

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 22, 2023 Session

**FILED**  
04/14/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. STEVEN SHAWN BOWEN**

**Appeal from the Criminal Court for Monroe County**  
**No. 19-CR-007 Sandra Donaghy, Judge**

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**No. E2022-00691-CCA-R3-CD**

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A Monroe County jury convicted the Defendant, Steven Shawn Bowen, of driving under the influence, third offense, driving on a revoked license, second offense, and violation of the financial responsibility for a motor vehicle statute. On appeal, the Defendant asserts that the trial court erred when it: (1) “refused to allow [the Defendant] a court reporter;” (2) denied his motion to dismiss based on the State’s failure to preserve video footage of the stop and arrest; (3) denied his motion to dismiss based on the statute of limitations; and (4) admitted the official toxicology report in the absence of witnesses to establish chain of custody for the blood sample. Finally, the Defendant claims that there is insufficient evidence to support his convictions. After review, we affirm the trial court’s judgments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and JOHN W. CAMPBELL, SR., J., joined.

Robert L. Jolley, Jr., Knoxville, Tennessee, for the appellant, Steven Shawn Bowen.

Herbert H. Slatery III, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; Stephen D. Crump, District Attorney General; and Sean S. Boers, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Procedural History and Facts**

This case arises from a traffic stop that resulted in an arrest for driving under the influence (“DUI”), third offense, driving while license revoked, 7<sup>th</sup> offense, and violation of the financial responsibility for a motor vehicle statute. A transcript is not included in the record for reasons discussed in more detail below. We will provide a more detailed

summary of the procedural history of this case as it relates to the issues raised by the Defendant.

### **A. Procedural History**

The record contains the affidavit of complaint for “Driving Under The Influence 3<sup>rd</sup> Offense 55-10-401.” It reads as follows:

On 12/14/2017 at approximately 2200 hrs [Tellico Plains Police Department Officer Chris Kimsey] observed [a] vehicle cross center line several times and drift back into travel lane. [The Defendant] made a right turn onto Fairview road without using turn signal. Attempt to stop vehicle and it took [the Defendant] approximately a mile to finally stop. Contact made with [the Defendant] and he smelled strong of an intoxicating substance on his person. [The Defendant] states he has had 5-6 beers and spoke with mild slurred speech. SFST attempted. [The Defendant] d[id] poorly on HGN, 9 step walk and turn he almost fell, and one leg stand refused. Driver history shows history of driving while intoxicated and history of driving on revoked. Currently his license i[s] revoked. [The Defendant] also has no insurance. [The Defendant] charged with 3<sup>rd</sup> Offense DUI, 7<sup>th</sup> Offense driving while revoked, and no insurance.

The same summary was used for the affidavits of complaint for driving on a revoked license and violation of financial responsibility. On December 15, 2017, the Monroe County Clerk found probable cause that the Defendant had violated Tennessee Code Annotated sections: 55-10-401, DUI third offense; 55-50-504, driving while license revoked; and 55-12-139, financial responsibility and issued a warrant.

On January 7, 2019, a Monroe County grand jury indicted the Defendant for DUI, third offense by impairment or, alternatively, per se, a Class A misdemeanor, driving while license revoked, a Class A misdemeanor, and violation of the financial responsibility statute, a Class C misdemeanor.

On July 17, 2019, the State filed a motion to limit testimony on the subject of field sobriety tasks. Concurrent with this motion, the State moved to amend the indictment to delete the language charging DUI by impairment and stated its intent to proceed solely on DUI per se at trial. In this motion, the State summarized the facts of the offense as follows:

On December 14, 2017, the Defendant was lawfully stopped in Monroe County, Tennessee; after conducting a DUI investigation, Officer Chris Kimsey of the Tellico Plains Police Department arrested him for DUI

and various other charges. Upon the Defendant's refusal to submit to blood alcohol testing, Officer Kimsey sought and obtained a search warrant. A blood test was then conducted and a TBI report indicated the Defendant had a blood alcohol content of 0.17%. On January 7, 2019, the Defendant was indicted in Count 1 for DUI by impairment and, in the alternative, DUI per se.

