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STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF NORTH DAKOTA

February 19, 2010

City of Fargo,

Plaintiff and Appellee,

v.

Steve Knodle,

Defendant and Appellant,

)
)
)
)
) Supreme Court No.20100004

) Cass County No. 09-K-02594
)
)

APPEAL FROM THE DISTRICT COURT
CASS COUNTY, NORTH DAKOTA
EAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE FRANK L. RACEK, PRESIDING

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUE

[¶ 3] Whether the evidence was insufficient to support the conviction for driving under the influence of alcohol.

STATEMENT OF THE CASE

[¶ 4] This is an appeal arising from a criminal case. (see District court Clerk's Register of Actions, Appendix to the Brief, pp.1-3) The Defendant and Appellant, Steven Knodle (hereinafter referred to as "Knodle") was charged and arrested for the offense of driving a motor vehicle while under the influence of intoxicating liquor on April 17, 2009. See Uniform Traffic Citation, Appendix to the Brief, p.4) The Fargo Municipal Court found him guilty of the offense of driving a motor vehicle while under the influence of intoxicating liquor.(See Judgment and Disposition of Criminal Complaint, Appendix to the Briefs, p.5) Knodle appealed this conviction to the Cass County District Court where trial was held on November 30, 2009.(Trial Transcript of November 30, 2009) The district court found Knodle guilty of the offense of driving a motor vehicle while under the influence of intoxicating liquor.(See District Court Criminal Judgment, Appendix to the Briefs, p.6) Knodle then filed a timely notice of appeal from that judgment on January 6, 2010.(See Register of Action, Appendix to the Briefs, pp. 1-3, and Notice of Appeal and Notice of Filing Notice of Appeal, Appendix to the Briefs at pp. 7-12)

STATEMENT OF FACTS

[¶ 5] On April 17, 2009, officer Michael Benton was dispatched to the Kids Kingdom day-care center in south Fargo regarding an argument between an adult male

who was yelling at a ten year old boy. (T. 6-7) When Officer Benton arrived, he observed a black Ford Explorer in the Kid's Kingdom parking lot with a female seated in the front passenger seat. (T.7) Officer Benton testified that he received the dispatch at approximately 11:20 p.m. (T.6). Benton stopped his squad car and shortly thereafter encountered the Appellant, Steve Knodle who appeared from behind him in the parking lot. (T.9) Knodle explained to Officer Benton that Knodle's nine-year-old son had ran off and Knodle was trying to find him. (T.9) Officer Benton immediately detained Knodle and placed him in handcuffs. (T.10) Knodle told Officer Benton that he and his female passenger had been at a bar prior to arriving at Kid's Kingdom to pick up Knodle's nine-year-old son. (T.11) Knodle said he and his passenger had arrived at Kid's Kingdom about a half hour before Officer Benton arrived. (T.11) Knodle explained that shortly after retrieving his son form Kid's Kingdom, the boy became upset and left on foot. (T.12) The boy was located at a near-by hotel a short time later. (T.12-23) After the boy was located, Officer Benton commenced a D.U.I. investigation based upon his observation of Knodle and Knodle's statement that he had driven from the bar to Kid's Kingdom. (T.13) Officer Benton conducted field sobriety tests on Knodle which were scored as fails. (T. 14-15) Knodle was then placed under arrest for D.U.I. (T.16) Knodle Submitted to a blood test which resulted in a blood alcohol content of .19. (T.43) At no time did Officer Benton see Knodle driving or in actual physical control of a motor vehicle. (T.22) Officer Benton testified that he did not know what time Knodle arrived at Kid's Kingdom. (T.25)

[¶ 6] Officer Normandin of the Fargo Police Department testified that he was dispatched to the Kid's Kingdom during the course of Officer Benton's investigation.

(T.34) Knodle told officer Normandin that he had consumed two beers and one shot of liquor prior to driving to Kid's Kingdom. (T.38-39) Knodle also told Officer Normandin that sometime after Knodle arrived at Kid's Kingdom he realized that he probably needed to call a cab and fully intended to do just that.(T.39)

[¶ 7] Roberta Grieger from the North Dakota Crime Laboratory testified that she analyzed Knodle's blood sample. (T.42) Grieger testified that it was possible that under the right conditions, a person's blood alcohol level could elevate from .07 to .19 in one hour's time.(T.46)

[¶ 8] After consulting with his lawyer Knodle waived his right to testify on his own behalf.

