IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

FEBRUARY 1996 SESSION

FILED

May 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	**C.C.A. NO. 03C01-9506-CR-00162**
Appellee,	)	
	)	**GREENE COUNTY**
VS.	)	
	)	**HON. JAMES E. BECKNER , JUDGE**
ANSELMO BERROCALES VAZQUEZ,	)	
	)	
Appellant.	)	(DUI; no driver license; violation
	)	of light law)

FOR THE APPELLANT:

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OPINION FILED:_____

AFFIRMED

JOHN H. PEAY,
Judge

O P I N I O N

The defendant was found guilty at a jury trial of driving under the influence of an intoxicant (DUI), driving without a driver license, and violation of the headlight law. For these convictions he received sentences of eleven months and twenty-nine days, six months, and thirty days, respectively, to be served concurrently. His release eligibility for this effective sentence of eleven months and twenty-nine days was set at thirty percent.

In this appeal as of right, the defendant contends that the evidence was insufficient to support his conviction for DUI and that all three convictions should be set aside because the State was allowed to introduce evidence that the defendant gave a false name at the time of his arrest. After a review of the record, we find that the issues raised by the defendant are without merit.

According to the arresting officer, Larry Joe Lilly, at 3:00 a.m. on December 4, 1993, the defendant pulled his unlit vehicle onto Ross Boulevard in Greeneville, Tennessee. The officer followed the defendant, who was driving at a rather slow speed, for approximately 450 yards before pulling into the parking lot of a grocery or quick shop. The defendant did not weave out of his driving lane but when he exited the vehicle in the parking lot the officer testified that the defendant could not stand without assistance and that he could smell a strong odor of alcohol. The officer testified that the defendant could not produce a driver's license, that he was unable to complete two field sobriety tests, and had difficulty following the officer's pen when the horizontal gaze nystagmus test was attempted.

The arresting officer further testified that after they had arrived at the

detention center the defendant refused to sign the implied consent form which was read to him at least twice.

Deputy Sheriff Jerald Scott, who worked in the booking office, also testified that the defendant had refused to sign the implied consent form and that the defendant "acted as if he couldn't speak English." This officer further testified that he had communicated with the defendant since that night, in English.

The defendant, testifying on his own behalf, admitted to having lived in the United States for twenty years and that he was indeed able to communicate in the English language. The defendant further admitted that he did not possess a valid driver license but denied that he had been intoxicated, that he was unable to stand without assistance, or that he had been unable to perform the field sobriety tests. The defendant contended that he had pulled into the parking lot to get a fuse for his automobile lights. He testified that he had drunk only one and one-half margaritas at around 4:00 p.m. the previous afternoon and that he had had no difficulty in operating his vehicle. He denied that the officer had engaged his emergency lights. He also denied that he had refused the breath test but testified that he had requested a blood test.

On rebuttal the State recalled Officer Larry Joe Lilly to the stand and asked him if the defendant had furnished a fictitious name to him at the time of the stop. The officer testified that he had requested the defendant to write his name on a piece of paper and that the defendant had written the name "Pedro Cordoza." On cross-examination the officer testified that he had not furnished this piece of paper to defense counsel because he did not consider it to be of any importance. Counsel for the defendant moved the trial court to strike this evidence and instruct the jury to disregard the same.

This motion was denied by the trial judge who concluded that the information was used for rebuttal only and therefore not discoverable under Rule 16.

The defendant's first issue concerns the trial court's decision to allow evidence of his false name into proof. The defendant contends, and we agree, that this written statement is a discoverable statement under Tenn. R. Crim. P. 16(a)(1)(A). All written or recorded statements made by the defendant are discoverable under this rule, whether or not the State intends to offer the same in its proof in chief. Only oral statements need not be disclosed if the State does not intend to offer the same in their case-in-chief. Id.

However, we do not find the failure to disclose to be error in this case. Under the cited rule, the State's duty to furnish these statements does not come into existence except upon a request of the defendant. Nowhere in the record do we find such a request. However, even if proper request had been made for this information, the trial court was correct in not excluding it. Evidence not disclosed should not be excluded from the trial unless a party is actually prejudiced by the failure to comply with discovery orders and the prejudice cannot be otherwise eradicated. State v. James, 688 S.W.2d 463, 466 (Tenn. Crim. App. 1984). In this case the defendant only concludes that he has been prejudiced. There is nothing in the record to indicate prejudice or to show that the defendant could have in any way rebutted the authenticity of this writing. This alleged error is obviously without merit.

In his second issue the defendant contends that the evidence is insufficient to support his conviction for DUI. A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the

verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "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, 61 L.Ed.2d 560 (1979). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

The jury obviously accepted the testimony offered by the State and rejected the defendant's version of the events. We find the proof more than sufficient to support the jury's conviction for driving under the influence.

For the reasons set out above, the convictions of the defendant are affirmed.

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JOHN H. PEAY, Judge

CONCUR:

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DAVID G. HAYES, Judge

_____
WILLIAM M. BARKER, Judge