On August 16, 2019, the Defendant filed a motion to dismiss due to the expiration of the statute of limitations. The Defendant asserted that his offenses occurred on December 14, 2017, and because he was not indicted until January 7, 2019, the twelve-month statute of limitations for misdemeanors, pursuant to Tennessee Code Annotated, section 40-2-102, had expired by the time of indictment. The Defendant also moved for dismissal based upon destruction of evidence ("*Ferguson* motion"). The motion stated the issue as follows:

On or about May 15, 2019, the State notified counsel [ ] that material evidence with exculpatory value no longer exists and was destroyed on an unknown date. This notice was in the form of an Audio/Video/Electronic Evidence Certification of Prosecuting Officer signed by Lieutenant Jason Crowder of the Tellico Plains Police Department stating that "the computer system that all audio/video was stored on became corrupted and we have since gone to another system." The material evidence is the dash and/or body camera footage of [the Defendant]'s arrest, including the administration of field sobriety tests. Based upon Lieutenant Crowder's statement, this evidence no longer exists and cannot be retrieved or recovered by the Tellico Plains Police Department.

On August 19, 2019, the trial court granted the State's motion to limit testimony because of the State's intent to elect to proceed only on DUI per se. The trial court granted the Defendant's *Ferguson* motion in part, finding that Officer Kimsey's failure to download and preserve the video was negligent and the video was significant; however, in light of the TBI blood alcohol analysis, there remained sufficient evidence to convict the Defendant. Consequently, the trial court stated its intent to give a *Ferguson* instruction and concluded that the State's failure to preserve evidence did not warrant dismissal in this case. As to the Defendant's statute of limitations motion to dismiss, the trial court found the following:

This Court finds the Defendant was charged with DUI: Third Offense, Driving on a Revoked License, and Violation of the Financial Responsibility Law based upon arrest warrants sworn to on December 14, 2017 by Officer Kimsey. This Court finds the Defendant had adequate notice that he was a

multiple offender, based upon those warrants, for both Counts 1 and 3. This Court further finds that, pursuant to Tenn. Code Ann. § 40-2-104, prosecution was commenced when those arrest warrants were taken out. In the alternative, this Court finds that — though it was not filled out completely — the General Sessions Court Bindover Judgment found in the Court File was sufficient evidence to indicate prosecution had been commenced by August 7, 2018; this Court finds this by referencing the case number listed on the Judgment with the arrest warrants also present in the Court File, and furthermore that because the Judgment indicates there was a preliminary hearing in this matter, the Defendant would have been noticed of the charges against him by the date of that hearing and bindover.

This Court finds there was adequate notice that the State could have proceeded under DUI per se under Tenn. Code Ann. § 55-10-401(2) in General Sessions Court. This Court finds this matter is analogous to Rape of a Child, where the State is not required to give exact notice of precisely which appendage penetrated the child. This Court finds the Sixth Amendment does not require an officer to allege DUI per se in an arrest warrant in order to properly notice the Defendant that he may be indicted under DUI per se. In particular, the facts supporting this are that the Defendant went through a preliminary hearing and there were allegations of alcohol use. This Court finds DUI per se is preserved by filing an arrest warrant under Tenn. Code Ann. § 55-10-401.

Because prosecution of the offenses alleged in the indictment was commenced well within the statute of limitations, the Defendants Motion to Dismiss must fail.

The jury trial on the Defendant's charges took place on November 16, 2021, and the Defendant was convicted as charged. The trial proceeded without a court reporter, thus there is no transcript of the proceeding in the record. Pursuant to Tennessee Rule of Appellate Procedure 24, the Defendant filed a statement of the evidence (statement of proceeding) as follows:

This proceeding came to be heard on November 16, 2021. Present before the Honorable Sandra Donaghy were Sean Boers, Assistant District Attorney General, representing the State of Tennessee; the defendant Steven Shawn Bowen; and Robert L. Jolley, Jr., counsel for [the Defendant].

