

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

AT KNOXVILLE

FEBRUARY SESSION, 1999

June 28, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

STATE OF TENNESSEE,)	C.C.A. NO. 03C01-9804-CC-00163
)	
Appellee,)	
)	
)	ANDERSON COUNTY
VS.)	
)	HON. JAMES B. SCOTT, JR.
BETTY JUNE WOODS,)	JUDGE
)	
Appellant.)	(Direct Appeal -D.U.I.)

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

The appellant, Betty June Woods, was convicted by an Anderson County jury of one (1) count of driving under the influence of an intoxicant. The trial court sentenced her to eleven (11) months and twenty-nine (29) days, with all but thirty (30) days of her sentence suspended. On appeal, she claims that the evidence is insufficient to support the jury's verdict. She also argues that the trial court erred in instructing the jury under the driving under the influence statute. Finally, the appellant contends that the trial court erred in requiring her to serve thirty (30) days in jail. After a thorough review of the record before this Court, we find no reversible error and affirm the judgment of the trial court.

FACTS

At approximately 9:00 p.m. on August 22, 1996, Richard Burris was driving east on Oak Ridge Turnpike in Oak Ridge, Tennessee, when he noticed a car traveling west in the eastbound lanes. The turnpike is a four-lane highway with a grass median in the center. Because the vehicle was headed directly into Burris' lane of traffic, he stopped his vehicle. Suddenly, the car swerved to the right, through the median and into the westbound lanes. The car then stopped in the left turn lane at a red light. Burris turned his car around and stopped behind the vehicle at the red light. Burris approached the car, reached inside of the car and took the keys from the ignition. The driver of the car was identified at trial as the appellant. According to Burris, the appellant was not alert, unstable on her feet and confused as to her whereabouts. The appellant's six-year old son was in the vehicle as well.

Another motorist, Rick Cantrell, also observed the appellant's erratic driving. After he observed the appellant stop her vehicle in the left turn lane, Cantrell contacted the police. Cantrell observed that the appellant was not alert, her speech was unclear and she believed that she was in a different city. Cantrell further described the appellant as "wobbly." Both Burris and Cantrell testified that they believed that the appellant was intoxicated.

Officers responding to the scene found the appellant sitting "slumped-over" in the driver's seat. The appellant was unsteady on her feet and unable to stand on her own. Her speech was unclear and slurred, her eyes were glassy and bloodshot, and the appellant could not reasonably answer the officers' questions. One officer described the appellant as "semi-conscious" and looked as if she was "almost passed out behind the wheel." The officers opined that the appellant was intoxicated.

Because the appellant was unable to stand without assistance, the officers believed that administering field sobriety tests would be "risky." When asked whether she had been drinking, the appellant responded that she had taken Flexeril. Upon being arrested, the appellant agreed to submit to a chemical blood test. However, once the appellant was transported to Methodist Medical Center in Oak Ridge, she refused to consent to the blood test.

The state also called James McMahon, a pharmacist, who witnessed the incident to testify. McMahon testified that Flexeril is a muscle relaxant which causes drowsiness as a side effect in 39% of those who ingest it. In excessive doses, this medication can cause mental confusion, hallucinations and/or a "drugged-out feeling." McMahon stated that, when the recommended dosage is taken, Flexeril can impair a person's ability to operate machinery. According to McMahon, the impairment level of a recommended dosage of Flexeril is

comparable to the impairment level of several shots of alcohol. However, excessive doses of Flexeril could cause a person to be in a “stupor.”

The appellant testified on her own behalf at trial. She stated that on August 22, she was trying to locate the home of a friend in Clinton, Tennessee. However, because she was not familiar with Anderson County, she became lost and decided to return home. She drove around Oak Ridge looking for signs to direct her home, and when she turned onto the Oak Ridge Turnpike, she believed she was traveling in the right direction. She testified that she saw headlights and swerved over so that she did not collide with the vehicle. Then, she pulled her vehicle over and stopped.

Shortly thereafter, a man approached her vehicle. Because the man was extremely angry, she raised her car window, turned the ignition off and waited for the police to arrive. When the police arrived, one of the officers inquired whether she had taken any drugs that day, to which she responded that she had not. She testified that she then volunteered to take a blood test.

The appellant stated that she was taking Flexeril at the time of the incident, but only took this medication at bedtime. She denied being under the influence of anything at the time of the incident. She disputed the officers’ testimony that she admitted taking Flexeril on the day of the incident. She further testified that she refused to submit to the blood test because the officers had taken custody of her son and would not allow her to see him.

The jury returned a guilty verdict on one (1) count of driving under the influence of an intoxicant.¹ The trial court sentenced the appellant to eleven (11) months and twenty-nine (29) days, with all but thirty (30) days of the sentence

¹ The appellant was also indicted on one (1) count of refusing to submit to a blood test, but this count was subsequently dismissed by the state.

suspended. From her conviction and sentence, the appellant now brings this appeal.

