IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1997 SESSION

FILED

May 21, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 01CO1-9605-CC-00197
	)	
vs.	)	Robertson County
	)	
	)	Honorable John H. Gasaway, III.
PATRICIA CAROL CHERRY,	)	Judge
	)	
Appellant.	)	(DUI, Reckless Driving)
	)	

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

CURWOOD WITT
JUDGE

OPINION

The defendant, Patricia Carol Cherry, was convicted in a bench trial in the Robertson County Circuit Court of driving under the influence, a Class A misdemeanor, and reckless driving, a Class B misdemeanor.[1] On the first count, the trial judge sentenced Cherry to serve eleven months and twenty-nine days and to spend twenty-five hours in public service. He suspended her driving privileges for one year. For reckless driving, she received a six-month sentence concurrent to the sentence for driving under the influence. The trial judge ordered her to serve four days on two consecutive weekends and suspended the remainder of her sentences. In this direct appeal, the defendant challenges the sufficiency of the evidence.

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

Montgomery Davie testified that on the evening of July 1, 1994 at about 10:00 p.m., he was driving west along Interstate 24 between exits 24 and 19 when a car began to follow him rather closely. Since the following vehicle had its lights on bright, Davie slowed so that the car could pass him. When the driver behind him also slowed down, Davie returned to highway speed. The other car again matched his speed, and once more Davie slowed down. This time the following vehicle moved out into the left lane as though to pass him, but when the

[1] The defendant was also charged with refusal to take a blood alcohol test and for failure to stop at the scene of the accident. The trial judge dismissed the charge for refusing to submit to the test and acquitted the defendant of failing to stop at the scene of an accident.

two vehicles were approximately side-by-side, the other driver swerved back towards the right lane. Davie was forced off the road and onto the shoulder. At about the time Davie's vehicle reached the shoulder, the other car slammed into the left, front-quarter-panel of his car. The impact caused the other car to spin around so that it was facing in the opposite direction. Davie watched as the other driver immediately turned the vehicle around and took off down the interstate. He called 911 on his mobile telephone and then followed the other car. At exit 19, the car got off on the west bound exit and immediately returned to the interstate via the east-bound entrance ramp. Davie observed the car return to Exit 24 where it once again left the interstate. At this point, the driver became confused and drove in the wrong lane across the highway bridge to return once again to the interstate. Davie continued to follow as the car drove to exit 19, exited, and returned to drive back to exit 24, and then repeated the process for the third time.[2] Davie testified that, after the wreck occurred, the driver did not weave from lane to lane or have any trouble with the exits except during the first encounter with exit 24.

On her fourth pass, Trooper Norrod was waiting for the defendant as she drove down the off-ramp at Exit 24. According to his testimony, the car came off the interstate in a normal fashion. When the defendant stepped out of the car, he noticed a strong smell of alcohol, and in the car he saw a six pack of beer from which two were missing. He asked the defendant if she would consent to have a blood test, and she refused. A few moments later she agreed, only to change her mind again. The officer then administered two field sobriety tests.[3] The defendant

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[2] Cherry drove in the wrong lane only on her first exit from Exit 24. On subsequent trips, she drove in the correct lane on Highway 49.

[3] The state entered into evidence a video tape showing the stop and the administration of the field tests. The auditory portion of the tape was intact. Defense counsel stated that he had no objection as this was a bench trial.

removed her high heels before attempting the one-legged stand. She performed adequately during the first part of the test, but then began to wobble. Although she never fell, she stopped counting in the manner the officer directed and had to extend her arms to maintain her balance. During the recitation of the ABC's, she also became confused and began inserting improper letters into the sequence. When the defendant was unable to complete the test successfully, Trooper Norrod arrested her for driving under the influence.

The defendant testified in her own behalf. She stated that she had been in Nashville that day to take out a warrant on her ex-husband who was violating a restraining order. She reported being under considerable emotional stress. She admitted she had a sip from an "alcoholic concoction" at a restaurant and that she drank the two beers while talking to a friend at a pay telephone. She did not deny that she left the scene of the accident but stated that she became confused and upset when her ex-husband caused a scene at the restaurant where she was eating supper. When she drove back and forth between the exits she was looking for the way to her friend's house. She denied that she was under the influence of alcohol.