The trial court refused to allow the court reporter to record the proceedings without advance payment. Counsel for [the Defendant] objected to this ruling on Due Process grounds.

Counsel for [D]efendant renewed [the Defendant]'s motion to dismiss the DUI per se count of the indictment based on a violation of the statute of limitations. The trial court again overruled this motion and allowed the State to proceed to trial only on the State's elected second count of the indictment.

After the jury was selected, the second count of the DUI indictment and the DRL indictment were read to the jury. [The Defendant] entered a plea of not guilty. After opening statements by both parties, testimony was presented.

Chris Kimsey testified that on December 14, 2017, he was working as a patrolman for the Tellico Plains Police Department in Monroe County, Tennessee. He had worked for several law enforcement agencies but was no longer employed in law enforcement.

On December 14, 2017, Mr. Kimsey observed a red Toyota truck weaving across the yellow line several times in the City of Tellico Plains. He stopped this vehicle. [The Defendant] was the driver and there was a female passenger. Over objection, Mr. Kimsey testified that [the Defendant] spoke with slurred speech, smelled of alcohol, was impaired, and told him he had drunk five or six beers.

Mr. Kimsey placed [the Defendant] under arrest and read him the implied consent form, Exhibit 2. [The Defendant] refused the implied consent. Mr. Kimsey obtained a search warrant for [the Defendant]'s blood and observed the blood drawn by EMT Mark Cansler. Mr. Kimsey placed the blood into his evidence box for the evidence custodian Jason Crowder.

Mr. Kimsey testified the body cam and dash cam recordings of this arrest and subsequent proceedings were destroyed. Those videos would have shown all events to which he testified. He could not answer more detailed questions concerning this incident.

Taffany Byerly, a forensics technician with the TBI Crime Laboratory, testified concerning the procedures for receiving blood samples at the Laboratory. The transmitted document was introduced as Exhibit 4. That transmitted document showed the sample tested was brought to the

Laboratory by Jason Crowder and was handled by one other person before being examined by Melanie Carlisle. Counsel for [the Defendant] objected to any testimony concerning this document since all witnesses to that chain of custody were not called as witnesses.

Melanie Carlisle, an expert in the testing of blood alcohol content, testified that she examined the blood alcohol content of the blood transmitted as shown in Exhibit 4. The blood alcohol content shown in Exhibit 6 was .177. The tubes she examined had the initials of Mark Cansler. Counsel for [the Defendant] objected to this testimony since Mark Cansler was not called as a witness in this chain of custody.

The State introduced an annotated version of [the Defendant]'s driving history to show [the Defendant] was driving on a revoked license. No witness was called to introduce this evidence. Counsel for [the Defendant] objected to this introduction since it denied [the Defendant]'s right to confront witnesses.

After closing arguments and jury instructions, the jury deliberated and found [the Defendant] guilty of per se DUI, fixing a fine at \$1,000, and Driving on a Revoked License, fixing no fine.

A bifurcated proceeding was then held before the same jury. The State introduced, without witnesses, [the Defendant]'s prior DUI offenses and a more complete copy of his driving history. Counsel for [the Defendant] objected to the introduction of these documents based on a violation of [the Defendant]'s confrontation rights.

After consideration, the jury found [the Defendant] guilty [sic] of Third Offense DUI, fixing a fine at \$9,500 and Second Offense DRL, fixing a fine at \$2,000. Judge Donaghy approved the verdict and ordered a presentence investigation report.

The trial court approved the statement of evidence with the following supplementation:

On July 25, 2022, the [D]efendant filed a Statement of Proceedings from the jury trial held November 16, 2021. The proceedings were not recorded as the [D]efendant chose not to make arrangements to hire a court reporter to have the case recorded. Therefore, there is no verbatim transcript.

In addition to the reported factual basis for the stop, Chris Kimsey testified that the [D]efendant turned on Fairview Road without using a turn signal. After the officer activated his emergency equipment, the [D]efendant drove approximately one mile before he pulled over, conduct characterized as “too long” under the conditions. Mr. Kimsey explained to the jury that his body cam had been working, that he turned it on but did not check to see if it recorded, that he had no access to it to know if it recorded, that he was unable to delete it, and that he did not know the reason it was now missing. His vehicle was not equipped with a dash cam.

