IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 03C01-9507-CC-00197
Appellee,	*	WASHINGTON COUNTY
VS.	*	Hon. Arden L. Hill, Judge
RAY EDWARD HENSLEY,	*	(DUI 3rd, Driving on a Revoked License,
Appellant.	*	and Unlawful Possession of a Weapon)

For Appellant:

Thomas E. Cowan
Cowan and Landstreet, P.C.
Colony Square
111 South Main Street
Elizabethton, TN 37643

For Appellee:

Charles W. Burson
Attorney General & Reporter

Hunt S. Brown
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

Joe C. Crumley, Jr.
Asst. District Attorney General
First Judicial District
P.O. Box 38
Jonesborough, TN 37659

OPINION FILED _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Ray Hensley, was convicted of DUI (third offense), driving on a revoked license, and unlawful possession of a weapon. The trial court imposed consecutive sentences of 11 months and 29 days (mandatory 150 days in jail), six months (mandatory 20 days in jail), and thirty days (mandatory 10 days in jail) respectively. On appeal, the defendant challenges the sufficiency of the evidence on each offense.

We affirm the trial court's judgment.

At approximately 4:00 A.M. on June 17, 1994, the defendant was arrested in the drive-thru line of a Krystal restaurant in Johnson City. Officer Jerry Harrell, who was off duty and working as a security guard at the restaurant, had overheard the defendant "yelling and screaming" at the driver of the vehicle blocking his path. Officer Harrell approached the defendant's vehicle, asked the defendant what the problem was, and then noticed that the defendant had a holstered gun. The officer immediately drew his weapon and told the defendant to keep his hands on the steering wheel and to turn off the car engine. The defendant, who was generally cooperative, allowed the gun to fall to the floorboard, and then kicked it under his seat.

Within a few minutes, Officer Larry Robbins arrived to assist and the defendant was placed under arrest for possession of the weapon. As Officer Harrell recovered the loaded weapon from under the car seat, Officer Robbins administered several field sobriety tests. The defendant performed poorly and was charged with DUI. He registered .13 on a blood alcohol test administered at the police station. Police then determined that the defendant's driver's license had been revoked.

On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983), cert. denied, 465 U.S. 1073 (1984); Tenn. R. App. P. 13(e).

We are also guided in our review by other well-established principles. A crime may be established by the use of circumstantial evidence only. State v. Tharpe, 726 S.W.2d 896, 899-900 (Tenn. 1987); Marable v. State, 203 Tenn. 440, 451-52, 313 S.W.2d 451, 457 (1958). However, before an accused may be convicted of a criminal offense based upon circumstantial evidence alone, the facts and circumstances "must be so strong and cogent as to exclude [beyond a reasonable doubt] every other reasonable hypothesis save the guilt of the defendant." State v. Crawford, 225 Tenn. 478, 482, 470 S.W.2d 610, 612 (1971). "A web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt." Id. at 484, 470 S.W.2d at 613.

The defendant claims that the evidence to support the offense of DUI is insufficient because the video tape of his performance on the field sobriety tests establishes that he was not under the influence of an intoxicant to such a degree

that his driving ability was impaired. The tape, however, is not a part of the appellate record. Because it is the duty of the appellant to make sure that the appellate record "convey[s] a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." We cannot address the specific issue. Tenn. R. App. P. 24 (a). Certainly there was other evidence in the record to adequately establish that the defendant was driving under the influence of an intoxicant. Thus we cannot second-guess the conclusion of the jury.

Next, the defendant claims that his conviction for driving on a revoked license was not supported by sufficient evidence because there was no proof that he was driving on a public highway. Tenn. Code Ann. § 55-50-504(a) provides that a "person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is ... revoked commits a Class B misdemeanor...." While the defendant correctly points out that there was no direct evidence that he was driving on a public highway, there was plenty of circumstantial evidence that he had done so. For example, the defendant was alone in his vehicle. Further, the only entrance to the Krystal restaurant was from a public street. Because an offense may be proven by circumstantial evidence alone, we believe that the jury acted within its prerogative.

The defendant's final claim is that the evidence was insufficient to support his conviction for unlawful possession of a weapon because "there was not one scintilla of evidence that the defendant ever had the pistol in his hand or otherwise demonstrated that he had said pistol in his vehicle with the intent to go armed[.]" Tenn. Code Ann. § 39-17-1307(a)(1) provides that "A person commits an offense who carries with the intent to go armed a firearm ...." Here, there was evidence that the defendant had the loaded gun between his legs at the time he was

yelling obscenities at the driver of the car in front of him. When approached by the officer, the defendant attempted to conceal the weapon by kicking it under the seat of the car. Under these circumstances, we do not hesitate to find that the defendant sufficiently possessed the weapon with the necessary intent.

Gary R. Wade, Judge

CONCUR:

David H. Welles, Judge

William M. Barker, Judge