

OPINION

The Defendant was convicted on a jury verdict of driving under the influence of an intoxicant (DUI), driving on a revoked license, and evading arrest. The basis of this appeal is an instruction given by the trial judge when the jury initially returned an incomplete verdict. The Defendant argues that this instruction amounted to a directed verdict of guilt, which deprived him of his Sixth Amendment right to a jury trial. We find the instruction was proper, and affirm the decision of the trial court.

The facts in the record are summarized as follows. On July 19, 1991, the Defendant was arrested for driving under the influence of an intoxicant on Highway 100 in Hickman County, Tennessee. Upon arrest, the Defendant agreed to submit to a blood test, so the officer escorted the Defendant to Hickman County Hospital. Upon arrival at the hospital, the unhandcuffed Defendant escaped from custody, and was not recaptured until October 22, 1992.

On May 2, 1994, the Grand Jury for Hickman County, Tennessee returned an indictment charging the Defendant with DUI, driving on a revoked license, evading arrest, and of having a prior DUI conviction. The Defendant waived the right to a jury trial for the DUI prior charge.

A trial before Judge Cornelia A. Clark was convened in Centerville, Tennessee on April 19, 1995. After both sides submitted their cases to the jury, the jury returned with guilty verdicts on the counts of DUI, driving on a revoked

license, and evading arrest, but indicated to the Judge that they had failed to reach unanimous decisions on fines for two of the convictions.

The basis of this appeal concerns the trial judge's subsequent instruction to the jury:

[L]adies and gentlemen, I believe you have reported a partial verdict, but I must ask you to return to the jury room and continue deliberating on the issue of fines in any case where you have not agreed unanimously. I will ask you to recall, and I will reinstruct you, as to all the instructions I gave you earlier about the fines. They are discretionary, but you must ultimately agree or report if after the deliberations for some reason you cannot. *The parts of the verdict that you have reported that you agree on, you do not need to discuss further*, but I will ask you now to return to the jury room, continue deliberating on those fines where there was not unanimous agreement and report back at the conclusion of that deliberation.

(emphasis added).

The Defendant immediately objected to the instruction, claiming the judge foreclosed the possibility that the jury might, in further deliberations, reverse its initial determination and return with an acquittal. The judge overruled the objection, and the jury eventually returned with the same findings of guilt, and unanimous decisions regarding the fines. Specifically, the jury imposed a \$1,000 fine for DUI, a \$500 fine for driving on a revoked license, and a \$1,745 fine for evading arrest. The judge then found the Defendant guilty on the DUI prior, and sentenced the Defendant to a six-month jail sentence, suspended after serving 60 days. The Defendant was also sentenced to 11 months, 29 days probation on the DUI charge; a six-month jail sentence, suspended after serving 15 days, for driving on a revoked license; and an 11 month, 29 day jail sentence, suspended after serving 65 days, for evading arrest. All sentences were ordered to run concurrently.

The issue on appeal is whether the trial judge directed a guilty verdict and thereby denied the Defendant a fair trial when she instructed the jury, as they returned a verdict lacking unanimity on the penalties, that they need not revisit the issue of guilt in their later deliberations.

I.

As a general rule, if there is any uncertainty or contingency as to the finality of a jury verdict, there simply is no verdict. State ex. rel. Myers v. Brown, 209 Tenn. 141, 150, 351 S.W.2d 385, 389 (1961). While this is the general rule, it is perhaps more accurate to state that in such a situation, the jury has returned an “incomplete,” “improper,” or “imperfect” verdict. When a jury returns such a verdict, the trial court has the power and duty to command the jury to correct it. Meade v. State, 530 S.W.2d 784, 787 (Tenn. Crim. App.), cert. denied, id. (Tenn. 1975). Specifically, the judge must send the jury back to the jury room with instructions to correct or amend that incomplete, improper, or imperfect verdict. State v. Stephenson, 878 S.W.2d 530, 554 (Tenn. 1994); State v. Morris, 788 S.W.2d 820, 825 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1990). Thus, in the case sub judice, and as the Defendant concedes, the trial court was correct when it sent the jury back to continue its deliberations.

As held in Stephenson and Morris, the jury must be sent back to either correct or amend its initial verdict. In situations where a jury returns with a verdict of guilty, but fails to agree as to punishment, a trial judge may instruct the jury to continue deliberations so to amend its verdict with a proper finding of punishment. For example, in Gwinn v. State, 595 S.W.2d 832 (Tenn. Crim.

