledge as to the effect Anaspaz has on the central nervous system, and whether or not it is categorized as a narcotic drug." She responded by stating that she did not know whether Anaspaz was a narcotic and that whenever Anaspaz is prescribed, she cautions patients not to drink and drive. She later clarified for the court that Anaspaz, as a muscle relaxant, is a central nervous system depressant.

The trial court determined that Dougherty was qualified to testify regarding the effects the drugs had on the central nervous system. When the jury returned, Dougherty testified as follows:

Q: Are you familiar with a medication called Diazepam?
A: That's commonly known as Valium.
Q: And does this type of medication have any effect on the central nervous system?
A: Yes, I believe it does.
Q: Are you familiar with the medication by the name of Anaspaz?
A: Yes, I believe it's a muscle relaxer.
Q: And does this type of medication have any effect on the central nervous system?
A: As far as I know it does.

This testimony was relevant to the charge of driving under the influence. Further, Dougherty was familiar with the drugs and had years of experience in the nursing field. The record reflects the trial court did not abuse its discretion in allowing Dougherty to testify regarding the effect on the central nervous system. Interestingly, after noting the objection for the record, defense counsel stated, "I think this witness could qualify to testify as to the effects of the central nervous system . . . ." Dougherty's testimony was very limited. Also, even though we doubt that her knowledge of Anaspaz was shown to rise to the level of expertise, the admission of her testimony about it was harmless error at most. Tenn. R. App. P. 36(b).

The judgment of the trial court is AFFIRMED.

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JOE G. RILEY, JUDGE

CONCUR:

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JOSEPH M. TIPTON, JUDGE

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THOMAS T. WOODALL, JUDGE