

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

MARCH 1999 SESSION

FILED

June 25, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee,)
)
)
v.)
)
)
WILLARD HART,)
)
)
Appellant.)

No. 02C01-9809-CC-00271

Henderson County

Honorable Whit Lafon, Judge

Criminally negligent homicide

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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Willard Hart, appeals as of right from his conviction by a jury in the Henderson County Circuit Court of criminally negligent homicide, a Class E felony. He was originally indicted for vehicular homicide, reckless driving, driving under the influence (DUI), and vehicular assault, but he was found not guilty of these offenses. He was sentenced for the criminally negligent homicide conviction as a Range I, standard offender to two years confinement in the Department of Correction and was fined three thousand dollars. On appeal, the defendant claims that (1) the evidence is insufficient to support his conviction and (2) the trial court improperly sentenced him. We affirm the judgment of conviction.

Tennessee Highway Patrol Trooper Edward Barrett testified that he was called to a car accident on Rock Springs Road at about 6:00 p.m. on March 23, 1996. He said that when he arrived, he saw a white Ford station wagon turned upside down. He said the defendant and the victim, Patsy Taylor, were in the car, and medical attendants were trying to remove them. He stated that one of the passengers, Dennis McKinney, had already been removed from the backseat of the car. He testified that Ms. Taylor was lying across the defendant, and her body was partially outside the passenger window. He stated that Ms. Taylor appeared to be dead. He said he spoke with the defendant after he was removed, and the defendant told him that he was driving and ran off the road. Trooper Barrett testified that the defendant and the car smelled of alcohol. He said the defendant told him that he had consumed about one quart of alcohol. Trooper Barrett stated that he found beer bottles in the car, and he concluded that the defendant was very intoxicated. He testified that a check of the license plate on the car revealed that the car was registered to the defendant.

Trooper Barrett testified that the defendant consented to a blood alcohol test and that the blood was drawn at the hospital. He said that after the blood had been drawn, the defendant refused to sign an implied consent form. He said that when he went to the defendant's house to serve an arrest warrant a few days after the accident, the defendant said he was not driving the car at the time of the accident.

On cross-examination, Trooper Barrett testified that he did not ask anyone at the scene if they had tried to remove the defendant or Ms. Taylor from the car before he arrived. He said it appeared as if Ms. Taylor's body was partially on top of the defendant's body. He said the defendant was unconscious and had blood, scrapes and scratches on him. He stated that rain had just started at the time of the accident, and the pavement was starting to get wet. He said the road had no standing water on it. He said the defendant did not appear to be intoxicated when he served the arrest warrant on him.

Dr. Charles White, Jr., an Assistant Chief Medical Examiner for Henderson County, testified that he examined Ms. Taylor's body on March 29, 1996. He said that Ms. Taylor died from a skull fracture on the left side of her head.

Michelle Ross, a laboratory technician at Methodist Hospital, testified that she collected a blood sample from the defendant at about 7:00 p.m. on March 28, 1996. She said the defendant must have given consent or she would not have drawn the blood. Sandra Romanek, a forensic scientist with the TBI, testified that the defendant's blood revealed an alcohol content level of .27 percent. On cross-examination, she said that Ms. Taylor's blood alcohol content level was .33 percent.

Gregory Rush, the District Chief of the Henderson County Fire Department, testified that he was dispatched to the accident at about 6:00 p.m. He

testified that no other emergency personnel were on the scene at that time. He said he observed Ms. Taylor's body hanging halfway out of the car, and her head was in the road. He said bystanders had pulled out Mr. McKinney, and the defendant was still in the car lying under Ms. Taylor. He said he could smell alcohol on the scene.

Freddie Talley testified that on the day of the accident, he met the defendant, Ms. Taylor, Mr. McKinney and Tony Hart, the defendant's nephew, at a convenience store at Parker's Crossroads at about 9:30 or 10:00 a.m. He said he assumed that they had been drinking, and Ms. Taylor was driving the defendant's car. He said he took over the wheel and drove them to Jackson where they bought a pint of rum. He said they then went to Ms. Taylor's mother's house, but Ms. Taylor decided she did not want to get out of the car, and they drove back to Parker's Crossroads. He testified that they stopped at a convenience store and then took Tony Hart home at about 3:00 p.m. He said Ms. Taylor and Mr. McKinney dropped him off and then left at about 3:45 p.m. with Mr. McKinney driving. He said everyone was drinking beer and rum.