App.), perm. to appeal denied, id. (Tenn. 1979), a second-degree murder case, the jury returned a guilty verdict and assessed a sentence, but did so on a verdict form which listed outdated penalties. The court sent the jury back to amend the verdict and put it in the proper form, or simply, recalculate the sentence, but not to revisit the issue of guilt, a practice which this court found permissible. Id. at 835.

A judge may also rely on a jury's intent to find guilt as the judge limits further deliberations upon receipt of an incomplete verdict. In State v. Daniel, 663 S.W.2d 809 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1983), another second-degree murder case, the jury returned a guilty verdict, but erred in assessing punishment. The judge sent the jury back to deliberate further solely on the issue of punishment. This court again affirmed, allowing the trial judge to base his action in limiting the further proceedings in the jury's apparent intent to find guilt. Id. at 812. See also State v. Underwood, 669 S.W.2d 700, 705 (Tenn. Crim. App.), perm. to rehear denied, id. (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1984).

In the case sub judice, in the face of an incomplete verdict, the trial judge stated, "The parts of the verdict that you have reported that you agree on, you do not need to discuss further...." This is entirely consistent with a judge's duty to charge a jury to deliberate further so to correct or amend an imperfect verdict. In this case, as in Daniel, it was clear that the jury intended to find guilt, so an instruction which focused the remainder of the deliberations on the penalty was proper. Although a jury certainly could revisit the issue of guilt, there is no Tennessee authority which indicates that a trial judge must make that instruction.

Therefore, because portions of incomplete verdicts may be corrected or amended without specifically requiring a jury to reconsider all its prior deliberations, there was no error.

II.

While it is clear that a judge may instruct a jury to amend an incomplete verdict, the Defendant argues that this particular instruction amounted to a directed verdict of guilt, which, if true, would be an unconstitutional deprivation of liberty. This argument is not well-taken, as the instruction in question falls short of the threshold generally recognized regarding directed criminal verdicts.

The well-established general rule in Tennessee is that a trial judge may not direct a verdict of guilt in a criminal trial, no matter how overwhelming or conclusive the evidence. Nance v. State, 210 Tenn. 328, 331, 358 S.W.2d 327, 328 (1972). See also United Brotherhood of Carpenters and Joiners of America v. United States, 330 U.S. 395, 408 (1947). If, however a judge believes the evidence to be insufficient to warrant a conviction, the court, upon a party's motion or on its own motion, may direct the jury to acquit the defendant. Tenn. R. Crim. P. 29; Hill v. State, 4 Tenn. Crim. App. 325, 337, 470 S.W.2d 853, 858 (1971).

A directed verdict of criminal guilt not only violates established common law, but also infringes on the constitutional rights of the accused. A directed guilty verdict violates the Due Process Clause of the Fifth Amendment and the right to a speedy and public trial outlined in the Sixth Amendment to the United

States Constitution, as well as Sections Six, Eight, and Nine of Article I of the Tennessee Constitution. State v. Davis, 637 S.W.2d 471, 472 (Tenn. Crim. App. 1982).

The Defendant argues that by not instructing the jury that it may reconsider the issue of guilt, the court removed that conclusive function from the jury and, therefore, violated the Defendant's constitutional rights. This claim must fail for two reasons. First, at no time was the ability to find guilt or innocence removed from the jury's grasp. A bench statement that it is not necessary to revisit the issue of guilt is not equivalent to a prohibition. This was a clarification of the jury's duties at that point in its deliberations, not an absolute restriction of discussion or action. Second, at no point did the judge create a situation where a finding of guilt was inevitable. The jury had already returned with a conclusion of guilt. The trial judge's instruction would not make it more likely that the final verdict would be "guilty on all counts" when the jury had already made that decision. The instruction was too late to influence the jury's decision.

In conclusion, the trial judge in the case sub judice properly instructed the jury to amend its incomplete verdict. In doing so, she did not infringe upon their traditional province or fact-finding responsibilities, nor did she actually or effectively direct a verdict of guilt. Because the Defendant's constitutional rights were not violated, and no error was committed, the decision of the lower court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

WILLIAM M. BARKER, JUDGE

JERRY L. SMITH, JUDGE