SUFFICIENCY OF THE EVIDENCE

In her first issue, the appellant challenges the sufficiency of the convicting evidence. First, she argues that there is insufficient evidence to establish that she was under the influence of anything at the time of the incident. Secondly, she contends that, even if she was under the influence of Flexeril, that medication is not an “intoxicant” as contemplated by the driving under the influence of an intoxicant statute.

A.

When an accused challenges the sufficiency of the evidence, this Court must review the record to determine if the evidence adduced during the trial was sufficient “to support the findings by the trier of fact of guilt beyond a reasonable doubt.” Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence or a combination of direct and circumstantial evidence. State v. Brewer, 932 S.W.2d 1, 19 (Tenn. Crim. App. 1996).

In determining the sufficiency of the evidence, this Court does not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956). To the contrary, this Court is required to afford the state the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence.

State v. Tuttle, 914 S.W.2d 926, 932 (Tenn. Crim. App. 1995). “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). Questions concerning the credibility of the witnesses, the weight and value to be given the evidence as well as all factual issues raised by the evidence are resolved by the jury as the trier of fact. State v. Tuttle, 914 S.W.2d at 932.

Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this Court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); State v. Grace, 493 S.W.2d at 476.

B.

Tenn. Code Ann. § 55-10-401(a) provides, in pertinent part:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

- (1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system.

C.

The appellant contends that the state presented insufficient evidence that she was under the influence of any substance. She claims that she was driving erratically because she was not familiar with the roadways in Oak Ridge. Thus, she argues that the state failed to prove a “nexus” between any substance taken by the appellant and her driving behavior.

The proof at trial showed that the appellant was driving west in the eastbound lanes of the Oak Ridge Turnpike. She narrowly avoided a collision with oncoming vehicles by swerving over the grass median into the correct lane of traffic. There, she stopped in the left turn lane at a red light. Witnesses at the scene described her as not alert, unstable on her feet and confused as to her whereabouts. Her speech was unclear and slurred, her eyes were glassy and bloodshot, and she could not reasonably answer questions posed to her. Officers responding to the scene found the appellant sitting “slumped-over” in the driver’s seat. She was unable to stand without assistance. One officer described the appellant as “semi-conscious” and looked as if she was “almost passed out behind the wheel.” Furthermore, the officers at the scene believed that administering field sobriety tests would have been too dangerous given the appellant’s inability to stand on her own. All witnesses agreed that the appellant appeared to be intoxicated.

It is well established that the offense of driving under the influence of an intoxicant may be established solely by circumstantial evidence. State v. Gilbert, 751 S.W.2d 454, 459 (Tenn. Crim. App. 1988). The foregoing evidence, albeit circumstantial, overwhelmingly indicates that the appellant was driving under the influence of an intoxicant. Thus, we conclude that the state presented sufficient evidence for a rational trier of fact to find the appellant guilty of driving under the influence.

D.

The appellant also argues that, if she had taken Flexeril on the day in question, that medication is not an “intoxicant” under Tenn. Code Ann. § 55-10-401. She asserts that Flexeril is not a “drug producing stimulating effects on the central nervous system” and is not a narcotic. She further insists that the term

“intoxicant” in the statute refers only to alcohol. Therefore, she maintains that, because Flexeril is not an intoxicant as defined in Tenn. Code Ann. § 55-10-401, she is not guilty of driving under the influence of an intoxicant under the statute.

However, this Court need not reach the issue whether Flexeril is an intoxicant as contemplated by the statute. Although the officers testified that the appellant admitted taking Flexeril on the day of the incident, at trial the appellant insisted that the officers misunderstood her. She denied taking Flexeril or any other medication on the day of the incident. In addition, the appellant refused to submit to a blood test which would reveal the presence of chemicals in her system. Because there is no evidence affirmatively establishing that the appellant ingested Flexeril, and only Flexeril, on the day in question, whether Flexeril is an intoxicant under the statute is not dispositive of this issue.

After observing the appellant’s erratic driving behavior, witnesses noticed that the appellant was disoriented and sluggish. Her speech was slurred and unclear. She was unable to stand without assistance and could not respond to the officers’ questions. According to one officer, the appellant was in a “semi-conscious” state. Clearly, the appellant was driving in what a rational juror could find to be an intoxicated state, such conduct is clearly prohibited under Tenn. Code Ann. § 55-10-401.

The evidence is sufficient to sustain the appellant’s conviction. This issue is without merit.

JURY INSTRUCTIONS

The appellant next argues that the trial court erred in instructing the jury as to the driving under the influence statute. She claims that the trial court refused

to instruct the jury as to the entire driving the influence statute in that the drugs encompassed in the statute were never specified to the jury. She further asserts that the trial court's instructions used the phrase "intoxicant or drug" without further defining the terms. As a result, she contends that the instructions conveyed to the jury that they could convict her of driving under the influence of any drug, rather than those drugs prohibited by the statute.

The trial court instructed the jury as follows:

Any person who commits the offense of Driving Under the Influence of an intoxicant or drug is guilty of a crime. For you to find the defendant guilty of this offense, the State must have proven beyond a reasonable doubt the existence of the following essential elements:

1. That the defendant was driving, or was in physical control of an automobile or motor-driven vehicle; and
2. That this act occurred on the public roads or highways, or public streets; and
3. That the defendant was under the influence of an intoxicant or drug.

