IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER SESSION, 1999

FILED

December 28, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	**C.C.A. NO.M199800462CCAR3CD**
	)	
Appellee,	)	
	)	**WARREN COUNTY**
V.	)	
	)	
	)	**HON. CHARLES HASTON, JUDGE**
JERRY WAYNE FORD,	)	
	)	
Appellant.	)	**(SECOND OFFENSE DUI)**

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

The Warren County Grand Jury indicted Defendant Jerry Wayne Ford for driving under the influence ("DUI"), fourth offense, and for driving on a revoked license ("DORL"). The charge for DORL was later retired. Following a jury trial that same day, Defendant was convicted of second offense DUI. The trial court subsequently imposed a sentence of eleven months and twenty-nine days, suspended after ninety days of confinement. Defendant challenges his conviction, raising the following issue: whether the evidence was sufficient to support his conviction. After a review of the record, we affirm the judgment of the trial court.

FACTS

Officer Barry Parker testified that on March 19, 1995, he was working for the McMinnville, Tennessee Police Department. While he was on patrol that day, Parker observed a pickup truck that matched the description of a vehicle that he had been advised to be on the lookout for. Parker then followed the truck for a short distance before he turned on his patrol vehicle's blue lights. The truck did not stop immediately and instead, the truck traveled for approximately 300 to 400 yards and then pulled into a driveway. Parker did not observe any violations of traffic regulations during the approximately one half mile that he followed the truck.

Parker testified that when he pulled behind the truck and reported the license plate number to the dispatcher, Defendant got out of the truck and began

"staggering" toward the patrol vehicle. Parker then approached Defendant and told him that the truck matched the description of a vehicle that reportedly contained a juvenile the police were searching for. Parker observed that there was a passenger in the vehicle, but it was not the juvenile he was looking for.

Parker testified that at this point he noticed that Defendant had an odor of alcohol on his person and he was "very unsteady on his feet." Defendant then walked back to the truck and when Parker told him to stop, Defendant leaned up against the truck. Because Parker suspected that Defendant had been drinking, he asked Defendant to perform some field sobriety tests. When Parker asked Defendant to repeat the alphabet, Defendant was unable to do so. When Parker asked Defendant a second time to repeat the alphabet, Defendant did not attempt to do so. Parker then asked Defendant to perform the nine step heel to toe test. Defendant was unable to touch his heel to his toe on any of the nine steps and "he was very uneasy and wobbly the whole time trying to balance himself." At this point, Parker arrested Defendant because he believed that he had been drinking too much to drive.

Parker testified that he subsequently transported Defendant to the jail and advised him of his rights and responsibilities under the Tennessee Implied Consent Law. Defendant then took three intoximeter tests to determine his blood alcohol content, but the results of the tests were invalid. Although an officer explained how to take the test, Defendant did not follow the instructions to blow into the machine.

Officer Stan Hillis testified that he was present when Defendant attempted to perform the heel to toe test. Hillis observed that Defendant was unsteady and was unable to touch his heel to his toe. Hillis also observed that there was an odor of alcohol coming from Defendant. At this point, Hillis formed the opinion that Defendant was under the influence of alcohol and should not be driving.

Hillis testified that he administered the three Intoximeter 3000 tests to Defendant. Although the machine was working properly, the tests had invalid results. Hillis observed that when Defendant took the tests, he did not appear to blow hard like he had been instructed.

Edna Wanamaker testified that she was with Defendant at the Moose Lodge at approximately 8:00 p.m. on March 19, 1995. Although Wanamaker was not entirely sure, she believed that Defendant consumed approximately two to four beers before he drove the pickup truck away from the Moose Lodge one and one half hours after they arrived.

Defendant testified that he only consumed two beers at the Moose Lodge. Defendant admitted that he was unable to repeat the alphabet, but he claimed that he missed the letter "Q" the first time because he was nervous and he was unable to repeat the alphabet on the second attempt because Parker interrupted him. Defendant also admitted that he was unable to touch his heel to his toe on the nine step test, but he claimed that this was because he was wearing cowboy boots and

he had tired feet. In addition, Defendant testified that he blew into the intoximeter machine as he had been instructed.

ANALYSIS

Defendant contends that the evidence was insufficient to support his conviction for DUI. However, Defendant does not challenge the enhancement of his conviction from first offense DUI to second offense DUI. In fact, Defendant stipulated at trial that he had committed one previous DUI offense.

When an appellant challenges the sufficiency of the evidence, this Court is obliged to review that challenge according to certain well-settled principles. A verdict of guilty by the jury, approved by the trial judge, accredits the testimony of the State's witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994). Although an accused is originally cloaked with a presumption of innocence, a jury verdict removes this presumption and replaces it with one of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with Appellant to demonstrate the insufficiency of the convicting evidence. Id. On appeal, "the [S]tate is entitled to the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." Id. Where the sufficiency

of the evidence is contested on appeal, the relevant question for the reviewing court is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). In conducting our evaluation of the convicting evidence, this Court is precluded from reweighing or reconsidering the evidence. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996). Moreover, this Court may not substitute its own inferences "for those drawn by the trier of fact from circumstantial evidence." State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

Under Tennessee law,

> It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:
>
> > Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system.

Tenn. Code Ann. § 55-10-401(a)(1) (1998). There is absolutely no dispute in this case that Defendant was in physical control of a motor vehicle on a public road on the night in question. The only dispute is whether Defendant was under the influence of an intoxicant at the time.

We conclude that when the evidence is viewed in the light most favorable to the State, as it must be, the evidence was sufficient for a rational jury to find beyond a reasonable doubt that Defendant was under the influence of alcohol when he was driving a vehicle. Parker and Hillis both testified that when they approached

Defendant, he had the odor of alcohol on his person. Parker testified that when Defendant got out of the truck and approached the patrol vehicle, he was "staggering". Parker also testified that when Defendant walked back to the truck, he was "very unsteady on his feet" and he leaned up against the truck. Parker testified that Defendant was unable to repeat the alphabet or touch his heel to his toe and rather, "he was very uneasy and wobbly the whole time trying to balance himself." In addition, both Parker and Hillis testified that Defendant failed to blow into the intoximeter machine in the manner in which he had been instructed. Finally, Wanamaker testified that Defendant consumed as many as four beers during the one and one half hours before he drove the truck.

Defendant essentially argues that the evidence was insufficient because the proof of intoxication was contradicted by Parker's testimony that Defendant committed no other traffic offenses, Defendant's testimony that he had only consumed two beers, and Defendant's explanations for why he failed the field sobriety tests. However, "[t]he credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the jury as the triers of fact." State v. Cribbs, 967 S.W.2d 773, 793 (Tenn. 1998). Defendant is essentially asking us to reconsider the evidence and substitute a verdict of not guilty in place of the verdict found by the jury. That is not our function. Instead, we conclude that a rational jury could have found beyond a reasonable doubt that Defendant was under the influence of alcohol when he drove the pickup truck. See Tenn. R. App. P. 13(e).

Accordingly, the judgment of the trial court is AFFIRMED.

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THOMAS T. WOODALL, Judge

CONCUR:

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JOE G. RILEY, JR., Judge

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JAMES CURWOOD WITT, JR., Judge