

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 27, 2007

STATE OF TENNESSEE v. MARVIN RICHARD RAUHUFF

Appeal from the Criminal Court for Knox County
No. 81617 Mary Beth Leibowitz, Judge

No. E2007-00057-CCA-R3-CD - Filed February 25, 2008

In April 2005, a Knox County grand jury indicted the defendant, Marvin Richard Rauhuff, on one count of driving under the influence (DUI), third offense. Following a jury trial in Knox County Criminal Court, the defendant was convicted of the sole count of the indictment and was sentenced to eleven months, twenty-nine days in jail, with the defendant to serve 120 days in jail and the balance of his sentence on probation. The defendant appeals, arguing that the evidence was insufficient to sustain his conviction, and that his due process rights were violated by the state's failure to turn over evidence of a blood alcohol test indicating that the defendant's blood alcohol content (BAC) was below .08%. After reviewing the record, we find no error and affirm the judgment of the trial court.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ. joined.

Dan Channing Stanley (on appeal), Knoxville, Tennessee; L. Allison Dobbs (at trial), Sevierville, Tennessee, for the appellant, Marvin Richard Rauhuff.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Assistant Attorney General; Randall E. Nichols, District Attorney General; Marya E. Wilkerson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

_____ At trial, Officer Travis Porter with the Knoxville Police Department testified that at 11:40 p.m. on June 11, 2004, while on routine patrol, he responded to a single-car accident near the intersection of Chapman Highway and Moody Avenue in Knoxville. Officer Porter said that when

he approached the accident scene, he saw a 1986 Toyota pickup truck with two flat passenger-side tires and possible undercarriage damage. Officer Porter said that he later determined that the accident occurred when the defendant, driving northbound on Chapman Highway, struck the curb, lost control of his vehicle, went into a 360-degree spin, and ended up on the southbound side of Chapman Highway, with the truck's rear tires on the curb.

As Officer Porter approached the vehicle, he witnessed the defendant sitting in the driver's seat. According to the officer, the defendant revved the engine, "like the defendant was trying to take off." This led Officer Porter to open the driver's-side door and ask the defendant to exit the vehicle. When the officer opened the door, he "realized [the defendant] had sluggish movements. He had bloodshot eyes." Officer Porter also testified that he "smelled a strong alcoholic beverage coming from the vehicle," and that the defendant "stumbled out of the vehicle" when asked to exit his truck. This led Officer Porter to suspect that the defendant was intoxicated.

After placing the defendant in the back of a police cruiser, Officer Porter had the defendant perform two field sobriety tests in a nearby parking lot. Officer Porter testified that he could not remember if the defendant informed him of any physical limitations that would have prevented him from performing the tests. The first test was the heel-to-toe walking test, which Officer Porter demonstrated for the defendant before having the defendant perform the test. Officer Porter said that he performed his demonstration on an uphill portion of the parking lot but had the defendant perform his test on a level portion of the lot. According to the officer, the defendant failed the test, stepping off the line several times and never having his feet heel to toe at any time. The officer then had the defendant perform the one-leg stand test. Officer Porter testified that this test involved the subject keeping one leg raised six inches off the ground while "counting to 30 by thousands, and if you sway, fall, put your foot down any, that's one point against you." The officer said he also demonstrated this test for the defendant. According to the officer, the defendant failed the test, as he kept stumbling and putting his leg down. Although Officer Porter gave the defendant several chances to complete the test, the defendant was unable to keep his balance at any time. After the defendant failed the second test, Officer Porter arrested him for driving under the influence.

As part of its case in chief, the state played a video recording of the interaction between the officer and defendant, including the defendant's attempts at the field sobriety tests. While the tape was being played, Officer Porter commented that the defendant's speech was "slurred and mumbling," which was consistent with his impression of the defendant's speech the night of the arrest.

On cross-examination Officer Porter admitted that he was unsure how many times the defendant stepped off the line or how far off the line the defendant stepped during the heel to toe test. The officer also admitted that the defendant did not miss walking heel to toe by very much during the test, and that the defendant took the correct number of steps and turned around properly during the test. Officer Porter also acknowledged that he believed the defendant was intoxicated before the defendant performed the field sobriety tests.

The defendant testified that the night of the accident, he went to a restaurant in Sevierville, where he ate dinner and had one and a half beers with his meal. He then returned to his Sevier County residence, did his laundry, and then left his residence at around 10:15 p.m. to drive to Knoxville. The defendant testified that after driving for about an hour, one of the tires blew out, causing him to spin out and strike the curb on the opposite side of the road. The defendant said that he was “knocked a little bit silly” when his head struck the truck’s driver’s side window, but he was able to exit his truck and inspect it for damage. He noted that the truck’s passenger-side rims had been bent, but that no gas was leaking from the truck. He then re-entered the truck and attempted to re-start the truck’s engine, which had died following the accident.

