

RENDERED: JULY 30, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003043-MR

BRIAN KEITH BURTON

APPELLANT

v.

APPEAL FROM McCracken Circuit Court
HONORABLE R. JEFFREY HINES, JUDGE
INDICTMENT NO. 97-CR-000111

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, EMBERTON and HUDDLESTON, Judges.

HUDDLESTON, Judge. Brian Keith Burton appeals from a McCracken Circuit Court judgment based on a jury verdict convicting him of driving under the influence (DUI), 4th Offense, a violation of Ky. Rev. Stat. (KRS) 189A.010, and of driving with a suspended license for a DUI 3rd offense, and sentencing him to eight years' imprisonment. The only issue that Burton raises on appeal is whether the trial court erred when it failed to direct a verdict of acquittal because of the Commonwealth's failure to offer evidence

corroborating Burton's admission to the police that he had been driving while intoxicated.

On March 20, 1997, someone at the Morning Star Mission contacted the McCracken County Sheriff's Department concerning an individual who was apparently intoxicated and sitting in a vehicle parked on its property. Upon arrival at the Mission, Deputy Sheriff John Parks found Burton sleeping in the driver's seat of the vehicle with its headlights on.¹ Parks saw several full and empty bottles of alcohol in the vehicle and noticed the distinct odor of alcohol.

Burton failed four standard field sobriety tests and was subsequently arrested for DUI. After Burton was given a "Miranda warning," he admitted to Parks that he had been drinking prior to driving to the Morning Star Mission, but denied drinking after he arrived.

Burton testified at trial that his brother drove him to the Mission where they got into an argument. As a result, his brother left the vehicle and went to a motel. Burton claimed that he intended to call his wife for a ride, but instead fell asleep in his vehicle.

Burton argues that he was entitled to a directed verdict because the Commonwealth failed to offer evidence corroborating his

¹ Officer Parks had to open the driver's door of the vehicle after several unsuccessful attempts to wake Burton. Eventually, Parks had to pull Burton's blanket off to wake him. Burton was so intoxicated that he could not step out of the vehicle without assistance.

statement that he was driving while under the influence. Burton bases his argument on Ky. R. Crim. Proc (RCr) 9.60, which provides that "[a] confession of a defendant, unless made in open court, will not warrant a conviction unless accompanied by other proof that such an offense was committed." Burton insists that in order to convict him of DUI, the Commonwealth was required to prove both: (1) that he was drunk and, (2) that he was in actual physical control of the vehicle. See KRS 189.010(1). Burton admits that he was under the influence of alcohol, but contends that he was not in control of his vehicle. Burton asserts that the Commonwealth failed to offer independent evidence to corroborate his confession that he had been operating his vehicle while intoxicated.

Burton relies on Wells v. Commonwealth, Ky. App., 709 S.W.2d 847 (1986), but the recent Supreme Court decision in Blades v. Commonwealth, Ky., 957 S.W.2d 246 (1997), is controlling on this issue.² In Blades, the defendant was found staggering in the roadway with his truck parked approximately a mile away in the middle of the road with its engine running. A breath test showed that defendant's blood alcohol concentration was .234 percent.

At trial, the arresting officers testified that the defendant admitted that the truck was his and that he, in fact, had been driving it. The defendant testified that he told the officers that he had been driving in order to protect his stepdaughter, the

² Supreme Court Rule (SCR) 1.030(8)(a) provides that "[t]he Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court."

actual driver of the vehicle. After the defendant was convicted of DUI, he argued that he was entitled to a directed verdict under the rationale set forth in Pence v. Commonwealth, Ky. App., 825 S.W.2d 282 (1991).

In Pence, the defendant was found sitting behind the wheel of his vehicle at a truck stop. The defendant admitted he had been driving and a breath test revealed a blood alcohol content of .26. After the defendant was convicted of DUI, he appealed to this Court which reversed and said that "nothing in the evidence presented permitted a reasonable inference as to how long the defendant had been at the truck stop or that it was more likely that the defendant drove to the truck stop while intoxicated than he became intoxicated after arriving." Id. at 283.

The Blades court overruled Pence to the extent that it required a heightened level of evidence in order to submit DUI cases to the jury. In doing so, the Court said that:

It is well-settled that a jury may make reasonable inferences from the evidence. We fail to logically perceive a rational differentiation between the inferences that may be drawn in DUI cases of this nature and other crimes. Clearly, if inferences from circumstantial evidence are sufficient to convict in felony crimes, a fortiori circumstantial evidence and reasonable inferences therefrom are sufficient for a jury conviction of a misdemeanor offense

Id. at 250 (citations omitted).

In the present case, the issue of Burton's guilt was properly submitted to the jury and the Commonwealth produced enough evidence to support a conviction. To recapitulate, Burton admitted that he was intoxicated and that he had been drinking prior to driving to the Morning Star Mission. Burton was found sleeping inside his vehicle which contained full and empty liquor bottles. The vehicle's lights were on and the keys were in Burton's possession. Moreover, a security guard testified that he saw the vehicle drive up to the Mission and heard a car horn blow. On two occasions the security guard walked outside as a result of Burton honking the horn and did not see anyone other than Burton in or near the vehicle. The circumstances surrounding Burton's arrest provide more compelling grounds for concluding that he was operating or in physical control of the vehicle than those in Blades.³

In Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991), the Supreme Court said that:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in

³ In Blades v. Commonwealth, Ky., 957 S.W.2d 246 (1997), the defendant was observed staggering in the roadway. Upon further investigation, it was determined that the defendant was intoxicated as demonstrated by his failure to pass field sobriety tests and from breath-alcohol test results. The defendant's vehicle was found in the center of the roadway with the engine running and the defendant admitted to state troopers that he had driven the vehicle to its location. The Supreme Court said that "[c]learly there was more than sufficient circumstantial evidence presented to satisfy the corroboration requirement of RCr 9.60 and allow the jury to draw the reasonable inference that [the defendant] had been operating his vehicle while under the influence of alcohol." Id. at 250.

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 [must reserve] to the jury questions as to the credibility and weight to be given to such testimony.

Given the evidence at trial, it was not clearly unreasonable for the jury to find Burton guilty of DUI. Hence, the judgment is affirmed.

All CONCUR.

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