Now the expression, "under the influence of an intoxicant or drug," covers not only all the well-known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking intoxicants or drugs in any form; and which deprives one of the clearness of mind and control of herself, which she would otherwise possess. And this situation, it would not be necessary that a person be in such condition as would make him or her guilty of public drunkenness. The law merely requires that the person be under the influence of an intoxicant or drug. The degree of intoxication must be such that it impairs, to any extent, the driver's ability to operate an automobile.

A defendant has a constitutional right to a correct and complete charge of the law governing the issues raised by the evidence presented at trial. State v. Forbes, 918 S.W.2d 431, 447 (Tenn. Crim. App. 1995). "When the trial judge

gives instructions that correctly, fully, and fairly set forth the applicable law, it is not error to refuse to give a special requested instruction.” Id.

The instruction given by the trial court essentially followed the Tennessee Pattern Jury Instruction 38.01 for driving under the influence. The appellant complains that the instruction did not contain language similar to Tenn. Code Ann. § 55-10-401(b) which defines the phrase “drug producing stimulating effects on the central nervous system.” However, there is no evidence in the record that the appellant ingested a medication which would fit the definition of a “drug producing stimulating effects on the central nervous system.” The definition of such a medication was, therefore, irrelevant to the jury’s determination. “A defendant has a right to have every issue of fact raised by the evidence and material to his defense submitted to the jury upon proper instructions by the trial court.” State v. Phipps, 883 S.W.2d 138, 149-50 (Tenn. Crim. App. 1994). However, a defendant is not entitled to have the jury instructed on issues which were not presented by the evidence at trial. See State v. Elder, 982 S.W.2d 871, 877 (Tenn. Crim. App. 1998).

We believe that the instruction given by the trial court fully and fairly stated the applicable law for driving under the influence of an intoxicant. Therefore, the trial court did not err in failing to give the appellant’s requested special instruction.

This issue has no merit.

SENTENCING

In her final issue, the appellant claims that the trial court erred in imposing her sentence. She claims that the trial court found no applicable enhancement

factors, and she has no record of prior criminal activity. Therefore, she claims that the trial court's imposition of thirty (30) days in jail is excessive.

This Court's review of the sentence imposed by the trial court is *de novo* with a presumption of correctness. Tenn. Code Ann. § 40-35-401(d). This presumption is conditioned upon an affirmative showing in the record that the trial judge considered the sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The burden is upon the appealing party to show that the sentence is improper. Tenn. Code Ann. § 40-35-401(d) Sentencing Commission Comments.

Ordinarily, a trial court is required to make specific findings on the record with regard to sentencing determinations. See Tenn. Code Ann. §§ 40-35-209(c), 40-35-210(f). However, with regard to misdemeanor sentencing, our Supreme Court has recently held that this Court's review of misdemeanor sentencing is *de novo* with a presumption of correctness even if the trial court did not make specific findings of fact on the record because "a trial court need only consider the principles of sentencing and enhancement and mitigating factors in order to comply with the legislative mandates of the misdemeanor sentencing statute." State v. Troutman, 979 S.W.2d 271, 274 (Tenn. 1998).

Misdemeanor sentencing is controlled by Tenn. Code Ann. § 40-35-302, which provides that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. See State v. Palmer, 902 S.W.2d 391 (Tenn. 1995). One convicted of a misdemeanor, unlike one convicted of a felony, is not entitled to a presumption of a minimum sentence. State v. Creasy, 885 S.W.2d 829, 832 (Tenn. Crim. App. 1994). Misdemeanor sentences do not contain ranges of punishments, and a misdemeanor defendant may be sentenced to the maximum term provided for

the offense as long as the sentence imposed is consistent with the purposes of the sentencing act. State v. Palmer, 902 S.W.2d at 393.

The trial court sentenced the appellant to thirty (30) days in jail due to the aggravated circumstances in this case. We agree. Although the trial court did not specifically find enhancement factors, upon our *de novo* review, this Court finds that Tenn. Code Ann. § 40-35-114(10) and (16) are applicable. The appellant was driving in the wrong direction on a busy roadway while her six (6) year old son was sitting in the passenger seat. She narrowly avoided a head-on collision with another vehicle by swerving across a grass median. She was so impaired that she could not speak or stand without assistance. Certainly, this evidence demonstrates a high risk to human life as well as a great potential for bodily injury to other motorists. See State v. Jones, 883 S.W.2d 597, 603 (Tenn. 1994). As noted by the trial court, the appellant is truly fortunate for not having injured or killed another motorist, herself or her son. We, thus, conclude that the thirty (30) day incarceration period imposed by the trial court was appropriate.

This issue is without merit.

CONCLUSION

After a thorough review of the record before this Court, we find no reversible error. Accordingly, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

NORMA MCGEE OGLE, JUDGE

L.T. LAFFERTY, SENIOR JUDGE