On cross-examination, he said that he did not see any beer when he first met the group at Parker's Crossroads but that he assumed they had been drinking by the way they were talking. He said that when they returned from Jackson, they left the defendant at his house. He said they then stopped at Ms. Taylor's friend's house, and Ms. Taylor brought out a half-pint of whiskey. He said he drove to his house, and Mr. McKinney and Ms. Taylor left his house in the defendant's car at about 3:00 p.m. He said that other people frequently drove the defendant's car.

Dennis McKinney testified that he met Tony Hart, Mr. Talley, the defendant and Ms. Taylor on the afternoon of March 29 at Parker's Crossroads. He said they had all been drinking beer that day. He said that at some point, Tony Hart

left, but he did not see him leave and did not remember taking him home. He said that it was raining that day, and the accident occurred when they hit standing water in the road. He said he sustained a spinal cord injury that left him permanently paralyzed. He said that he was sitting in the backseat, Ms. Taylor was sitting in the front passenger seat, and the defendant was driving. He said the defendant had driven the car earlier that day, but he could not remember if anyone else had driven the car. He said he was not drunk at the time of the accident.

On cross-examination, Mr. McKinney testified that he was with the defendant and Ms. Taylor for about five or six hours that day. He admitted that he told an investigator that he had been with them for about one and one-half hours that day, but he said that he was on medication when he made that statement. He said that he, the defendant and Ms. Taylor had not had anything to drink before they met Tony Hart and Mr. Talley at Parker's Crossroads. He said nothing indicated to him that Mr. Talley had been drinking that day. He said that Ms. Taylor bought a quart of beer at Parker's Crossroads. He said he did not remember if they went to Lexington, to Jackson, or to Ms. Taylor's mother's house. He stated that he drank about five or more beers that day, but he was positive that Ms. Taylor was on the passenger side and the defendant was driving when the accident occurred.

Steven Phillips testified that the accident occurred in front of his house. He said he called 9-1-1 when he saw that the car was upside down. He said the 9-1-1 operator wanted to know the condition of the occupants, and he ran outside and looked into the car. He said he saw Ms. Taylor hanging out of the car, and the defendant was lying across her. He said someone was in the backseat. He testified that he waited for the police to arrive, then he went back to the scene. He said that he and Owen Williams helped pull Mr. McKinney out of the car. He stated that he smelled alcohol coming from the car. He said Ms. Taylor was hanging over the passenger side door,

and he thought the defendant was lying across her. He said that it had rained that day but that the sun was out when the wreck occurred.

Gary Stewart, a nurse and paramedic, testified that he and another paramedic responded to the accident. He said Mr. McKinney had been removed by the time they arrived, but the defendant and Ms. Taylor were still in the car. He said the defendant was upside down and was lying on the roof of the car with his head in the windshield area. He said Ms. Taylor was hanging out from the waist up on the passenger side. He said the defendant was on the bottom, and Ms. Taylor was lying across him, pinning him down. He stated that he smelled alcohol in the car and on the defendant. He said he saw beer cans and bottles and a small whiskey bottle.

Mr. Stewart testified that after they extracted the defendant from the car, he asked the defendant what happened. He stated that the defendant told him that he was driving and lost control of the car. He said he asked the defendant if he had been drinking, and the defendant told him that he had consumed about three quarts of beer. He said that when they removed Ms. Taylor, a whiskey bottle was lying on the defendant's chest. He testified that the defendant agreed to submit to a blood alcohol test. He said the test had to be performed at the hospital because he did not have all of his test materials at the scene. He said that when they arrived at the hospital, he told Ms. Ross that the troopers had requested a blood alcohol test, and Ms. Ross prepared her materials. He said the defendant consented to the test at the hospital.

