

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE SESSION, 1996

STATE OF TENNESSEE,)
)
 Appellee,)
)
)
 VS.)
)
 STANLEY MATHEWS,)
)
)
 Appellant.)

C.C.A. NO. 02C01-9508-CR-00214

SHELBY COUNTY

HON. L. T. LAFFERTY
JUDGE

(Direct Appeal)

FILED
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Cecil Crowson, Jr.
Appellate Court Clerk

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

A Shelby County Criminal Court jury convicted Appellant Stanley Mathews of driving under the influence. According to the record, Appellant, as a third offender, received a sentence of seven months. The trial court ordered him to serve 120 days of the sentence followed by probation for a period of eleven months and twenty-nine days.¹ In this appeal, Appellant presents the following issue: whether the evidence presented at trial is legally sufficient to sustain a conviction for driving under the influence.

After a review of the record, we affirm the judgment of the trial court.

I. FACTUAL BACKGROUND

As accredited by the jury's verdict, the State's proof shows that, on November 15, 1993, Officer Mark Miller of the Memphis Police Department observed two vehicles following each other into the Amoco gas station on Pendleton Avenue in Memphis. Officer Miller did not notice anything unusual about either car but followed them into the gas station because he needed to use the phone. Officer Miller observed the occupants of the vehicles exit their cars. Appellant exited the first vehicle from the driver's seat. An argument ensued between the occupants of the two vehicles. Upon observing this argument, Officer Miller approached the passengers and ordered them back into their cars. The occupants of the second car obeyed, but Appellant and

¹ Considering that the maximum total sentence pursuant to Tennessee Code Annotated Section 55-10-403(a)(1) is eleven months and twenty-nine days, it is logical to interpret the trial court's sentence as meaning a total sentence of eleven months and twenty-nine days, with 120 days of of the sentence served in the county workhouse and the balance served on probation.

Eric Porter, a passenger in Appellant's vehicle, refused. Appellant then turned to Officer Miller and began arguing with him. At this time, Officer Miller noticed that Appellant smelled of an intoxicant, slurred his speech, was unsteady on his feet, and was irate and belligerent. As a result, Officer Miller attempted to pat down Appellant. In response, Appellant struggled, resulting in Officer Miller spraying the defendant with a chemical agent.

As a result of Appellant's belligerent behavior, Officer Miller was unable to administer a field sobriety test. Appellant also refused to take a breathalyser test. Nevertheless, Officer Miller concluded that Appellant's driving abilities were impaired by alcohol.

At trial, Appellant presented a completely contrary version of the events. Appellant, his girlfriend Shevette Swanigan, and Porter all testified that Appellant drank three to four quarts of beer over a two to three hour period after playing basketball but that Appellant never drove the vehicle. According to Appellant's version of the incident, Swanigan picked him and Porter up from playing basketball, and they drove to the gas station when their car malfunctioned. While at the gas station, Porter and Appellant got into an argument with the cashier's brother. Officer Miller did not arrive on the scene until after the argument. Before Appellant could explain what had occurred, Officer Miller sprayed him with mace.

As a result of the incident, Appellant was indicted for driving under the influence of an intoxicant, reckless driving, and driving on a revoked license.

The jury found Appellant guilty of driving under the influence but not guilty of reckless driving and driving on a revoked license.

II. SUFFICIENCY OF THE EVIDENCE

Appellant alleges that the evidence presented at trial is legally insufficient to sustain a conviction for driving under the influence. In support of his sufficiency claim, Appellant argues that he was not driving the vehicle.

When an appeal challenges the sufficiency of the evidence, the standard of review is whether, after viewing 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. Jackson v. Virginia, 443 U.S. 307,318 (1979); State v. Evans, 838 S.W.2d 185, 190-91 (Tenn. 1992), cert denied, 114 S.Ct. 740 (1994); Tenn. R. App. P. 13(e). On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). This Court will not reweigh the evidence, re-evaluate the evidence, or substitute its evidentiary inferences for those reached by the jury. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). As the Supreme Court of Tennessee said in Bolin v. State:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face-to-face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

405 S.W.2d 768, 771 (1966). Thus, a jury verdict is entitled to great weight.

Once approved by the trial court, a jury verdict accredits the witnesses presented by the State and resolves all conflicts in favor of the State. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978); State v. Townsend, 525 S.W.2d 842, 843 (Tenn. 1975). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted exclusively to the jury as trier of fact. State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984). A jury's guilt verdict removes the presumption of innocence enjoyed by the defendant at trial and raises a presumption of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). The defendant then bears the burden of overcoming this presumption of guilt on appeal. State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977).

In order to sustain Appellant's conviction for driving under the influence, the proof must show beyond a reasonable doubt that Appellant was driving or had physical control of the vehicle on a public road and that Appellant was under the influence of an intoxicant. See Tenn. Code Ann. § 55-10-401(a). Officer Miller testified that he observed Appellant drive down Pendleton Avenue and pull into the Amoco station. Officer Miller further testified that Appellant smelled of alcohol, had slurred speech, was unsteady on his feet, and was very irate and belligerent. In addition, Appellant himself, testified that he had consumed three to four quarts of beer in the two to three hour period before his arrest.

As stated previously, determining the credibility of witnesses and the weight to be given their testimony as well as resolving conflicts in the proof are matters entrusted exclusively to the jury as trier of fact. Sheffield, 676 S.W.2d

at 547. This Court, even if it wished to do so, may not substitute its evidentiary inferences for those drawn by the jury. Carey, 914 S.W.2d at 95. Here, it appears from the verdict that the jury chose to believe the testimony of Officer Miller regarding the incident and to disbelieve Appellant's account. Under well-settled Tennessee law, the jury was within its province in doing so. Thus, we find that, when viewed in a light most favorable to the State, the evidence is legally sufficient to sustain Appellant's conviction for driving under the influence.

III. INCONSISTENT VERDICTS

Appellant also claims that the jury verdicts are inconsistent, and thus his conviction should be overturned. Appellant argues that, if a jury found him guilty of driving under the influence, then the jury had to reach the conclusion that he was the driver of the car. If Appellant was the driver of the car, then it would necessarily follow that he was guilty of driving on a revoked license because there was no dispute that his license was revoked. However, the jury returned a guilty verdict with respect to the driving under the influence charge and a not-guilty verdict with respect to the driving on a revoked license charge. Assuming arguendo that the verdicts are inconsistent, our Supreme Court has held that "[t]his Court will not upset a seemingly inconsistent verdict by speculating as to the jury's reasoning if we are satisfied that the evidence establishes guilt of the offense upon which the conviction was returned." Wiggins v. State, 498 S.W.2d 92, 94 (Tenn. 1973); see also State v. Jackson, No. 02C01-9503-CC-00092, 1996 WL 315821, at *4 n.7 (Tenn. Crim. App. June 10, 1996); State v. Hunter, No. 01C01-9411-CC-00391, 1996 WL 10086, at *4 (Tenn. Crim. App. Jan. 11, 1996), applic. filed, (Tenn. Aug. 1, 1996); Jackson v. State, 477 S.W.2d 213, 216 (Tenn. Crim. App. 1971). Since, as

discussed above, the evidence is sufficient to support Appellant's conviction, Appellant's argument with regard to this issue is meritless.

Accordingly, the judgement of the trial court is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

DAVID H. WELLES, JUDGE