Based on this evidence, the trial judge found the defendant guilty of driving under the influence and of reckless driving.

A trial judge's findings on appeal have the weight of a jury verdict. State v. Wilkins, 654 S.W.2d 678, 680 (Tenn.1983). A guilty verdict accredits the testimony of the witnesses for the state and resolves any conflicts in favor of the

state's theory. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn.1978). The question for this court is whether, after reviewing 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); Tenn. R. App. P. 13(e). This rule applies whether the findings of guilt are based upon direct evidence, circumstantial evidence, or a combination of the two. State v. Thomas, 755 S.W.2d 838, 842 (Tenn. Crim. App. 1988).

The elements of driving under the influence are: (a) driving or being in physical control of a motor vehicle, (b) upon a public thoroughfare while (c) under the influence of an intoxicant or drug. Tenn. Code Ann. § 55-10-401(1993 Repl.); State v. Ray, 563 S.W.2d 218, 219 (Tenn. Crim. App. 1977); State v. Gilbert, 751 S.W.2d 454, 459 (Tenn. Crim. App. 1988); State v. Marvin Daniel Stuard, No. 01CO1-9412-CC-00437 slip op. at 4 (Tenn. Crim. App., Nashville, July 14, 1995). The offense of driving under the influence may be established solely by circumstantial evidence. State v. Gilbert, 751 S.W.2d at 459 (citations to other cases omitted).

The record contains direct evidence of two of the three elements of driving under the influence. Trooper Norrod testified that he observed Cherry driving a motor vehicle on an off-ramp of Interstate 24, and the defendant admitted that she was driving the vehicle on the interstate in her testimony to the court. The only question that the trial judge resolved based on circumstantial evidence was whether the defendant was under the influence of an intoxicant. The testimony of both Mr. Davie and Trooper Norrod supports the judgment of the trial court. Mr. Davie observed the defendant's erratic behavior on the highway. The defendant

fled the scene of the accident, drove on the wrong side of a divided highway bridge, and generally demonstrated that her judgment was impaired. She failed the two field sobriety tests the officer administered and admitted that she had consumed two beers and at least part of another alcoholic beverage. The officer reported that the defendant smelled strongly of alcohol. Although the defendant attempted to explain her erratic behavior as the product of emotional stress, the finder of fact accredited the state's witnesses rather than the defendant. The evidence is sufficient for a rational person to conclude that the defendant was driving under the influence beyond a reasonable doubt.

The evidence is also sufficient to support the conviction for reckless driving. The elements of reckless driving are (1) driving a vehicle (2) in a willful or wanton disregard for (3) the safety of persons or property. Tenn. Code Ann. § 55-10-205(a) (1993). Willful and wanton disregard for another's safety is a factual question to be determined from all the circumstances. It exceeds negligence in that the defendant willfully breaches a duty. State v. Wilkins, 654 S.W.2d 678, at 680. The purpose of the statute is to punish those whose driving disregards the safety of persons or property. State v. Gilboy, 857 S.W.2d 884, 887 (Tenn. Crim. App. 1993). In this case, the evidence presented at trial is sufficient beyond a reasonable doubt to prove that the defendant drove with a willful and wanton disregard for the safety of both persons and property. After tailgating Mr. Davie, she forced him off the road and rammed into the side of his car. She drove on the wrong side of a divided roadway forcing on-coming traffic to drive on the shoulder. The defendant is fortunate that her actions did not cause greater property damage, injuries, or loss of life.

For the reasons discussed above, we find the evidence at trial sufficient to support the defendant's convictions beyond a reasonable doubt. Therefore, we affirm the judgment of the trial court.

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CURWOOD WITT, Judge

CONCUR:

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GARY R. WADE, Judge

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DAVID G. HAYES, Judge