Exhibits to the bifurcated jury trial were received over objection of the defense. Exhibits 1 thru 6 were offered by the State and identified by the reported witnesses. Jury-out hearings were conducted to review the jury instructions, for a Rule 29 Motion, and for a *Momon* Hearing. Exhibits 9 and 10 were admitted in the second part of the bifurcated trial. A copy of the Trial Exhibit Tracking Chart should be included as part of the Record.

The Defendant appeals the trial court’s judgments.

## **II. Analysis**

On appeal, the Defendant asserts that the trial court erred when it: (1) “refused to allow [the Defendant] a court reporter”; (2) denied his motion to dismiss based on the State’s failure to preserve video footage of the stop and arrest; (3) denied his motion to dismiss based on the statute of limitations; and (4) admitted the official toxicology report in the absence of witnesses to establish chain of custody for the blood sample. Finally, the Defendant claims that there is insufficient evidence to support his convictions. The State asks this court to affirm the trial court’s judgments in all respects.

### **A. Court Reporter**

The Defendant’s complaint with regard to the court reporter is somewhat unclear. He asserts that the trial court refused to allow him to have a court reporter; however, based upon the entirety of the record and the case law relied upon in the Defendant’s brief, we deduce that his argument is that the trial court refused his request for a court reporter at the State’s expense. The State responds that the trial court properly denied the Defendant’s request for the State to provide a court reporter. We agree with the State.

Tennessee Code Annotated section 40-14-307(2018) provides:

(a) A designated reporter shall attend every stage of each *criminal case* before the court and shall record verbatim, by a method prescribed or

approved by the administrative director, all proceedings had in open court and other proceedings as the judge may direct. The reporter shall attach the reporter's official certificate to the records so taken and promptly file them with the clerk of the court, who shall preserve them as a part of the records of the trial.

(b) A party at the party's own expense may retain a reporter other than the reporter provided under this part to record and transcribe the proceedings and a transcript so prepared may be used for purpose of appeal, as provided by law.

(emphasis added). Criminal case is defined in Tennessee Code Annotated section 40-14-301(3)(2018) as "the trial of any criminal offense which is punishable by confinement in the state penitentiary." Thus, a court reporter is not provided at state expense for a misdemeanor unless a defendant is unable to afford one based upon indigency, a status not asserted by the Defendant here. In those cases, a defendant may employ a court reporter at trial. Furthermore, Tennessee Rule of Appellate Procedure 24 provides that when a verbatim transcript is unavailable, a defendant may prepare a statement of the evidence. *See* Tenn. R. App. P. 24(c). The State may file objections to the statement of the evidence, and the trial court shall decide what may be properly included within the statement of evidence. Tenn. R. App. P. 24(c) & (e). The Defendant properly complied with those rules here, and we have before us a statement of the evidence.

The Defendant was charged with misdemeanors and no showing of indigency was established prior to the time of his trial. The trial court approved the Defendant's statement of evidence with supplementation, and the State made no objection to its accuracy. Despite the Defendant's contentions that a transcript of the evidence was necessary, Tennessee Rule of Appellate Procedure 24(c) provides a sufficient substitute for the memorialization of a complete and accurate account of the facts which give rise to those issues which form the basis of the appeal. The Defendant is not entitled to relief as to this issue.

### **B. *Ferguson* Claim**

The Defendant asserts that the State was grossly negligent for failing to preserve the video footage of the traffic stop and, therefore, the trial court erred when it denied the Defendant's motion to dismiss on this basis. The State responds that the Defendant has waived this issue for failing to provide an adequate record on appeal.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides every defendant the right to a fair trial. To facilitate this right, a defendant has a constitutionally protected privilege to request and obtain from the



prosecution evidence that is either material to guilt or relevant to punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Further, the prosecution has a duty to turn over exculpatory evidence that would raise a reasonable doubt about a defendant's guilt. *United States v. Agurs*, 427 U.S. 97, 110-11 (1976). The evidence in both *Brady* and *Agurs* was "plainly exculpatory" evidence, which differs from the evidence in the case under submission, which is "allegedly exculpatory."

