

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1423

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Alamance County
Nos. 00 CRS 12246-47

ROBERT LEON TART

Appeal by defendant from judgment entered 24 January 2001 by Judge Ronald L. Stephens in Alamance County Superior Court. Heard in the Court of Appeals 22 July 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Isaac T. Avery, III and Assistant Attorney General Patricia A. Duffy, for the State.

David J.P. Barber for defendant-appellant.

WALKER, Judge.

Defendant was found guilty of habitual driving while impaired and driving while license revoked. After admitting to being an habitual felon, he received a sentence of 135 to 171 months in prison.

Viewed in the light most favorable to the State, the evidence at trial tended to show the following: On the afternoon of 8 February 2000, Sergeant Jeff Wood of the Burlington Police Department observed defendant turn his vehicle off of Huffman Mill Road into the parking lot of Alamance Regional Medical Center,

while traveling at approximately forty miles per hour. A safe speed for the parking lot was twenty-five miles per hour. Once inside the lot, defendant accelerated, squealed his tires, and turned left again toward the Kernodle Clinic.

Sergeant Wood activated his blue lights and approached defendant's vehicle. Defendant informed Sergeant Wood that he had no driver's license. Defendant's eyes were red and glassy, his speech was slurred and mumbled, and he had a strong odor of alcohol about his person. After checking defendant's name against the records of the Department of Motor Vehicles (DMV), Sergeant Wood placed him under arrest. Defendant refused to submit to an Intoxilyzer breath analysis. Sergeant Wood administered two field sobriety tests. Defendant was unable to maintain a "one-legged stand" for thirty seconds. He also swayed noticeably from front to rear during the "sway test." Based on his observation of defendant over a one and one-half hour period, as well as his thirteen years of law enforcement experience, Sergeant Wood formed an opinion that defendant had consumed a sufficient quantity of an impairing substance that his mental and physical faculties "were extremely impaired." Inside defendant's vehicle, Sergeant Wood found half-empty bottles of vodka and Wild Irish Rose.

DMV records showed that defendant's driver's license had been revoked since 11 January 2000. Defendant stipulated to three prior impaired driving convictions within seven years of the charged offense.

In his one assignment of error on appeal, defendant claims the trial court erred in denying his motion to dismiss. Specifically, he contends the State failed to adduce substantial evidence of impairment. We disagree.

Defendant was observed turning off of a public road into a parking lot at an unsafe rate of speed. Once inside the parking lot, he accelerated and squealed his tires making a second turn. Defendant smelled strongly of alcohol; his eyes were red and glassy; his speech was slurred; and he was unable to perform correctly either of two field sobriety tests. He also refused to submit to an Intoxilyzer test. See N.C. Gen. Stat. § 20-139.1(f) (2001) (providing that such a refusal is admissible in a criminal prosecution for impaired driving). Defendant had open bottles of liquor and fortified wine in his vehicle. Finally, Sergeant Wood formed an opinion, based on his observations, that defendant's mental and physical faculties were extremely impaired. Such evidence was sufficient to take the issue of defendant's impairment to the jury. See *State v. O'Rourke*, 114 N.C. App. 435, 441, 442 S.E.2d 137, 140 (1994); and *State v. Beasley*, 104 N.C. App. 529, 533, 410 S.E.2d 236, 239 (1991).

No error.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).