

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)
)
Plaintiff and Appellee,)
)
vs.)
)
Joseph ~~Steven~~ ^{Stephen} Dobson,)
)
Defendant and Appellant.)

Supreme Court No. 990273
District Court No. CR-99-623

990273

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

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STATE OF NORTH DAKOTA

APPELLEE'S BRIEF

APPEAL FROM THE JUDGMENT OF CONVICTION ENTERED IN THE CASS
COUNTY DISTRICT COURT, EAST CENTRAL JUDICIAL DISTRICT, THE
HONORABLE MICHAEL O. MCGUIRE, PRESIDING

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STATEMENT OF THE ISSUES

- I. Whether the trial court erred in denying the defendant's Rule 29 (a) motion for judgment of acquittal.
- II Whether there was sufficient evidence to sustain the jury's convictions of driving while under the influence and driving while license suspended or revoked.

STATEMENT OF THE CASE

The State is satisfied with the Appellant's statement of the nature of the case, the course of proceedings, and the disposition in the trial court.

On February 13, 1999, at approximately 2:10 a.m., Deputy Bruce Renshaw of the Cass County Sheriff's Office was on patrol northbound on Cass County Road 15, just north of I-94. (Transcript (Tr.) at 15). While on patrol, Deputy Renshaw noticed a vehicle traveling a half-mile ahead of him. Id. Because of the time of day and location, a rural gravel road, Deputy Renshaw decided to run a license plate check on the vehicle to determine whether that vehicle belonged in the area. Id. The vehicle came back registered to Judy Dobson, Joseph Dobson's wife. Id. Due to prior dealings with Joseph and Judy Dobson, Deputy Renshaw ran a check of both of their drivers' licenses. Id. at 16. Both licenses came back as being suspended. Id.

As Deputy Renshaw followed the vehicle, he observed the vehicle travel from the shoulder of the road back over the center of the road approximately four times. Id. Because Deputy Renshaw was uncertain of the identity of the driver and because he had prior problems with Dobson and his wife, he radioed two other deputies to assist him with the traffic stop. Id. at 16-17.

Deputy Joel Stading was in the area and responded to Deputy Renshaw's location. Id. Deputy Stading pulled his vehicle off to the side of the road so that he could attempt to get an identification of the driver as the vehicle drove past him. Id. at 40-41. As the vehicle was right past Deputy Stading's location, Deputy Stading shined a spotlight on the vehicle. Id. Deputy Stading could see an individual sitting in the driver's seat and that this individual had on a brown colored coat and dark hair. Id. Because there was some mud on the driver's side window, Deputy Stading was unable to positively identify the driver of the vehicle. Id.

Deputy Stading relayed the information regarding the driver to Deputy Renshaw, who then initiated a traffic stop. Id. The vehicle stopped approximately an eighth of a mile down the road, and both deputies approached the vehicle within 10 to 15 seconds after the vehicle stopped. Id. at 17-18, 22, 42. Deputy Renshaw approached the passenger side of the vehicle while Deputy Stading approached the driver's side of the vehicle. Id. at 19. When the deputies approached the vehicle, it was still running and there was no one in the driver's seat. Id. There were two individuals in the vehicle, one in the passenger seat and one in the back seat. Id. at 20. Joseph Dobson was sitting in the passenger seat and another individual identified as Ronald Albaugh, was sitting in the back seat. Id. Dobson, who was sitting in the passenger seat, was wearing a brown coat. Id. at 43-45. Dobson was breathing heavy and appeared at first to be sleeping. Id. The other individual, Ronald Albaugh, was sitting in the back seat wearing a dark black or dark blue coat. Id. Mr. Albaugh appeared to be sleeping or passed out. Id. at 45-46.

The deputies did not believe Dobson was sleeping because he responded with a

smirk or smile to the conversation and/or joke the deputies were having with one another outside of the vehicle. Id. at 45-47. In addition, the deputies did not believe Dobson was sleeping because he appeared to have labored breathing as though he had just performed some physical movement. Id.

As the deputies assisted Dobson out of the vehicle, they noticed a strong odor of alcohol coming from him and that he had poor balance. Id. at 21. When the deputies asked Dobson to perform field sobriety tests, he responded that he knew he was drunk. Id. at 22. Thereafter, Dobson was placed under arrest for driving while under the influence of alcohol and driving while license suspended or revoked. Id. at 23.

Prior to trial, Dobson stipulated that on February 13, 1999, he was under the influence of alcohol and that his license was suspended. Id. at 4-5. The only issue was whether or not he was the driver of the vehicle on February 13, 1999.

ARGUMENT

I. Whether the trial court erred in denying the defendant's Rule 29 (a) motion for judgment of acquittal.

In ruling on a motion of judgment of acquittal, the trial court must view the evidence in a light most favorable to the prosecution and assume the truth of the prosecution's evidence. State vs. Schaeffer, 450 N.W.2d 754, 756 (N.D. 1990). If on this basis there is substantial evidence justifying an inference of guilt, the motion for judgment of acquittal must be denied. State vs. Holy Bull, 238 N.W.2d 52, 57 (N.D. 1975). To successfully challenge the sufficiency of the evidence on appeal, the defendant must show that evidence, when viewed in light most favorable to the verdict, permits no reasonable

inference of guilt. State vs. Fasching, 461 N.W.2d 102, 103 (N.D. 1990).