The Tennessee Supreme Court adopted a balancing approach to determine the consequences that flow from the State's loss or destruction of allegedly exculpatory evidence in *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999). In *Ferguson*, the Court held that the first step in the balancing analysis is to "determine whether the State had a duty to preserve the evidence. Generally speaking, the State has a duty to preserve all evidence subject to discovery and inspection under Tennessee Rule of Criminal Procedure 16, or other applicable law." *Id.* at 917 (citing *Brady*, 373 U.S. at 87; *Agurs*, 427 U.S. at 110-11). The Court clarified the boundaries of the State's duty to preserve evidence by quoting *California v. Trombetta*, 467 U.S. 479(1984), which held:

Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the Defendant would be unable to obtain comparable evidence by other reasonably available means.

*Ferguson*, 2 S.W.3d at 917 (quoting *Trombetta*, 467 U.S. at 488-89).

The Court explained that if the proof demonstrates the existence of a duty to preserve the evidence and demonstrates that the State failed in that duty, "the analysis moves to considerations of several factors which guide the decision regarding the consequences of the breach." *Id.* Accordingly, those factors include: "(1) the degree of negligence involved; (2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence used at trial to support the conviction." *Ferguson*, 2 S.W.3d at 917. "If, after considering all the factors, the trial judge concludes that a trial without the missing evidence would not be fundamentally fair, then the trial court may dismiss the charges." *Id.* Dismissal, however, is but one of the trial judge's options. *Id.* "The trial judge may craft such orders as may be appropriate to protect the defendant's fair trial rights. As an example, the trial judge may determine, under the facts and circumstances of the case, that the defendant's rights would best be

protected by a jury instruction.” *Id.* The *Ferguson* Court suggested the following jury instruction in a case where the State lost or destroyed “allegedly exculpatory” evidence:

The State has a duty to gather, preserve, and produce at trial evidence which may possess exculpatory value. Such evidence must be of a nature that the defendant would be unable to obtain comparable evidence through reasonably available means. The State has no duty to gather or indefinitely preserve evidence considered by a qualified person to have no exculpatory value, so that an as yet unknown defendant may later examine the evidence. If, after considering all of the proof, you find that the State failed to gather or preserve evidence, the contents or qualities of which are in issue and the production of which would more probably than not be of benefit to the defendant, you may infer that the absent evidence would be favorable to the defendant.

*Id.* at 917, n.11 (citing *Trombetta*, 467 U.S. at 489; *State v. Willits*, 96 Ariz. 184 (Ariz. 1964)).

In this case, we must first determine whether the State had a duty to preserve Officer Kimsey’s body camera recording of the traffic stop and whether the State failed in that duty. As the State correctly notes, there is not a transcript of the hearing on this motion included in the record. We conclude, however, that there is sufficient evidence in the record for our review of this issue.

According to the Defendant’s motion to dismiss, “the computer system that all audio/video was stored on became corrupted and [the police department had] since gone to another system.” In the supplementation to the statement of the evidence, the trial court made the following findings about trial testimony related to the recording:

Mr. Kimsey explained to the jury that his body cam had been working, that he turned it on but did not check to see if it recorded, that he had no access to it to know if it recorded, that he was unable to delete it, and that he did not know the reason it was now missing. His vehicle was not equipped with a dash cam.

Although questionable, the destroyed tape recording may have had exculpatory value because it would have portrayed the traffic stop and the Defendant’s appearance and conduct during the stop. Depending upon the Defendant’s appearance and performance on the field sobriety tasks, the Defendant may have used the recording to impeach Officer Kimsey during cross-examination.

Further, the statement could have been material to the preparation of the Defendant's defense. Thus, the State had a duty to preserve the recording as "potentially exculpatory evidence." *Ferguson*, 2 S.W.3d at 918. Accordingly, we must consider the three factors set forth in *Ferguson* to decide whether the trial court erred in not dismissing the case and instead giving a jury instruction regarding the missing evidence.