On cross-examination, Mr. Stewart admitted that he first wrote in his report that the defendant's head was above the steering wheel, but he said it was actually sticking through the windshield above the passenger side. He testified that the defendant was disoriented and knew the answers to some questions but not to others.

Brent Markham, an employee of the Henderson County Ambulance Service, testified that he was off duty that night but that he learned of the accident and went to help. He said that emergency personnel were already on the scene when he arrived. He said he went to the car to assist the occupants, and Ms. Taylor was lying face down, hanging out of the passenger window. He said the defendant was on his back with his head coming through the passenger windshield. He said he could smell alcohol around the car, and some bottles were lying around. He said he immediately asked the defendant if he had been driving, and the defendant responded that he had by nodding his head. He said it was not raining at the time of the accident.

On cross-examination, Mr. Markham testified that after the defendant was removed from the car, the defendant stated that he had been driving. He said the defendant did not appear to be disoriented.

Donald Melvin testified that he works for the I-Mart at Parker's Crossroads. He said he saw the defendant, Mr. McKinney and Ms. Taylor at about 3:00 or 3:30 p.m. on the day of the accident. He said Mr. McKinney was in the backseat of a car, Ms. Taylor was in the passenger seat, and he assumed that the defendant was driving. On cross-examination, he stated that he did not know for certain who was driving.

Michael Melton, a trooper for the Tennessee Highway Patrol, testified that when he arrived at the scene of the accident, he saw Ms. Taylor partly out of the car with the defendant lying underneath her. He said he talked to the defendant at the hospital, and the defendant was very intoxicated. He said the defendant told him that he was driving the car and that it ran off the road. He said the defendant smelled strongly of alcohol, and his eyes were bloodshot. He said he saw beer containers at the scene of the accident. He said it had been raining that day, and the road was wet.

On cross-examination, Trooper Melton said he did not know if the defendant had been medicated at the hospital. He said that at the hospital, the defendant said that Ms. Taylor was not with him at the time of the accident. He said that he did not perform any field sobriety tests on the defendant.

Mark Stanford, an investigator with the Tennessee Highway Patrol, testified that he took photographs of the accident scene. He said that it had been raining that day, and the road was wet. He stated that when he served the arrest warrant on the defendant, the defendant stated that he was not driving at the time of the accident.

Tony Hart, the defendant's nephew, testified that Mr. McKinney picked him up in the defendant's car at about 7:00 or 8:00 a.m. on the morning of the accident. He said they stopped to buy a six-pack of beer and then went to the defendant's house. He said Ms. Taylor came over to the defendant's house, and they all drank the six-pack. He said Mr. McKinney then drove them to Parker's Crossroads where they picked up Mr. Talley. He said Mr. Talley then drove them to Jackson to buy liquor, and everyone drank some of the liquor. He said they may have stopped to pick up another six-pack, then they drove to Ms. Taylor's mother's house. He said Ms. Taylor got out and spoke to her mother, then they all went back to Parker's Crossroads. He said Mr. McKinney, Mr. Talley, and Ms. Taylor were in the car, and they took him to his house.

On cross-examination, Mr. Hart testified that the defendant drank a little that day. He said they dropped off the defendant before they took him home. He said he did not know what happened after they left.

The defendant testified that Ms. Taylor was driving at the time of the accident and that he was in the passenger seat and Mr. McKinney was in the backseat.

He said they were going to Parker's Crossroads to buy bread. He said the wreck occurred because Ms. Taylor did not have the windshield wipers on, and water splashed onto the windshield, blocking her view. He said he did not remember anything after the wreck until the next morning when he went home. He said he drank about two beers and a shot that day. He said that Mr. McKinney, his nephew and Ms. Taylor came to his house early that morning with a six-pack. He said they drank the six-pack and then drove to Parker's Crossroads to get more beer. He said they picked up Mr. Talley and went to Jackson to buy rum. He said they then went to Ms. Taylor's mother's house and her aunt's house, then they went back to Parker's Crossroads. He said that Mr. Talley was driving, and he dropped off Tony Hart. He said Mr. Talley then drove him home at about 3:30 p.m., and Mr. McKinney, Mr. Talley and Ms. Taylor left in his car. He said Ms. Taylor and Mr. McKinney came back at about 5:30 p.m., and they went to buy bread. He said Mr. McKinney was in the backseat, he was in the passenger seat, and Ms. Taylor was driving.

