

RENDERED: March 13, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2994-MR

ROGER MORRISON

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES E. KELLER, JUDGE
CRIMINAL ACTION NO. 96-CR-000720

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GUDGEL, CHIEF JUDGE; EMBERTON and GUIDUGLI, Judges.

GUIDUGLI, JUDGE. Appellant, Roger Morrison (Morrison), appeals from a final judgment and sentence of imprisonment entered by the Fayette Circuit Court on October 29, 1996. After a trial by jury, Morrison was found guilty of an amended charge of unauthorized use of a motor vehicle (KRS 514.100), as well as, resisting arrest (KRS 520.090), driving under the influence, second offense (KRS 189.010), operating on a suspended license (KRS 186.620), and assault, fourth degree (KRS 508.030) and sentenced to twelve months in the county jail. Probation was denied by the trial judge. Appellant argues that the trial court erred by denying his motions for a directed verdict. We disagree and, hence, affirm.

On June 3, 1996, Morrison came upon a 1978 Chevrolet truck parked at the entrance of the Radisson Hotel parking garage with keys in the ignition. The truck belonged to Richard Roy, who, along with Steven Coleman, was repairing a fire extinguisher box in the garage. Roy and Coleman were not far from the vehicle when they heard it start up and pull forward and strike a parked vehicle. Roy and Coleman ran to the vehicle and found Morrison sitting in the driver's seat. Appellant subsequently exited the truck and was detained by the two. While awaiting the arrival of the Lexington police, Morrison attempted to leave the scene, threatened the witnesses, struck Coleman in the throat and had to be physically restrained by hotel security.

Eventually, Officer Steven Davis, of the Lexington Division of Police, arrived and placed Morrison under arrest for theft by unlawful taking over \$300 (KRS 514.030), a felony and the several misdemeanor offenses noted above. Officer Davis also testified that appellant was screaming and yelling and resisting arrest by attempting to kick the officer, as well as, by threatening him. Officer Davis was unable to give Morrison any field sobriety tests because appellant was "totally intoxicated."

At trial before a jury, Coleman, Roy and Officer Davis testified as to what transpired on June 3, 1996, at the Radisson Hotel. Cindy Dudley, a Department of Transportation records custodian, testified, without objection, that Morrison's driving privileges were suspended on that date in question. Appellant took the witness stand and testified that he had a serious

alcohol problem, that he had been drinking, that he "blacked out," and that he does not remember everything that happened that day.

Morrison appeals his conviction contending that his motions for directed verdict should have been granted. Appellant moved for a directed verdict at the conclusion of the Commonwealth's case and again at the conclusion of all the evidence. Both motions for directed verdict were general in nature and based upon the insufficiency of the evidence. Additionally, appellant specifically moved for a directed verdict on the operating on the suspended license charge claiming that he was not on a public highway as required by statute.

On motion for a directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991); Yarnell v. Commonwealth, Ky., 833 S.W.2d 834 (1992); Farler v. Commonwealth, Ky. App., 880 S.W.2d (1994). "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal." Benham at 187. A reviewing court does not have to

reevaluate the proof because its only function is to consider the decision of the trial court in light of the evidence presented at trial. Bussell v. Commonwealth, Ky., 882 S.W.2d 111 (1994). A careful review of the record, including the video tape of the jury trial, makes it clear that there was more than sufficient evidence to overcome a motion for a directed verdict based on the sufficiency of the evidence.

Appellant next argues his motion for directed verdict on the suspended license charge. It is clear from the evidence that the Commonwealth met its burden of proof and appellant was not entitled to a directed verdict. At trial, Coleman testified that he heard the engine of the truck start, then saw Morrison attempting to leave the parking garage in the vehicle but was thwarted when he struck a parked vehicle. Both Coleman and Roy observed appellant behind the driver's wheel with the engine still running. Officer Davis testified, without objection, that he was advised over the radio that Morrison's license was suspended. Ms. Dudley concluded the Commonwealth's evidence by referring to appellant's certified driver's record and testifying that the record indicated Morrison's license was suspended on June 3, 1996. "[I]n prosecuting a suspended license charge, it is not necessary to prove a prior conviction. Rather, it is only necessary that the Commonwealth prove that the individual was operating a vehicle while his or her license was suspended." Commonwealth v. Duncan, Ky., 939 S.W.2d 336 (1997).

The issue to be considered then is not whether his license was, in fact, suspended but rather, was Morrison operating a vehicle on a highway at the time of the violation? Appellant argues that since he was in a parking garage that he was not operating a vehicle on a highway as required under the suspended license statute. KRS 186.620(2) states:

No person who has not applied for an operator's license or whose operator's license has been denied, canceled, suspended or revoked, or whose privileges to operate a motor vehicle has been withdrawn, shall operate any motor vehicle upon the highways while the license is denied, canceled, suspended, or revoked or his privilege to operate a motor vehicle is withdrawn, or the license has not been applied for.

In the case sub judice, the court instructed the jury that in order to find the appellant guilty of operating on a suspended license the jury must find that Morrison was operating a motor vehicle on a highway and that his license had been suspended. The instructions pursuant to 1 Cooper, Kentucky Instructions to Juries (Criminal) § 8.14 (1993), defined highway as: "Highway - Means every way or place of whatever nature when any part of it is open to the use of the public, as a matter of right, license, or privilege, for the purpose of vehicular traffic." Appellant did not object to the instruction or the definition. Under the definition used, the Radisson Hotel parking garage would be included in the definition of highway. It is open to the public and guests, as well as, others who pay to use the parking facility. A review of the evidence presented in this case clearly indicates that the trial court correctly

determined that a reasonable juror could fairly find guilt beyond a reasonable doubt. The motion for a directed verdict was properly denied and the case properly presented to the jury for determination on all issues.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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