The first factor to consider in determining what consequences should flow from the State's breach of duty is the degree of negligence involved. *Id.* at 917. In his appellate brief, the Defendant contends that "[W]hen destruction is done with intent to deprive a defendant of exculpatory evidence, that constitutes gross negligence." The Defendant asserts that, "Given the nature of the offenses as charged, it should have been clear prior to the destruction of the evidence that footage of [the Defendant]'s alleged driving conduct, any alleged confession, and a field sobriety test conducted at the scene of the incident could have been wholly exculpatory, but the State nevertheless deprived [the Defendant] of this footage." The Defendant concludes, "Therefore, this court may reasonably find that the officers' failure to preserve this video evidence constitutes gross negligence." We disagree with the Defendant's allegation that the loss of the recording was a result of gross negligence. According to the Defendant's motion, the recording was destroyed due to corrupted software. We conclude, as did the trial court, that the conduct was simple negligence, as opposed to gross negligence.

The second factor we must consider addresses the significance of the missing evidence, "in light of the probative value and reliability of secondary or substitute evidence that remains available." *Id.* In his appellate brief, the Defendant contends that the destroyed evidence was extremely significant because "[a]bsent further evidence and inspection of the body camera or dash camera footage in this case, the evidence is insufficient to convict [the Defendant]." We respectfully disagree with the Defendant's characterization that the destroyed recording was the only evidence against him in this case. Officer Kimsey testified about the Defendant's driving, appearance, and the field sobriety tasks. The Defendant admitted to drinking five or six beers and, moreover, the results of a blood test indicated a significant level of alcohol present in the Defendant's blood.

The third factor to consider is the sufficiency of the other evidence used at trial to support the conviction. *Id.* The Defendant was convicted of DUI per se with a blood alcohol content of .177. The police officer testified to the reasons for the stop, the visible indicators of the Defendant's intoxication, the Defendant's admission to drinking five or six beers, and his poor performance on field sobriety tasks. Thus, the evidence presented was sufficient, as a matter of law, for conviction.

As a remedy for the missing recording of the stop, the trial court gave an instruction to the jury about the missing recording. The trial court's instruction was almost identical

to the instruction suggested in *Ferguson*. *Id.* at 917, n.11. We conclude that, under the facts and circumstances of this case, the Defendant received a fundamentally fair trial and that he experienced no measurable disadvantage because of the missing recording of the traffic stop. The Defendant is not entitled to relief on this issue.

### C. Statute of Limitations

The Defendant asserts that he was indicted outside the statute of limitations for misdemeanor offenses; therefore, the trial court should have dismissed the DUI charge against him. The State responds that the State commenced its prosecution by issuing an arrest warrant for DUI within the limitations period. We agree with the State.

Tennessee Code Annotated section 40-2-102 provides that, “Except as provided in § 62-18-120(g) and subsection (b) of this section, all prosecutions for misdemeanors shall be commenced within twelve (12) months after the offense has been committed.” T.C.A. § 40-2-102(a) (2018). The purpose of this limitations period “is to protect a defendant against delay and the use of stale evidence and to provide an incentive for efficient prosecutorial action in criminal cases.” *State v. Nielsen*, 44 S.W.3d 496, 499 (Tenn. 2001). Statutes of limitation are construed “liberally in favor of the criminally accused.” *State Ferrante*, 269 S.W.3d, 908, 911 (Tenn. 2008) (citing *State v. Henry*, 834 S.W.2d 273, 276 (Tenn. 1992)).

Tennessee Code Annotated section 40-2-104 provides that a prosecution is commenced by the following:

[F]inding an indictment or presentment, the issuing of a warrant, . . . binding over the offender, by the filing of an information as provided for in chapter 3 of this title, or by making an appearance in person or through counsel in general sessions or any municipal court for the purpose of continuing the matter or any other appearance in either court for any purpose involving the offense.