On cross-examination, the defendant denied that he was holding a liquor bottle on the way to the store. He stated that Mr. McKinney lied when he said that the defendant was driving. The jury convicted the defendant of criminally negligent homicide upon the foregoing evidence.

First, the defendant contends that the evidence is insufficient to support a conviction for criminally negligent homicide. The defendant argues that the evidence shows that Ms. Taylor was driving and that the jury must have found that Ms. Taylor was driving because they acquitted him of all driving-related charges. He states that because he was not driving, the jury must have held him liable for allowing Ms. Taylor to drive in an intoxicated state. From this, he argues that he should not be held liable because he did not know if Ms. Taylor had been drinking since he last saw her, and nothing indicated to him that she was unable to operate the car.

The state contends that the evidence is sufficient whether the jury determined the defendant or Ms. Taylor to be driving. The state argues that if the jury found the defendant to be the driver, the evidence sufficiently supports the conviction because driving with a .27 percent blood alcohol content level constitutes a gross deviation from the standard of care. The state further argues that the evidence is sufficient if the jury found Ms. Taylor to be the driver because the defendant let Ms. Taylor drive even though he knew she had been drinking all day and was in no condition to drive.

Our standard of review when the sufficiency of the evidence is questioned on appeal is “whether, after viewing 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, 319, 99 S. Ct. 2781, 2789 (1979). This means that we do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Criminally negligent homicide is defined as “[c]riminally negligent conduct which results in death.” Tenn. Code Ann. § 39-13-212(a). Criminal negligence is defined as follows:

“Criminal negligence” refers to a person who acts with criminal negligence with respect to the circumstances surrounding that person’s conduct or the result of that conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.

Tenn. Code Ann. § 39-11-302(d).

Initially, we note that there is no requirement of consistency in a jury verdict. Wiggins v. State, 498 S.W.2d 92, 93-94 (Tenn. 1973); State v. Gennoe, 851 S.W.2d 833, 836 (Tenn. Crim. App. 1992); State v. Hicks, 835 S.W.2d 32, 36 (Tenn. Crim. App. 1992). An acquittal on one count cannot be considered res judicata to another count even though both counts stem from the same criminal transaction. Wiggins, 498 S.W.2d at 94; Gennoe, 851 S.W.2d at 836; State v. Bloodshaw, 746 S.W.2d 722, 726 (Tenn. Crim. App. 1987). “This 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, 498 S.W.2d at 94.

Viewed in this light, we believe the evidence sufficiently supports a conviction for criminally negligent homicide. At trial, four witnesses testified that the defendant said he was driving the car when it ran off the road. Mr. McKinney, the only remaining witness to the accident besides the defendant, testified that the defendant was driving at the time of the wreck. Mr. McKinney, Mr. Talley, Tony Hart and the defendant himself all testified that the defendant had been drinking before the accident. The defendant’s blood alcohol content level was .27 percent. Based on this evidence, the jury could have reasonably concluded that the defendant’s failure to perceive the risk of driving after consuming alcohol constituted a gross deviation from the standard of care, resulting in the death of Ms. Taylor. The evidence is sufficient to support the conviction.

The defendant also summarily contends that his sentence was incorrect or excessive, providing no specifics. We note that appellate review of sentencing is de novo on the record with a presumption that the trial court’s determinations are correct. Tenn. Code Ann. § 40-35-401(d). As the Sentencing Commission comments to this section note, the burden is on the defendant, as the appealing party, to show that the

sentence is improper. A general claim that a sentence is incorrect or excessive avails the defendant nothing. It is not our function to rummage through a record to glean support for a general claim of excessive sentencing, and such a claim will generally lead to a summary affirmance of the sentence. In any event, under our de novo review of the record, we conclude that the sentence and fine are proper.

In consideration of the foregoing and the record as a whole, we affirm the judgment of conviction.

Joseph M. Tipton, Judge

CONCUR:

Gary R. Wade, Presiding Judge

Thomas T. Woodall, Judge