In the present case, on the defendant's motion for judgment of acquittal, the trial court found that in viewing the evidence most favorable to the prosecution and assuming the truth of the evidence offered, there was substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. Tr. at 55,79-80.

The defendant has failed to show that the evidence viewed in light most favorable to the verdict, permits no reasonable inference of guilt. The defendant has essentially argued that because neither deputy personally identified him as the driver and because there were some similarities in appearance between him and Ronald Albaugh, there is insufficient evidence to sustain a conviction.

Circumstantial evidence may be used to establish guilt and is considered competent evidence. State vs. Holy Bull, 238 N.W.2d 52, 55 (N.D. 1975). Here, the State's evidence showed that the driver of the vehicle was wearing brown clothing and had dark hair. Although the evidence also showed that both the defendant and Ronald Albaugh have dark colored hair, there is no dispute that the defendant was wearing brown colored clothing on February 13, 1999. During the trial, Deputy Joel Stading stated that the color of the defendant's coat was distinct from that of Ronald Albaugh's. Tr. at 53. In addition, Deputy Stading indicated that both individuals' coats were fully on. Id. The State makes this point to illustrate that within the few seconds from the time the vehicle stopped and when the deputies approached the vehicle, it would have been impossible for the defendant to switch coats with Ronald Albaugh or put a different one on.

Additionally, the State's evidence established that the defendant was not sleeping

in the passenger seat because he was responding to the deputies conversation with a smirk and/or smile. The State's evidence also showed that the defendant was breathing heavy as though he had just performed some physical movement such as moving from the driver's seat to the passenger's seat. In viewing all of this evidence in light most favorable to the State, there is substantial evidence justifying an inference of guilt which supports the trial court's denial of the defendant's motion for judgment of acquittal.

II Whether there was sufficient evidence to sustain the jury's convictions of driving while under the influence and driving while license suspended or revoked.

An appellant challenging evidence must show the evidence, when viewed in the light most favorable to the verdict, reveals no reasonable inference of guilt. State vs. Strutz, 2000 ND 22, ¶ 7 (citing State vs. Esparza, 1998 ND 13, ¶ 17, 575 N.W.2d 203). In a review of the sufficiency of the evidence for a criminal conviction, the Court does not reweigh the evidence nor judge the credibility of witnesses. State vs. Keller, 550 N.W.2d 411, 412 (N.D. 1996) (quoting State vs. Torres, 529 N.W.2d 853 (N.D. 1995)). The task of judging the credibility of the witnesses belongs to the jury. State vs. Strutz, 2000 ND 22, ¶ 8 (citing State vs. Carlson, 1997 ND 7, ¶ 51, 559 N.W.2d 802. On appeal, the Court must assume the jury believed the evidence supporting the verdict and disbelieved any contrary evidence. Id.

The evidence that the defendant was wearing a brown colored coat on February 13, 1999, and the fact that Deputy Stading saw the driver of the vehicle wearing brown colored clothing reveals a reasonable inference of guilt. Further, the evidence that the defendant was breathing heavy and was "fake" sleeping also reveals an inference of guilt.

It is possible that Ron Albaugh could have been the driver of the vehicle, but it is not probable based on the evidence. Ron Albaugh could have lunged into the back seat of the vehicle once the vehicle stopped, but it is just as likely that the defendant slid into the passenger's seat from the driver's seat when the vehicle stopped. Additionally, both individuals in the vehicle had their coats fully on. Therefore, it is unreasonable to think that either individual changed coats from the time the vehicle stopped to the when the deputies approached the vehicle because there was not enough time.

Although the defendant's witness, Rick Potratz, testified that he helped the defendant out to his car (from the Sanborn bar) and put him in the passenger seat, this is not enough to prove the defendant's innocence because Mr. Potratz was not with the defendant and Ronald Albaugh after they left the Sanborn bar. In fact, Mr. Potratz testified that the defendant was going to his mother's house in Sanborn after they left the bar, however, as the evidence shows, the defendant and Ronald Albaugh drove back to the rural Fargo area. Tr. at 59.

In light of all of these facts and circumstances, the jury could have, and did, conclude that the defendant was the driver of the vehicle on February 13, 1999. Viewing the evidence in a light most favorable to the verdict and drawing all logical inferences from the evidence, there was sufficient evidence for the jury's verdicts.

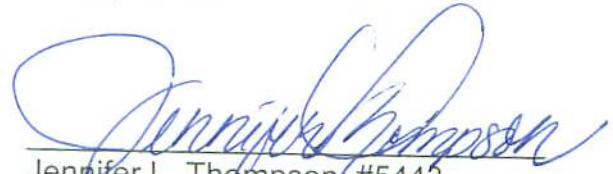
CONCLUSION

The trial court did not err in denying the defendant's motion for judgment of acquittal and there was sufficient evidence to sustain the jury's verdicts because in viewing the evidence in the light most favorable to the prosecution and assuming the truth of the

evidence offered, there was substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt.

For the foregoing reasons, the defendant's convictions should be affirmed.

Respectfully submitted this 25th day of February, 2000.



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