T.C.A. § 40-2-104 (2018). This section “provides for the commencement of a prosecution by several methods, ‘all deemed to provide the defendant with sufficient notice of the crime.’” *Ferrante*, 269 S.W.3d at 914 (quoting *State v. Tait*, 114 S.W.3d 518, 522 (Tenn. 2003)). “A lawful accusation is an essential jurisdictional element of a criminal trial, without which there can be no valid prosecution.” *Id.* (quoting *State v. Morgan*, 598 S.W.2d 796, 797 (Tenn. Crim. App. 1979)). Our Supreme Court “has long recognized that, ‘prior to formal accusation, [a] defendant’s rights are protected by the statute of limitations.’” *Id.* (quoting *State v. Baker*, 614 S.W.2d 352, 354 (Tenn. 1981)).

In this case, the Defendant committed these offenses on December 14, 2017, and the grand jury indictment was filed on January 7, 2019, more than twelve months after the offenses occurred. Thus, we must determine whether another event, prior to the filing of the indictment, was sufficient to commence prosecution.

Our review of the record reveals that a warrant for the driving under the influence charge was issued on December 15, 2017. The issuing of a warrant is one of the methods for commencement of a prosecution provided for in Tennessee Code Annotated section 40-2-104. Although the arrest warrant did not use the specific language “driving under the influence, per se”, its use of the term “driving under the influence” was sufficient to commence the State’s prosecution of that offense. *See State v. Tait*, 114 S.W.3d 518, 522 (Tenn. 2003) (holding, “an indictment that alleges various theories of guilt for offenses that can be inferred from an arrest warrant in no way compromises the defendant’s notice of the charge”). Tennessee Code Annotated section 55-10-401 criminalizes driving under the influence. Pursuant to this statute, the State has the burden of showing either: (1) impairment, or alternatively, (2) an alcohol concentration of .08 or more. Both result in a conviction for driving under the influence. Therefore, the arrest warrant charging the Defendant with driving under the influence was sufficient notice of the charge.

The Defendant also appeared in court on August 7, 2018, for a preliminary hearing, and his cases were bound over to the grand jury. The Defendant’s appearance in court “for any purpose involving the offense” and the “binding over of the offender” to the grand jury are also statutorily defined methods for commencing prosecution. T.C.A. § 40-2-104 (2018); *see also State v. Thompson*, No. M2009-02122-CCA-R3-CD, 2010 WL 3489162 (Tenn. Crim. App., at Nashville, Aug. 25, 2010) (holding that the State timely commenced prosecution within the statute of limitations where the defendant waived his right to a preliminary hearing and his cases were bound over to the grand jury), *no perm. app. filed*. Consequently, the State timely commenced prosecution within the statute of limitations. The Defendant is not entitled to relief as to this issue.

#### **D. Chain of Custody**

The Defendant contends that the trial court erred when it admitted the “official alcohol report” because the State had not established the chain of custody. He asserts that the State did not establish the custody of the evidence absent testimony from the EMT, Mark Cansler, who drew the Defendant’s blood. The State counters that the Defendant has waived this issue for failing to provide a fair, accurate, and complete account of what occurred at the trial with respect to this issue. Nonetheless, the State maintains that there was sufficient evidence of the chain of custody.

We review challenges to the chain of custody of evidence under the abuse of discretion standard. *State v. Cannon*, 254 S.W.3d 287, 294 (Tenn. 2008) (citing *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000) and *State v. Beech*, 744 S.W.2d 585, 587 (Tenn. Crim. App. 1987)). Under this standard, we will not reverse unless the trial court “ ‘applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.’ ” *Id.* (citations omitted).

Tennessee Rule of Evidence 901(a) provides: “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims.” It is “ ‘well-established that as a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or establish an unbroken chain of custody.’ ” *Scott*, 33 S.W.3d at 760 (quoting *State v. Holbrooks*, 983 S.W.2d 697, 700 (Tenn. Crim. App. 1998)). This evidentiary rule is designed to insure “ ‘that there has been no tampering, loss, substitution, or mistake with respect to the evidence.’ ” *Id.* (quoting *State v. Braden*, 867 S.W.2d 750, 759 (Tenn. Crim. App. 1993)).

