

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1999 SESSION

FILED

February 16, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

vs.

LESTER BOYD BAIRD,

Appellant.

C.C.A. No. 01C01-9903-CC-00062
M1999-00181-CCA-R3-CD

Rutherford County

Hon. James K. Clayton, Judge

(DUI - second conviction)

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OPINION FILED: _____

AFFIRMED

JAMES CURWOOD WITT, JR., JUDGE

OPINION

The defendant, Lester Boyd Baird, appeals his Rutherford County Circuit Court bench trial conviction of driving under the influence, second offense, a class A misdemeanor. See Tenn. Code Ann. § 55-10-401 (1997). He was sentenced to eleven months, twenty-nine days in the workhouse with 45 days to be served in confinement and the balance on probation. The court also assessed a \$600 fine. In this appeal, the defendant questions the sufficiency of the evidence. We have heard oral argument and reviewed the record, the briefs of the parties, and the applicable law. We affirm the trial court's judgment.

The proof in the case at bar shows that late in the evening of February 20, 1998, the defendant drove to Domino's Pizza and ordered a pizza. A Domino's Pizza employee noticed that the defendant staggered as he came to the window, and she smelled beer. She called the police and reported that a customer was drunk. At trial, the employee stated that she could not identify the defendant as the customer, but she watched the customer's departure from the store and watched the officer pull him over. Officer Lucas responded to the report and saw the defendant's truck in the Domino's Pizza parking lot. He followed the truck when it left the lot.

Officer Lucas saw the defendant's truck swerve three times in his lane. Each time the defendant's tires were on, but did not cross, the yellow centerline. After seeing this, Officer Lucas activated his emergency lights and stopped the defendant.

Officer Lucas checked the defendant's driver's license and made small talk in order to ascertain whether the defendant was intoxicated. The defendant admitted to having two beers earlier that evening. Officer Lucas asked the defendant to perform field sobriety tests, but the defendant said that he was nervous and asked for a few moments to collect his wits. The officer told the defendant to perform the tests, and the defendant told him to just arrest him, which the officer did. Officer Lucas testified that, although the defendant followed instructions and did not stumble or stagger, in his opinion as an officer

who had arrested “many drunks,” the defendant was “unfit to drive a motor vehicle.”

The defendant refused to submit to either a blood or breath test and signed an implied consent form acknowledging his refusal. At trial, the defendant claimed he drove erratically because he had worked a long shift the night before and had very little sleep. He also claimed that he refused to complete the field sobriety tests and told the officer to arrest him because he thought the officer was sent by his ex-wife to harass him. He testified that earlier that afternoon he had an argument with his ex-wife and she threatened to have him arrested. He believed her threat because he said that she was friendly with many of the local police.

Based upon the evidence as summarized above, the trial court in a bench trial found the defendant to be under the influence and convicted him of DUI. The trial court found that the Domino’s Pizza employee and the responding officer smelled alcohol on the defendant’s breath, which brought into question the defendant’s testimony that he had his last beer five hours earlier. The trial court also found it significant that the defendant’s signature on the implied consent form could not be read and was different from signatures on two other forms that were signed at a later time. Pursuant to an earlier agreement in which the defendant waived his right to a jury trial, the defendant received the minimum sentence for DUI, second offense.

The defendant complains that the evidence was insufficient to support his conviction. When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92, (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e). This rule applies to findings of guilt based upon direct evidence, circumstantial

evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990).

In determining the sufficiency of the evidence, this court should not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. 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 the evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956); Farmer v. State, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, this court must 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. Cabbage, 571 S.W.2d at 835.

The evidence in the light most favorable to the state shows that a Domino's Pizza employee saw the defendant stumble and smelled alcohol on his breath. It also showed that the defendant drove on the centerline three times in the presence of oncoming traffic and that he refused to complete the field sobriety tests as requested by the arresting officer. The arresting officer, based on his experience, offered his opinion at trial that the defendant was intoxicated. The defendant's signature written on the implied consent form was distorted.

The verdict suggests that the trial court accredited the testimony of the arresting officer and the Domino's Pizza employee, and this court is neither permitted to substitute our judgment on credibility issues for that of the trier of fact nor to reweigh the evidence.

This court has previously found sufficient evidence of DUI when that evidence was similar to the evidence now before us. In State v. Vasser, 870 S.W.2d 543, 544 (Tenn. Crim. App. 1993), the evidence was sufficient to support

a DUI conviction when the trial court relied only upon the arresting officer's testimony that the defendant was driving under the influence. Id. at 544. In Vasser, the defendant did not complete the field sobriety tests and refused to take a breath test. Id. at 543-44. In State v. Corder, 854 S.W.2d 653 (Tenn. Crim. App. 1992), the defendant was found asleep in his car and no field sobriety tests were administered. Id. at 654. This court affirmed the DUI conviction because the trial court accredited the testimony of the arresting officer over the other witnesses. Id.

Driving under the influence may be shown by circumstantial evidence. State v. Lawrence, 849 S.W.2d 761, 763 (Tenn. 1993); State v. Corder, 854 S.W.2d at 654. The proof in the present case was sufficient to allow a rational fact finder to conclude beyond a reasonable doubt, based upon circumstantial evidence, that the defendant was driving under the influence. Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

JOE G. RILEY, JUDGE

ALAN E. GLENN, JUDGE