JURISDICTIONAL STATEMENT

[¶ 9] The district court had jurisdiction over this case pursuant to N.D. Const. art. VI, § 8, N.D.C.C. §§ 27-05-06, 40-18-15.1. This Court has jurisdiction over this appeal under N.D. Const. art. VI, § 6, N.D.C.C. §§ 29-28-06 (1), and 29-28-06 (2). This appeal is timely under N.D.R. App.P. 4(b)(1)(A).

STANDARD OF REVIEW

[¶ 10] When reviewing challenges to the sufficiency of the evidence, this court considers the evidence most favorable to the verdict and all reasonable inferences from such evidence. State v. Wilson, 2004 ND 51, ¶6, 676 N.W. 2d 98 (citing State v. Knowels, 2003 ND 180, ¶ 6671 N.W. 2d 816). The defendant "must show the evidence, when viewed in the light most favorable to the verdict, reveals no reasonable inference of guilty." Wilson, 2005 ND at ¶ 6 (citing State v. Strutz, 200 ND 22, ¶7, 606 N.W. 2d

866). The Court does not weigh conflicting evidence or judge the credibility of witnesses. Wilson, 2005 ND at ¶6 (citing State v. Johnson, 425 N.W. 2d 903, 906 (N.D. 1988)). Rather the reviewing court will “merely review the record to determine if there is competent evidence that allowed the court to draw an inference reasonably tending to prove guilty and fairly warranting a conviction.” Wilson, 2005 ND at ¶ 6 (quoting State v. Jacobson, 419 N.W. 2d 899, 901 (N.D. 1988)). This court reverses a conviction only if no rational fact-finder could have found the defendant guilty beyond a reasonable doubt, after applying the standard above. State v. Burke, 2000 ND 25, ¶ 12, 606 N.W.2d 108. The defendant bears the burden of convincing this court that there is no reasonable inference of guilt, based on the evidence. See State v. Ebach, 1999 ND 5, ¶ 24, 589 N.W.2d 566.

ARGUMENT

[¶ 11] The evidence was insufficient to support a conviction for driving under the influence. The evidence does support the allegation that Knodle drove his vehicle from the bar to Kid’s Kingdom. The evidence also supports the allegation that at the time Knodle submitted to the blood test, his blood alcohol concentration was in excess of the legal limit to operate a motor vehicle. However, there is insufficient evidence to establish a nexus between Knodle driving and being under the influence simultaneously. Neither Officer Benton or officer Normandin observed Knodle driving nor could they testify exactly when Knodle was driving. Knodle told Officer Normandin that after he had been at Kid’s Kingdom for a period of time, he felt that he probably needed a cab.

[¶ 12] Roberta Grieger testified that it was possible that a person’s blood alcohol concentration can elevate from below the legal limit to a .19 within an hour’s time

depending on the conditions. It is logical to infer that at the time Knodle was searching for his lost child, his heart and adrenalin were pumping at a rate far in excess of normal. Obviously any alcohol in his system was being metabolized at a higher than normal rate. These conditions were not present while Knodle was driving to Kid's Kingdom. This in turn explains why Knodle felt that he needed a cab when his son was finally located and was safe. The Trial courts finding that Knodle was driving under the influence of alcohol is not supported by the facts. Rather, Knodle's conviction was based upon speculation.

CONCLUSION

[¶ 13] For all of the above stated reasons, Defendant/ Appellant respectfully requests the court to reverse the district court's conviction of the defendant for driving under the influence.

Dated this 19th day of February, 2010.

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[¶ 14] CERTIFICATE OF SERVICE

A copy of this document and the Appendix to Brief of Appellant in pdf format were e-filed with the North Dakota Supreme Court and served upon Scott Diamond, Fargo City Prosecutor, on the 19th day of February, 2010. Specifically, this document and the Appendix to Brief of Appellant were electronically filed and served as follows:

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/s/ Joe A. Johnson
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