Each link in the chain of custody “ ‘should be sufficiently established,’ ” but the rule “ ‘does not require that the identity of tangible evidence be proven beyond all possible doubt; nor should the State be required to establish facts which exclude every possibility of tampering.’ ” *Cannon*, 254 S.W.3d at 296 (citing *Scott*, 33 S.W.3d at 760). To that end, the State is not required “ ‘to call all of the witnesses who handled the item.’ ” *Id.* Rather, “ ‘when the facts and circumstances that surround tangible evidence reasonably establish the identity and integrity of the evidence, the trial court should admit the item into evidence.’ ” *Id.* On the other hand, if the State fails to offer sufficient proof of the chain of custody, the “ ‘evidence should not be admitted . . . unless both identity and integrity can be demonstrated by other appropriate means.’ ” *Scott*, 33 S.W.3d at 760 (quoting COHEN ET. AL., TENNESSEE LAW OF EVIDENCE § 901.12, at 624 (3d ed.1995)).

In the case presently before us, Officer Kimsey testified that he watched the EMT, Mark Cansler, draw the Defendant’s blood. Officer Kimsey placed the blood into his evidence box for the evidence custodian Jason Crowder. TBI Forensic Technician Byerly testified that she received the sample Jason Crowder delivered to the TBI and Melanie Carlisle examined the sample. Melanie Carlisle, an expert in the testing of blood alcohol content, testified that she identified the official alcohol report she created indicating that the Defendant’s blood alcohol content was .177. The tubes she examined had the initials of Mark Cansler. We conclude that the State established a sufficient chain of custody and that therefore the trial court did not abuse its discretion in admitting the test results into evidence. The Defendant is not entitled to relief on this issue.

### **E. Sufficiency of the Evidence**

The Defendant argues that the State failed to present sufficient evidence because they failed to provide body camera footage and dashboard camera footage and failed to present Mark Cansler's testimony about drawing the Defendant's blood. The State responds that there is sufficient evidence to support the Defendant's convictions. We agree with the State.

The Defendant's issue for review states he is challenging his "convictions"; however, based upon his argument it appears he challenges only the convictions for DUI and driving on a revoked license. Thus, we will address the sufficiency of the evidence as to those two convictions.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering 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, 319 (1979); see Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)). In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.'" *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)). "The standard of review [for sufficiency of the evidence] 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). "Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State."

*State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

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.

*Bolin v. State*, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the “strongest legitimate view of the evidence” contained in the record, as well as “all reasonable and legitimate inferences” that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

A person commits driving under the influence per se by operating a motor vehicle on a public road if “[t]he alcohol concentration in the person’s blood or breath is eight-hundredths of one percent (0.08%) or more.” T.C.A. §55-10-402(2). A person commits driving on a revoked license when the person “drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public . . . at a time when the person’s privilege to do so is . . . revoked . . . .” T.C.A. §55-10-504(a)(1).

The evidence, viewed in the light most favorable to the State, proves that the Defendant violated traffic safety laws initiating a traffic stop. Officer Kimsey testified that the Defendant evidenced signs of impairment, admitted to drinking five or six beers. Officer Kimsey obtained a search warrant for the Defendant’s blood, and subsequent analysis revealed that the Defendant’s blood alcohol content was .177 percent. The Defendant’s driver’s license was revoked at the time of the traffic stop. The State presented evidence of two prior convictions for driving under the influence and one conviction for driving on a revoked license.

To the extent the Defendant argues insufficiency on the basis of the missing footage from Officer Kimsey’s body cam and the State’s failure to present the testimony of EMT Mark Cansler, we have already addressed those issues in this opinion.



Accordingly, we conclude that this is sufficient evidence to prove beyond a reasonable doubt that the Defendant operated a motor vehicle on a public road while under the influence and at a time that his driver's license was revoked. The Defendant is not entitled to relief as to this issue.

### **III. Conclusion**

Based on the foregoing reasoning and authorities, we affirm the trial court's judgments.

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ROBERT W. WEDEMEYER, JUDGE