The defendant testified that he performed the sobriety tests in a parking lot without lights. The defendant said that the parking lot consisted of gravel and broken pavement, that the surface was not level, and that there were no lines marking the lot. The defendant testified that he was unable to complete the one-leg stand because he was still dizzy from the wreck. According to the defendant, the officer did not ask him whether he had been injured in the accident. The defendant also said that he had suffered injuries to his legs from previous accidents, though he admitted that he did not remember whether he informed the officer about these prior accidents before attempting the tests. The defendant also testified that the officer did not tell him that he needed to keep his heel and toes touching during the test, and that there was no visible line on which he was instructed to keep his toes during the test.

On cross-examination, the defendant admitted that he did not tell the officer that he had been injured in the accident. He also stated that he did not complete the one-leg stand test because he felt dizzy, but he did not communicate his dizziness to the officer. When asked why he did not tell the officer he had been hurt, the defendant replied, “I learned a long time ago you don’t ask questions and tell stuff. You just reply.” He also admitted that he had been looking in his rear-view mirror and in the surrounding parking lots immediately before the accident, and that this behavior “might have been part” of the accident. He admitted that his speech did sound slurred on the videotape of the stop that was played in court, but he contended that the slurred speech did not result from his being intoxicated. He also testified that the officer may have been smelling seafood or butter instead of alcohol on the defendant’s breath.

Based on the above evidence, the jury found the defendant guilty of driving under the influence. The defendant admitted to two previous DUI convictions and consented to a conviction for DUI, third offense. The trial court sentenced the defendant to eleven months, twenty-nine days in jail, with the defendant to serve 120 days in jail and the remainder of the sentence on probation. This appeal follows.

ANALYSIS

Sufficiency of Evidence

The defendant’s initial contention is that the evidence produced at trial is insufficient to

support his conviction for driving under the influence. We disagree.

An appellate court's standard of review when the defendant questions the sufficiency of the evidence 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) (emphasis in original). The appellate court does not reweigh the evidence; rather, it presumes 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). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant was convicted of driving under the influence in violation Tennessee Code Annotated Section 55-10-401. The statute states, in pertinent part:

(a) 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;

.....

Tenn. Code Ann. § 55-10-401(a)(1).

In this case, Officer Porter testified that he encountered the defendant sitting in the driver's seat of his vehicle shortly after being involved in an accident. Officer Porter testified that the defendant was sluggish, had bloodshot eyes, and stumbled as he exited his truck. The officer also testified that the defendant had a strong smell of alcohol about him when he first exited the vehicle. The defendant then failed two field sobriety tests. The officer's testimony was corroborated by the video recording of the stop, which also revealed that the defendant's speech was slurred during the incident. Although the state did not offer proof of the defendant's blood alcohol content and the defendant argued that his poor performance in his interactions with police and in the field sobriety tests were the result of being "knocked silly" by the accident, the jury chose to accredit the state's proof and discount that offered by the defendant. As such, we conclude that the evidence was sufficient for a reasonable jury to find the defendant guilty of driving under the influence beyond a reasonable doubt. Thus, the defendant is denied relief on this issue.

Blood Test

The defendant next argues that the state “violated his right to due process of law as guaranteed to him by the Fourteenth Amendment of the United States Constitution by failing to disclose to him the results of a blood alcohol content test indicating his BAC to be below the statutory level of .08%.” The defendant argues that his assertion is supported by the video tape of the stop and field sobriety tests. According to the defendant, the video reveals that the defendant was administered a blood alcohol content test which showed the defendant’s blood alcohol content to be .05%. However, the video tape included in the record on appeal depicts only the defendant’s arrest. The tape contains no evidence of any blood alcohol test or any conversation concerning such a test. Additionally, our review of the trial transcript shows that the defendant did not object to the video and did not mention the alleged .05% test on the record. The defendant did raise the issue in his motion for new trial; however, the transcript from the hearing on the motion does not appear in the record. In light of these facts, we must conclude that the defendant has failed to present a complete and accurate record on appeal, and this failure prevents us from considering the issue. See Tenn. R. App. P. 24(b) (noting that the appellant has a duty to prepare a complete and accurate record on appeal). Accordingly, the issue is waived and the defendant is not entitled to relief.

CONCLUSION

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE